

AGENDA ITEM MEMO

BOARD MEETING DATE: November 17, 2022

TO: Board Members

THROUGH: Jeff Walker, Executive Administrator
Ashley Harden, General Counsel
Jessica Peña, Deputy Executive Administrator, Water Supply &
Infrastructure
T. Clay Schultz Ph.D., Director, Regional Water Project Development

FROM: Jessica Taylor, P.E., Customer Service Liaison, Executive Administration

SUBJECT: Use of Alternative Delivery Methods for Texas Water Development Board
Funded Projects

ACTION REQUESTED

No action is required of the Board. This is a briefing and discussion on the status of the proposed revisions to Texas Water Development Board's guidance document related to use of Construction Manager-at-Risk (CMAR) and Design-Build (DB) project delivery methods.

BACKGROUND

Historically, the primary delivery method for construction projects financed through the Texas Water Development Board (TWDB) has been Design-Bid-Build. In recent years, the number of projects utilizing alternative delivery methods has grown substantially.

In October 2020, the TWDB published a guidance document for projects utilizing alternative delivery methods. In Fall 2021, staff began re-evaluating the guidance document based on internal staff and external stakeholder feedback. The guidance document has been renamed the Use of Alternative Delivery Methods for TWDB Funded Projects. The document was formerly known as Guidance for Use of CMAR and DB Project Delivery Methods for Communities Financing Projects through the TWDB Financial Assistance Programs.

KEY ISSUES

The proposed revisions to the guidance document are intended to better align the TWDB review process with the general project flow of alternative delivery projects, to the greatest

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| | ⋮ | Jeff Walker, Executive Administrator |

extent possible given current statute and administrative rules. Additionally, the proposed revisions will help expedite the staff review time required on CMAR and DB projects. This will allow TWDB to provide an improved process for alternative delivery projects and help entities maintain project schedules.

The guidance document provides details on implementation of a project utilizing TWDB funding using the CMAR or DB delivery method, including procurement requirements as outlined in Texas Government Code Chapter 2269, review requirements in each phase of the project, and availability of funds. However, as noted in the guidance document, it is the recipient's responsibility to ensure compliance with state laws governing contracting and delivery procedures for construction projects and all TWDB programmatic requirements.

On August 11, 2022, TWDB hosted a virtual workgroup with external stakeholders to discuss the proposed revisions to the guidance document. Following this workgroup, TWDB staff had additional discussions with stakeholders to better refine the proposed process.

The revised guidance document will be posted on the TWDB website for public comment on November 17, 2022 and written comments will be accepted through December 19, 2022.

SUMMARY

The Executive Administrator will make the revised guidance document available on the TWDB website for public comment on November 17, 2022. Following the public comment period, the Executive Administrator will make changes to the guidance document as appropriate. No action is required of the Board at this time.

Attachments:

1. Public Comment Notice and Summary of Proposed Revisions
2. Draft Use of Alternative Delivery Methods for TWDB Funded Projects (TWDB-0570)

Public Comment Period on Use of Alternative Delivery Methods for Texas Water Development Board Funded Projects Guidance Document

Public Comments:

The Texas Water Development Board is holding a period of public review and comment on the proposed revisions to the Use of Alternative Delivery Methods for Texas Water Development Board Funded Projects guidance document. This document was formerly known as the Guidance for Use of Construction Manager-at-Risk and Design-Build Project Delivery Methods for Owners Financing Projects Through the Texas Water Development Board Financial Assistance Programs.

The document available online includes:

- Summary of substantive changes
- Draft Use of Alternative Delivery Methods for Texas Water Development Board Funded Projects (TWDB-0570)

The period of public review and comment begins on **November 17, 2022** and ends on **December 19, 2022**. Comments on the proposed revisions to the guidance document can be submitted via:

1. Email: PUBLIC-COMMENT@twdb.texas.gov
2. U.S. Mail:

Ms. Jessica Taylor
Customer Service Liaison
Texas Water Development Board
P.O. Box 13231
Austin, TX 78711

Please note, this public review and comment period is for the guidance document only. The proposed rulemaking will be posted in the Texas Register on December 2, 2022, for a 30-day period. Written comments on the proposed rulemaking may be submitted by mail to Office of General Counsel, Texas Water Development Board, P.O. Box 13231, Austin, Texas 78711-3231, by email to rulescomments@twdb.texas.gov, or by fax to (512) 475-2053.

For questions contact, Jessica Taylor, Customer Service Liaison, at (512) 463-7191 or jessica.taylor@twdb.texas.gov

Summary of Proposed Revisions:

Below is a summary of substantive changes proposed in the revised guidance document. Other non-substantive changes are included throughout the guidance document.

1. **Format:** The Construction Manager At-Risk (CMAR) and Design-Build (DB) sections of the guidance document have been separated into two parts. Part I of the guidance will discuss the requirements for implementation of a project utilizing Texas Water Development Board (TWDB) funding using the CMAR delivery method, including procurement requirements as outlined in Texas Government Code Chapter 2269, review requirements in each phase of the project, and availability of funds. Part II of the guidance will discuss the requirements from the same sources for implementation of a project utilizing TWDB funding using the DB delivery method.
2. **Web Portal File Sharing Page:** The TWDB will provide a web portal file sharing page that will be accessible for the life of the project. All project documents submitted to TWDB, with the corresponding submittal form, will be uploaded to the web portal following the Alternative Delivery Document Naming Convention (TWDB-0570 Attachment No. 4). TWDB staff will be able to download all files needed for review and add the files to the File of Record.
3. **Front-End Document Template:** The Owner or CMAR Firm shall work with TWDB to create a Front-End Document Template for the project. The template will include an overall project scope, a draft sub-contract and/or purchase order agreement, the appropriate TWDB Supplemental Contract Conditions, and all required programmatic language and forms. This template will be utilized when the CMAR is preparing Bid Packages and Work Packages.
4. **Staged Design Package Review:** The Owner can elect to follow a staged Design Package Review process. As part of the staged process, a Regulatory, Programmatic, and Bid (RP&B) Design Package may be submitted. The RP&B set must include complete design for all project components within TCEQ regulated design criteria for the scope of work included in the design package. The RP&B set must be sealed per Texas Administrative Code §137.33 and clearly marked with a disclaimer outlining the purpose of the document and that the document is not for construction.

Once design of all project components is finalized, the Issued for Construction (IFC) Design Package is issued by the design engineer. The IFC Design Package will be submitted to the TWDB with a signed and sealed change log for TWDB review and approval. The IFC Design Package cannot include a disclaimer and must be issued for construction.

If the staged Design Package Review process is not utilized, the Design Package submitted must include complete design for all project components in the scope of work and the set cannot include a disclaimer.

5. **Review of Bid Package Procurement at the GMP level:** The Owner or CMAR shall upload all documentation of the Bid Package Procurement as outlined in the Alternative Delivery Bid Package Procurement Submittal Form (TWDB-0400A and TWDB-0580 Attachment No. 3). At any time during the construction phase the TWDB may request, and review, documentation related to Work Packages approved in a Bid Package Procurement.
6. **Staged Notice to Proceed and Release of Funds:** The Owner or CMAR shall upload all executed contract documents related to a Bid Package contract amendment or GMP as outlined in the Alternative Delivery Bid Package Procurement Submittal Form (TWDB-0400A and TWDB-0580 Attachment No. 3). If an RB&P Design Package was approved for the scope of work, the TWDB will issue a Concurrence with Notice to Proceed and Partial Eligible Release of Award Letter. This will allow for release of up to 75% of the GMP or bid package award for non-construction activities such as procurement of long-lead items and mobilization, which are included in the approved design. Following the approval of the IFC Design Package, another Concurrence with Notice to Proceed and Eligible Release of Award Letter will be issued. At this point, up to 95% of the GMP or bid package award amount will be eligible for release (excluding unallocated contingencies or allowances, and not to exceed the GMP).

If the Owner does not elect to use the staged Design Package Review Process, only one Concurrence with Notice to Proceed and Eligible Release of Award Letter will be issued allowing release of up to 95% of the GMP or bid package award (excluding unallocated contingencies or allowances, and not to exceed the GMP).

7. **CMAR Certificate of Acceptance Procedure:** Prior to release of final retainage on the CMAR contract and overall project, a Certificate of Acceptance (COA) must be issued. The Owner or CMAR Firm must submit a COA request for the overall project to the TWDB including a letter from the Owner and CMAR Firm certifying that all work has been completed.

Use of Alternative Delivery Methods for Texas Water Development Board Funded Projects

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Definitions

In this guidance, the following terms are used:¹

- a. *Alternative Delivery (also known as Collaborative Delivery, herein referred to as Alternative Delivery, or AD)*: In accordance with Texas Gov't Code 2269, a method for procuring contracts and delivering a capital project that involve close collaboration among the project owner, designer, and contractor from design through project completion. Design Build and Construction Manager-at-Risk are AD project delivery methods that will be discussed in this document.
- b. *Applicant*: The governmental entity seeking funding from the Texas Water Development Board. Generally, the Applicant and the Owner are the same entity.
- c. *Board*: The Texas Water Development Board's three-member governing body.
- d. *Bid Package*: A set of work packages selected by the CMAR to be advertised together in association with a GMP and TWDB reviewed and approved Design Package and Front-End Document Template.
- e. *Construction Manager-at-Risk (CMAR)*: An AD project-delivery method in which the Owner retains an engineering firm and a construction manager (or General Contractor) under two separate contracts, one for design and the other for construction, respectively. The construction manager is responsible for construction performance and commits to delivering the project within a defined schedule and price, either a fixed lump sum or a guaranteed maximum price (GMP). The construction manager provides construction input to the owner and design engineer during the design phase and operates as the general contractor during the construction phase. In this guidance, the CMAR firm may be referred to as "the CMAR".
- f. *Design-Bid-Build (DBB)*: A traditional project-delivery method in which the Owner first procures and contracts with an engineer to prepare detailed design plans and specifications for a project. The Owner then procures and contracts with one or more separate construction companies to construct the project, based on the plans prepared by the Design Engineer. In DBB, the contractor does not have input during the design phase.
- g. *Design-Build (DB)*: An AD project-delivery method in which the Owner enters into a single contract with a Design-Builder to design, permit, construct, test, and commission a capital project.
- h. *Design-Builder*: A partnership, corporation, or other legal entity or team that includes an engineer and a construction contractor qualified to engage in civil work construction in Texas.²
- i. *Design Engineer*: On a DBB or CMAR project, this is the consulting engineer (engineering firm) procured by the Owner to provide planning, design, and construction phase engineering services. In this capacity, the Design Engineer is also the Engineer of Record.

¹ Except when noted, definitions are taken from the Water and Wastewater Design-Build Handbook (Fifth Edition), Water Design-Build Council and Design Build-Institute of America (2019)

² Texas Gov't Code § 2269.351(2)

- j. *Design Package*: Design-only documents consisting of engineered drawings and technical specifications which may be issued for construction (IFC) or for regulatory, programmatic, and bid (RP&B) purposes.
- k. *Engineer of Record*: A Design Engineer properly licensed in the State of Texas who seals drawings, reports, or documents for a project and is professionally responsible for those drawings, reports, and documents.
- l. *Entity*: In this guidance, the term may be used to refer in general to a distinct and independent organization.
- m. *Front-End Document Template*: In this guidance, the term refers to the set of contract front-end documents to be used with all Bid Packages on a CMAR project. The template will include the overall project scope, the template sub-contract agreement and/or purchase order agreement that will be used on all Work Packages, the appropriate sections of the TWDB Standard Contract Conditions, any special environmental conditions, and all project-relevant forms.
- n. *Guaranteed Maximum Price (GMP)*: An approach to pricing services in an alternative delivery proposal and contract. The GMP is a price cap on which the Owner is liable for reimbursement costs, including materials, labor, and profit. This pricing approach includes an inherent risk for the delivery team to not exceed the contract maximum price.
- o. *Independent Engineer (IE)*:³ Engineer who is independent of the DB firm. This engineer may be in-house staff, or a consultant hired according to applicable procurement laws. The IE acts as the Owner's representative for the procurement process and for the duration of the work.
- p. *Issued for Construction (IFC) Design Package*: When all components of the Design Package are signed and sealed by one or more engineers licensed in the State of Texas and are issued for construction. The IFC set may not include a disclaimer, as may be found in the RP&B set.
- q. *Owner*: The Entity in charge of developing the project. Normally the Owner and Applicant are one and the same.
- r. *Owner Advisor (OA)*: A third party individual or firm retained by an owner to provide identified services such as technical, procurement, and management services related to a project. The OA can serve as the owner's representative and advisor during procurement, contracting, and management of the project, but does not make an owner's decisions during the delivery of a project unless authorized to do so.
- s. *Plans and Specification (P&S)*: Set of construction drawings that show details of the design of a project, and standards of performance for construction works, materials, and manufactured products.⁴
- t. *Preconstruction Services*: Services performed by the AD firm prior to the completion of design activities. Preconstruction services typically include tasks such as constructability and value engineering reviews, cost estimating, scheduling, and bidding activities.

³ Texas Gov' Code §2269.355(a)

⁴ 30 Texas Administrative Code Chapter 217.2(54) and 217.2(68)

- u. *Project Implementation Plan*: Document developed by the Applicant in the planning phase of a project, to serve as a roadmap for successfully completing the project. The Project Implementation Plan defines the owner's capabilities and goals, priorities and drivers, and management oversight for the project, along with its process for selecting a delivery method and procuring an alternative-delivery firm.
- v. *Regulatory, Programmatic, and Bid (RP&B) Design Package*: A Design Package issued for regulatory, programmatic, and bid purposes, that includes a sealed design for all project components within TCEQ regulated design criteria for the scope of work in the Design Package. The set may include a disclaimer indicating the purpose of the documents.
- w. *Texas Water Development Board (TWDB)*: The TWDB is the state agency primarily responsible for water planning and administering water financing for the state.⁵
- x. *Work Package*:⁶ Any major elements of work within a CMAR contract.

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⁵ Texas Water Code §6.011

⁶ Texas Gov't Code §2260.255

Resources:

Applicable Rules:

[Texas Government Code \(Texas Gov't Code\), Chapter 2269](#): Contracting and Delivery Procedures for Construction Projects

[Texas Government Code \(Texas Gov't Code\), Chapter 2254](#): Professional and Consulting Services

[Texas Water Code \(TWC\), Chapter 17](#): Water Development Public Funding General Provisions

[30 Texas Administrative Code \(TAC\) Chapter 290, Subchapter D](#): Rules and Regulations for Public Water Systems

[30 Texas Administrative Code \(TAC\) Chapter 217](#): Design Criteria for Domestic Wastewater Systems

TWDB Program Administrative Rules found in 31 Texas Administrative Code:

[31 TAC Chapter 363](#): State Funded Projects (Water Development Fund (DFund), State Water Implementation Fund for Texas (SWIFT), Flood Infrastructure Fund (FIF), and Economically Distressed Area Program (EDAP))

[31 TAC Chapter 371](#): Drinking Water State Revolving Fund (DWSRF)

[31 TAC Chapter 375](#): Clean Water State Revolving Fund (CWSRF)

or on the [TWDB Administrative Rules webpage](#).

Guidance Documents:

TWDB guidance documents can be found on the [TWDB Guidance and Forms Library](#).

Related TWDB guidance documents include the following:

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| CWSRF Loan Program Guidance: | TWDB-0100 |
| SWIFT Program Guidance: | TWDB-0900 |
| FIF Program Guidance: | TWDB-0104 |
| American Iron and Steel (AIS) Guidance: | TWDB-1106 |
| United States Iron and Steel (U.S. I&S) Guidance: | TWDB-1105 |
| Disadvantaged Business Enterprise (DBE) Guidance: | TWDB-0210 |
| Davis Bacon Guidance: | DB-0156 |
| Guidance on Procuring Architects and Engineers: | TWDB-1108 |
| TWDB Supplemental Contract Conditions (SCC): | |
| • CWSRF & DWSRF - Equivalency Projects: | TWDB-0550 |
| • CWSRF and DWSRF - Non-Equivalency Projects: | TWDB-0551 |
| • State Funded Projects: | TWDB-0552 |

Other Resources:

Note: These resources are for reference to provide insight on industry standards. They have not been approved by and do not necessarily represent the position of the TWDB.

Water and Wastewater Design-Build Handbook (Fifth Edition), Water Collaborative Delivery Association, originally published under the Water Design-Build Council, and Design-Build Institute of America, 2019. A copy of the handbook may be obtained by visiting the Water Collaborative Delivery Association website (<https://watercollaboratedelivery.org/handbook/>), formerly the Water Design-Build Council.

[Water/Wastewater Sector, Design-Build Done Right™](#), Design-Build Practices, 2015 Publication from the Design-Build Institute of America

Alternative Delivery (AD) Guidance

Background

This document has been prepared, based on industry standards, to help guide the Owners and their consultants in understanding how TWDB funding can be used to finance an AD project. Alternative Delivery eligibility, steps necessary to secure funding from the TWDB, requirements for contract approvals, and the release of funds processes will be discussed. Owners must ensure that they comply with all the requirements of Texas Government Code (Texas Gov't Code) Chapter 2269 with regards to hiring and implementing any alternative delivery project as well as state and federal statutes and rules governing TWDB financing programs.

Not every project can (or will) benefit from using an AD method. The Owner must consider the benefits, limitations, cost, schedule, funding program requirements, and other aspects of the project when deciding whether the project would benefit from using an AD approach, especially when using TWDB's CWSRF or DWSRF programs, which include the federal crosscutter requirements.

Enabling Legislation in Texas

In 2007, the 80th Texas Legislature amended the Texas Gov't Code to allow the use of alternative project delivery methods for the construction of water and wastewater projects. The 82nd Legislature placed this material in Texas Gov't Code Chapter 2267. The 83rd Legislature removed these provisions from Chapter 2267 and placed them in Chapter 2269 of the Texas Gov't Code.

- Construction Manager-at-Risk (CMAR) procedures are described in Texas Gov't Code Chapter 2269, Subchapter F.
- Design-Build (DB) procedures are described in Texas Gov't Code Chapter 2269, Subchapter H.

TWDB Programs & Alternative Delivery Eligibility

Regardless of the project delivery method employed, all Applicants must meet general TWDB program funding requirements and requirements unique to each funding program. It is important that the Applicant understand and comply with these requirements and provide documentation requested during the application, planning, design, construction, and post-construction phases of the project. In addition, once a funding request is approved by the Board, release of funds for project-specific tasks is governed by the applicable Texas Administrative Code (TAC) rules, as well as by TWDB operating procedures and best business practices. The TWDB Program Administrative Rules applicable to the various TWDB funding programs can be found in 31 Texas Administrative Code Chapters [363](#), [371](#), and [375](#) or on the [TWDB Administrative Rules webpage](#).

NOTE: The following recent SRF Programmatic Eligibility Clarifications were provided by the Environmental Protection Agency (EPA) (Headquarters), and are reflected through this guidance:

- Design-Build projects are eligible for CWSRF – Equivalency funding when the construction cost is predominant (i.e., 51 percent or more of the total project cost)
- Procurement standards in 2 CFR Part 200 do not apply to CWSRF or DWSRF loans

Part I – Construction Manager-at-Risk Method

Requirements when using the CMAR Delivery Method

CMAR Delivery Method

Construction Manager-at-Risk is a delivery method by which an Owner contracts with an architect or engineer for design and construction phase services, and contracts separately with a construction manager-at-risk (CMAR) to serve as the general contractor and to provide consultation during the design and construction, rehabilitation, alteration, or repair of a facility. The CMAR (also referred to as the CMAR firm) is responsible for procuring equipment, subcontracts, and delivering the project within an agreed upon schedule and price. The CMAR must bid the work in accordance with local, state, federal, and programmatic requirements. Minor work, as determined by the Owner, may be included in the general conditions of the contract, and performed by the CMAR.

CMAR Phases:

- The Owner procures the design engineer and the CMAR separately in accordance with applicable procurement laws and program funding requirements. A guaranteed maximum price (GMP) for the CMAR contract may be set at this time, or the CMAR contract may be amended at a pre-determined stage of the project to set a GMP.
- The Owner's selection of a CMAR firm, as well as process deadlines, are outlined in [Texas Gov't Code § 2269.253](#) and [§ 2269.254](#). These statutes allow for procurement of the CMAR firm in either a one-step process (via a request for proposals (RFP)) or a two-step process (via a request for qualifications (RFQ) followed by an RFP). The Owner shall state the selection criteria in the RFQ and/or RFP.
 - In the two-step process, per the above referenced Code, the Owner is not allowed to request fees or prices during the RFQ phase. In addition, the Owner has 45 days from the day on which the final proposals are opened, to evaluate and rank the submitted proposals.
- During the design phase, the CMAR firm becomes actively involved, providing construction-related advice on preconstruction aspects of the project such as site layout, constructability, early cost and schedule factors, and preparation of bid packages which will be bid in association with a GMP.
- The CMAR will advertise Bid Packages, review the bids, and recommend award of each work package. The cost of the CMAR contract will be the cumulative award for all work packages, CMAR fees, and profit, not to exceed the GMP.
- During the construction phase, the CMAR firm assumes the role of general contractor, and is responsible for full construction and commissioning.

A. Project Pre-Planning when Seeking TWDB Funding

The Owner should keep the following steps in mind when seeking funding from the TWDB for the development of a project using the CMAR method.

1. *Project Pre-Planning*

The Owner should begin to plan its project and evaluate the appropriate delivery method to use based on criteria such as project complexity, size, cost, schedule, and risk. The Owner should also begin to evaluate potential financing options that would be compatible with the

delivery method chosen.

TWDB staff strongly recommends that the project Owner consider engaging an in-house Project Management Team, consisting of representatives from engineering, operations and maintenance, finance, procurement, legal, and communications, to assist in the project definition, procurement of consultants and contractors, and implementation aspects of the CMAR method.

See Chapter One of the Water and Wastewater Design-Build Handbook (Fifth Edition), Water Collaborative Delivery Association (originally published under the Water Design-Build Council), and Design Build-Institute of America (2019) for additional information on the owner's project implementation team membership and roles, as well as an example Organization Positions and Responsibilities table.

The TWDB recommends the Owner request an informational meeting with TWDB Regional staff at this phase to discuss potential funding options and TWDB funding requirements.

2. Risks and Responsibilities

As part of the *Project Implementation Plan*, the TWDB recommends that the Owner develop a detailed risk and responsibilities matrix, to be included in the procurement documents. As described in the *Water and Wastewater Design-Build Handbook*, a risk and responsibilities matrix "identifies foreseeable risks, the probability that each risk will occur, the potential impact of each risk, the party responsible for the risk, and how each risk will be managed if realized." Once the CMAR firm is selected, the matrix becomes fundamental in the preparation and negotiation of the agreement.

Additionally, the TWDB recommends that a preliminary risk register be developed for the project. A risk register catalogs risks and identifies the party responsible for mitigating them. More on the benefits of a risk and responsibilities matrix and risk register concepts, as well as examples of a risks and responsibilities matrix and a risk register, can also be found in the *Water and Wastewater Design Build Handbook* (See Table 3.2 – Examples of Allocated Risks and Responsibilities in Collaborative-Delivery Approaches, and Figure 3.2 – Sample Project Risk Register.)

3. Selection of a CMAR firm:

The Owner shall select the CMAR firm in compliance with all the requirements of [Texas Gov't Code Chapter 2269](#). All contracts to be funded by the TWDB shall include the applicable TWDB Supplemental Contract Conditions (SCC) in their entirety (or as modified with agreement and prior written approval of the TWDB) and all applicable TWDB programmatic forms (see "*Resources*" section above).

For DWSRF and CWSRF Equivalency funding, all services must follow the DBE requirements set forth in [TWDB-0210](#). Procurement of the CMAR firm must be approved **prior** to contract execution to ensure funding eligibility. A summary of the DBE forms required from the Owner and CMAR firm can be found in Attachment No. 5.

CMAR contract – The TWDB recommends that the CMAR contract include:

- a clearly defined scope of work;
- clearly defined responsibilities and relationship between the design engineer and the CMAR;

- clearly defined DBE requirements for all sub-contracts, supplies, services, and equipment for DWSRF and CWSRF Equivalency funding;
- documentation to address work that may be self-performed by the CMAR, in accordance with [Texas Gov't Code § 2269.255](#) (see Part I.B.5.f – CMAR Bidding on Bid Packages);
- clearly define elements of work that may be considered “minor work” (see Part I.B.3.a) along with the defined minor work criteria;
- clearly identified proposed early work to be procured, as applicable;
- documentation to address responsibilities for testing, and inspection, and quality control during construction;
- documentation to address responsibilities for completing buildability and constructability review and certification; and,
- appropriate TWDB SCC and forms as discussed in Part I.C of this guidance.

B. TWDB Project Implementation Processes using CMAR

The sections below outline the general TWDB project process when using the CMAR delivery method. The Owner should discuss the process below, with the Regional Water Project Development (RWPD) Team assigned to its project and clarify any questions early in the process.

The Alternative Delivery Contract Submittal Form (Attachment No. 1 – TWDB-0250) and the Design Package Submittal Form (Attachment No. 2 – TWDB-0300A) provide an overview of the requirements applicable to each funding program. **All submittals must be in a high quality, fully searchable, PDF format, contain the correct TWDB project identifier, be bookmarked, or indexed, and address all required submittal items. Submittals not meeting these requirements will not be accepted for review.**

1. Application Phase

- a. A pre-application meeting must be held prior to submittal of an application for funding to discuss the proposed project and the alternative delivery method being considered. For CWSRF, DWSRF, SWIFT, and FIF projects, this meeting may be scheduled after the Owner receives an invitation to apply.
- b. The Owner submits a complete application. See [TWDB application form](#) or the [online application \(OLA\)](#).
- c. If the Owner is only requesting funds for the design and construction phases, then an Engineering Feasibility Report (EFR) and a [Federal Environmental Review Form](#) (for Federal Programs) or an [Environmental Data Form](#) (for State Programs) will be required as part of the application.
- d. The Owner will provide a formal letter outlining the implementation of the CMAR method in the proposed project. The Owner shall ensure that the following are addressed in their letter:
 - document the proposed benefits of using an AD method in accordance with requirements of [Texas Gov't Code § 2269.056](#);
 - certify the Design Engineer, or an entity related to the Design Engineer, will not serve, alone or in combination with another person, as the CMAR for the project ([Texas Gov't Code § 2269.252\(b\) and \(c\)](#)); and,
 - certify the Design Engineer will be selected based on demonstrated competence and qualifications as provided by [Texas Occupations Code § 1001](#) ([Texas Gov't Code § 2269.057\(b\)](#)).

2. Design Engineer Firm Selection

- a. Contracts for engineering services must be submitted for review prior to execution. Note that this review by the TWDB is not to determine the legal validity of the contract, but to evaluate scope of work and eligibility for funding through the TWDB funding programs.
- b. For DWSRF and CWSRF Equivalency funding, all professional services must follow the DBE requirements set forth in [TWDB-0210](#). All DBE forms must be submitted for review and approval, prior to execution of the contract to ensure funding eligibility.
- c. For CWSRF Equivalency funding, the Applicant must certify that the consulting engineer services were procured in accordance with the requirements of the Federal Water Pollution Control Act as interpreted by the Environmental Protection Agency (See [TWDB-1108](#))

3. CMAR Firm Selection, Documentation, and Contract Review

The Owner's contract with the CMAR firm, as well as the advertisement for proposals, must include all program specific language and bonding requirements as found in the TWDB SCC:

CWSRF & DWSRF Equivalency projects ([TWDB-0550](#))
CWSRF & DWSRF Non-Equivalency projects ([TWDB-0551](#))
State loan projects ([TWDB-0552](#))

Please note, the TWDB SCC should be included in the contract documents and will not be accepted if added as an appendix.

For DWSRF and CWSRF Equivalency funding, all services must follow the DBE requirements set forth in [TWDB-0210](#). Procurement of the CMAR firm must be approved prior to contract execution to ensure funding eligibility. A summary of the DBE forms required from the Owner and CMAR firm can be found in Attachment No. 5.

a. Draft CMAR Contract Review:

- The Owner shall provide documentation to demonstrate compliance with [Texas Gov't Code § 2269.253](#) and [§ 2269.254](#) (see Attachment No. 1 – Alternative Delivery Contract Submittal Form). Documentation shall include:
 - A copy of the RFP for a one-step process or RFP and RFQ for a two-step process ([Texas Gov't Code § 2269.253](#)), and
 - If DWSRF or CWSRF Equivalency funding, the applicable set of DBE forms (see [TWDB-0210](#)) and appropriate supporting documentation.
- The Owner shall submit a copy of the draft Owner/CMAR contract for review for compliance with TWDB funding program requirements. The submittals shall be in a high quality, fully searchable PDF format.
- All TWDB programmatic requirements as provided in the appropriate version of the TWDB SCC ([TWDB-0550](#), [TWDB-0551](#), or [TWDB-0552](#)) must be included in the CMAR contract. Any modifications to the SCC must receive prior written approval by the TWDB project manager.
 - The TWDB recommends that the Owner consider adding a discussion to the CMAR contract regarding the factors identified below. These are recommended as Best Management Practice (BMP) additions to the CMAR contract, intended to help prevent or reduce problems and conflicts that may arise due to ambiguity between roles and responsibilities of the CMAR firm

and the Design Engineer, as well as to avoid confusion regarding when the CMAR firm may self-perform or perform minor work.

- Clearly define the responsibilities and relationships between the Design Engineer and the CMAR. This is especially important if a Risks and Responsibilities Matrix (or similar type of documents) has not been prepared;
- If known at the time of preparation of the contract, address work to be self-performed by the CMAR. See also Part I.B.5.f of this guidance.
- Address testing and inspection during construction; and,
- See also Part I.A.3 of this guidance.
- Any proposed minor work must be clearly defined and included in the general conditions of the contract ([Texas Gov't Code § 2269.001\(4\)](#) and [§ 2269.255 \(a\)](#)). The Owner and its legal counsel are responsible for defining what type of work constitutes "minor work". The Owner and its legal counsel shall provide a certification that the proposed method of procurement meets the regulations applicable to the Owner.
- TWDB will provide a comment letter, if necessary, to communicate any concerns with the draft contract.
- Once all concerns have been addressed, the TWDB will concur in the award of the contract.

b. Executed CMAR Contract Acceptance:

- The Owner will execute the CMAR contract and submit a copy of the executed contract to the TWDB. (See Attachment No. 1 – Alternative Delivery Contract Submittal Form)
 - Note: The CMAR will provide the payment and performance bonds in an amount not less than 100-percent of the construction contract price (GMP or fixed price amount) and meet the requirement of [Texas Water Code § 17.183\(2\)\(A\) and \(B\)](#). If a price has not been agreed upon, the CMAR may provide a bid bond, or other financial security acceptable to the Owner, in accordance with [Texas Gov't Code § 2269.258](#).
- The TWDB will provide a comment letter, if necessary, to communicate any concerns with the executed contract.
- Once all comments have been addressed, the TWDB will accept the CMAR contract. For details on when work elements are eligible for funding see Part I.C Availability of Funds for CMAR Projects.

4. Planning and Acquisition for CMAR Projects

Planning phase submittals include (1) an Environmental Document, and (2) an Engineering Feasibility Report (EFR). Guidance for these submittals is discussed in the following documents, which can be found at the TWDB website:

- Engineering Feasibility Report Guidance:
 - [Water Projects](#)
 - [Wastewater Projects](#)
 - [Flood Projects](#)
- [Federal Environmental Review \(EID\)](#)
- [Environmental Data Form for State Programs](#)

The Planning phase is complete upon issuance of an Environmental Determination and approval of the EFR.

If land acquisition is a project component, the environmental review related to the land acquisition must be completed and an environmental determination issued by the TWDB, prior to the release of funds for land acquisition. Requirements for release of funds are outlined in [TAC § 363.43\(c\) and \(d\)](#), [§ 371.73\(c\)](#) (DWSRF), and [§ 375.93\(c\)](#) (CWSRF).

5. Preparation of Design and Bid Packages

This section discusses the process to submit Design and Bid Packages for review and approval. Prior to submitting documents for review, please ensure that the following items are addressed:

- a. The TWDB will provide a web portal file sharing page where all project documents will be stored and accessible to the TWDB for the life of the project. Documents must be named following the Naming Convention found in Attachment No. 4.
- b. [Texas Water Code § 17.183\(b\)](#) requires plans and specifications submitted to the Board in connection with an application for financial assistance must include a seal by a licensed engineer affirming that the plans and specifications are consistent with and conform to current industry design and construction standards.
- c. The applicable Document Submittal Checklist is completed including page references to all review items.
 - Design Package Submittal Form (TWDB-0300A)
 - Bid Package Procurement Submittal Form (TWDB-0400A)
- d. Bookmark or index all submittals to reduce review time and potential comments. Submittals that are not bookmarked will not be accepted.
- e. Submittals shall be in a high quality, fully searchable PDF format. Submittals that are not searchable will not be accepted.
- f. The Owner shall perform a Quality Assurance and Quality Control (QA/QC) review on documents submitted to TWDB for review or approval. The Owner shall ensure:
 - The correct TWDB project identifier is used on all documents.
 - Documents are properly signed and notarized, as applicable.
 - All project elements the Owner is seeking TWDB funding for must receive TWDB approval prior to construction.
 - The submittal is complete (bookmarked, searchable, no missing pages or information), concise, and accurate
 - There is no duplication of attachments, guidance, or forms within a document.

CMAR projects can take on many different structures. When planning the structure of Design and Bid Packages please discuss with the TWDB project manager as early as possible. As shown in Figure 1 below, the project can include one or multiple Design Packages.

It is the responsibility of the CMAR, working in coordination with the Design Engineer, to split the Design Package into Bid Packages that include individual Work Packages combined for advertisement. In general, a Bid Package contains multiple Work Packages with either similar delivery schedules or related scopes of work. The CMAR contract may be amended to include a partial GMP after procurement of each Bid Package.

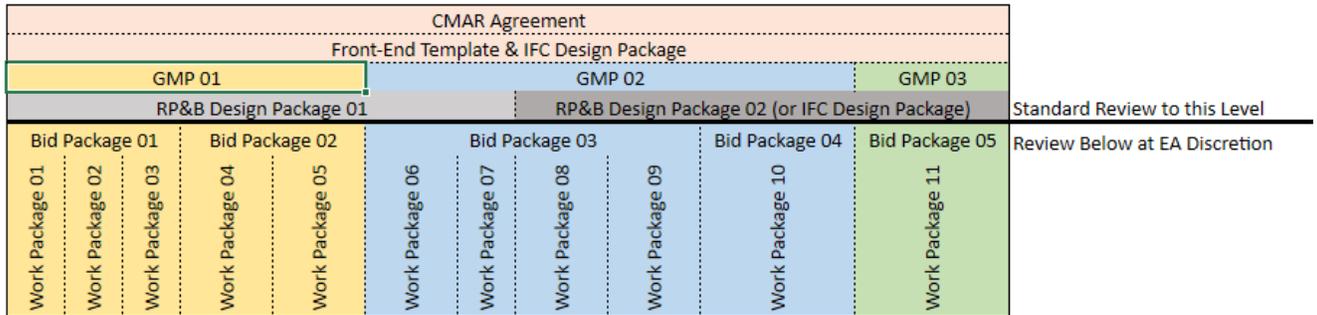


Figure 1: CMAR Project Structure

a. Front-End Document Template:

- The Owner or CMAR firm shall submit for review a template set of contract front-end documents to be used with all Bid Packages on the project. The template must include the overall project scope, the template sub-contract agreement and/or purchase order agreement that will be used on all Work Packages, the appropriate sections of the TWDB SCC, any special environmental conditions, and all project-relevant forms (see Attachment No. 2 – TWDB-0300A, Section 2.00).
- The TWDB will review this template and provide comments. Once all comments have been appropriately addressed, the TWDB will issue a front-end document template approval letter.
- The resulting preapproved set of front-end template documents will only need to be re-reviewed if there are any changes to the template or if the included documents are updated. Any changes to the SCC or template front-end documents must be discussed with and approved by TWDB staff prior to any revisions.

b. Design Package Review:

- The Owner or Design Engineer will submit for review a complete Design Package which may be a single review or staged into incremental review phases. Each Design Package will need to be reviewed for compliance with TCEQ Design Criteria, as applicable.
- For a staged review, the Design Engineer shall submit a Regulatory, Programmatic, and Bid (RP&B) Design Package.
 - The RP&B Design Package must include complete design for all project components within TCEQ regulated design criteria for the scope of work included in the Design Package.
 - The RP&B Design Package must be sealed per [TAC §137.33](#), and clearly marked as “This document is released for the purposes of regulatory and programmatic review, and bidding only. It is not to be used for construction purposes.”.
- For projects not utilizing a staged review, the Design Engineer shall submit a Design Package issued for construction purposes.
 - The Issued for Construction (IFC) Design Package must include complete design for all project components within the scope of work included in the Design Package.
 - The IFC Design Package must be sealed per [TAC §137.33](#), and cannot include a

disclaimer limiting the set to a specific use.

- The Design Package submittal must include a completed copy of the **Design Package Submittal Form (Attachment No. 2 – TWDB-0300A)**. If you have questions, please discuss with the TWDB project manager.
 - **Note:** per LOA between the TWDB and TCEQ ([Texas Administrative Code \(TAC\) § 354.5](#)), TCEQ retains review authority over certain water projects. For these projects, TWDB will rely on TCEQ’s technical review and approval of the design package.
 - **Note:** Exceptions and variances to TCEQ rules must be approved by the TCEQ ([TAC § 290.39\(f\)](#) and [§ 217.2\(78\)](#) and [§ 217.4](#)). The consultant shall contact TCEQ to obtain approval of any variance or exception and submit a copy of TCEQ’s approval to the TWDB.
- The TWDB will conduct a review of the IFC Design Package or RP&B Design Package for compliance with TCEQ and programmatic rules. A comment letter will be provided, if necessary, to communicate any needed revisions.
- Once all comments have been addressed, the IFC Design Package or RP&B Design Package will be stamped approved by the TWDB, and a Design Package approval letter will be issued.
 - **Note:** Any substantial or material alteration to the approved Design Package must be approved by TWDB per [Texas Water Code 17.186](#).

c. Bid Package Procurement Concurrence with Award:

- The CMAR shall submit the required documents for the Bid Package Procurement to TWDB for review and concurrence of award at the GMP level. Please see **Attachment No. 3 – Bid Package Procurement Submittal Form (Section 4.0)** ([TAC § 363.43\(c\)\(1\)](#); [§ 371.63\(c\)\(2\)](#) and [\(d\)](#); [§ 375.83\(c\)\(2\)](#) and [\(d\)](#)).
 - The CMAR shall upload all required documentation for each Bid Package to the project web portal. The documents must follow the TWDB Naming Convention (Attachment No. 4) and remain accessible for the duration of the project.
- Any addenda including design changes that are issued on an approved Design Package during the bidding process must be signed and sealed by a professional engineer licensed in the State of Texas as required by this guidance and outlined in [TAC § 137.33\(f\)\(3\)](#). Addendum must be provided to TWDB for review as part of the Bid Package award submittal.
- The TWDB will conduct a review of the Bid Procurement Package Award documents at the GMP level for compliance with funding and procurement requirements. A comment letter will be provided, if necessary, to communicate any needed revisions.
 - **Note:** At any time, the TWDB may request, and review, documentation related to specific Work Packages approved in a Bid Package.
- Once all comments have been appropriately addressed, the TWDB will concur with award of the Bid Package.

d. Bid Package Concurrence with Notice to Proceed Review:

- The CMAR (or the Owner, if the CMAR bids on the package), shall submit the required executed contract documents to TWDB for review and concurrence with notice to proceed. Please see **Attachment No. 3 - Bid Package Procurement Submittal Form (Section 5.0)**.
 - The CMAR shall upload all required documentation for each Bid Package to the project web portal. The documents must follow the TWDB naming convention

(Attachment No. 4) and remain accessible for the duration of the project.

- The TWDB will review the executed Bid Package documents at the GMP level. A comment letter will be provided, if necessary, to communicate any needed revisions.
- Once all comments have been appropriately addressed, the TWDB will issue a Concurrence with Notice to Proceed and Partial Eligible Release of Award Letter.
 - If a RP&B Design Package was approved, the letter will allow for release of up to 75% of the GMP or bid package award amount for non-construction activities such as procurement of long-lead items and mobilization, which are included in the approved design. The remaining amount of the GMP will not be eligible for release until the IFC Design Package is reviewed and approved by the TWDB.
 - If the IFC Design Package was reviewed and approved during the Design Package review, the letter will allow for release of up to 95% of the GMP or bid package award amount at that time (excluding unallocated contingencies or allowances, and not exceeding the GMP).
- **Note:** At any time during the construction phase, the TWDB may request, and review, documentation related to Work Packages approved in a Bid Package.

e. Issued for Construction Set and Concurrence with Notice to Proceed:

This section covers further steps for projects utilizing the staged review process on Design Packages. If the RP&B Design Package was reviewed and approved during the Design Package review, the IFC Design Package must be provided to, and approved by, the TWDB before the start of any construction.

- Once the IFC Design Package is issued by the design engineer, the set must be submitted to the TWDB with a transmittal letter and a signed and sealed change log listing all changes between the approved RP&B Design Package and the IFC Design Package.
- The TWDB will review the IFC Design Package and corresponding change log. A comment letter will be provided, if necessary, to communicate any questions.
- When all comments have been appropriately addressed, the IFC Design Package will be stamped approved by the TWDB, and the TWDB will issue combined letter that includes (1) approval of the IFC Design Package and (2) Concurrence with Notice to Proceed and Eligible Release of Award Letter.
 - This letter will allow for release of up to 95% of the GMP or bid package award amount (excluding unallocated contingencies or allowances, and not to exceed the GMP).).
- **Note:** At any time during the construction phase, the TWDB may request, and review, documentation related to Work Packages approved in Bid Package

f. CMAR Bidding on Bid Packages (Self-Performance)

[Texas Gov't Code § 2269.255\(b\)](#) provides that the CMAR may seek to perform a portion of the work itself if the CMAR submits its bid or proposal for a portion of the work in the same manner as all other contractors or subcontractors. If the CMAR chooses to submit a bid, then the Owner will have the responsibility to determine if the CMAR's bid provides the best value for the Owner.

If the CMAR seeks to self-perform a portion of the work, then the Owner shall provide a description of the bid process and a certification that:

- the CMAR submitted its bid or proposal for that Bid Package in the same manner as all other trade contractors or subcontractors; and
- the Owner determined that the CMAR's bid proposal provided the best value.

6. Other Construction Phase Activities

a. *GMP or CMAR Contract Amendments:*

- The CMAR shall submit all GMP or CMAR contract amendments throughout the construction phase.
- The TWDB will conduct a review of the amendment and a comment letter will be provided, if necessary, to communicate any needed revisions.
- Once all comments have been appropriately addressed, a GMP amendment approval letter will be issued.

b. *Use of Contingency Funds:*

- The Owner shall submit change requests from the CMAR, per the terms of the CMAR contract, to reallocate funds from contingency throughout the construction phase.
- The TWDB will conduct a review of the change request and a comment letter will be provided, if necessary, to communicate any needed revisions.
- Once all comments have been appropriately addressed, a change request approval letter will be issued, and contingency funds will be reallocated to eligible change request work items.

c. *Use of Allowance Funds:*

- Requirements related to material, equipment, and other allowances must be clearly outlined in the CMAR contract.
- During review of a Design Package, allowances must be clearly outlined in the bid form, if applicable. The TWDB will review the included allowances and determine if they are eligible costs.
- The TWDB will note eligible allowance costs as part of the Design Package approval and Concurrence with Notice to Proceed letters.

C. Availability of Funds for CMAR Projects

Funds for planning, land acquisition, design, and construction activities are made available according to the funding program's specific rules and requirements; and upon receipt of sufficient documentation, approval by TWDB, and completion of all required milestones.

The general progression for the availability of funds is as follows:

1. Closing, Planning, and Land Acquisition Costs:

- a. *Fiscal Services funds:* Are released after Board commitment and completion of all closing prerequisites.
- b. *Planning Phase funds* (Permitting, Environmental, Engineering-Planning, and applicable special engineering): Are released after receipt of executed professional services contracts for the planning or permitting phase and upon completion of all closing-phase prerequisites.

- c. *Land Acquisition funds*: Are released after completion of applicable State or Federal land acquisition and appraisal rules (based on funding program). Land Acquisition funds may only be released after the issuance of the environmental determination.

2. Design and Construction Costs:

- a. *Design Phase funds*: Engineering design tasks (performed by the Owner's Design Engineer), are eligible for funding once the project's planning phase (including issuance of an environmental determination) has been approved and upon completion of all design-phase prerequisites.
- b. *CMAR Preconstruction Services*: Preconstruction services are eligible for funding after receipt of executed contracts for preconstruction services and upon approval of an engineering feasibility report, and issuance of an environmental determination for the project. CMAR contracts must be approved by TWDB prior to eligibility for funding of any preconstruction services by the CMAR (see Part I.B.3.a-b above). Any special fees included in the CMAR contract (such as design phase service fees), will be made available in accordance with the terms of the contract and after all applicable requirements as described above have been met.
 - **Note:** For projects utilizing CWSRF or DWSRF equivalency programs, all sub-contracts for construction, supplies, services, and equipment must meet DBE procurement requirements to be eligible for funding.
- c. *Construction Phase funds*: Construction phase costs are eligible for funding after the Owner and CMAR execute a GMP or agree on a Fixed Price, the CMAR has provided the required performance and payment bonds, and TWDB has issued concurrence in NTP for each of the approved Bid Package (see Part No. I.B.5.d-e above).
 - Up to 75% of the approved and eligible construction costs are available when the Concurrence with NTP and Partial Eligible Release of GMP letter is issued (if following staged review process).
 - Up to ninety-five percent of the approved and eligible construction costs are available when a Concurrence with NTP and Eligible Release of GMP Letter is issued. Funds for construction costs will be made available as they are approved. Note that funds are released according to program guidelines.
 - The final five percent of construction costs is available contingent upon TWDB's issuance of a Certificate of Approval (COA) for the project as a whole. A list of documents needed to issue a COA can be found in Section 4 – Releasing Final Retainage below. The TWDB project manager will be able to provide clarification at the beginning of the construction project regarding any variances to the required documentation.
 - Any construction phase service fees included in the Owner/CMAR contract will be available in accordance with the terms of the contract.
 - i. **Note:** For projects utilizing CWSRF or DWSRF equivalency programs, all sub-contracts for construction, supplies, services, and equipment must meet DBE procurement requirements to be eligible for funding.

3. Ineligible Project Components:

In general, the following are not eligible for TWDB funding (note this is not an exhaustive list):

- a. Testing, remediation, or disposal of contaminated, potentially contaminated, or hazardous materials.

- b. Street paving beyond what is required to bring a street to the condition it was before the work began (for line work and other projects within roadways).
- c. Release of unallocated contingencies. Any contingency funds must be reallocated to an approved budget line item or specified and eligible task before release (see Part No. 1.B.6.b above).
- d. Release of unallocated expenses such as Owner's or Contract Allowance.

4. Releasing Final Retainage:

Prior to approval for the release of final retainage on the project, the TWDB's Executive Administrator must issue a Certificate of Approval (COA).

- The CMAR (or Owner, when appropriate) shall submit a COA Request to the TWDB for the CMAR contract, associated GMP(s), and overall project. A complete COA Request submittal must include:
 1. A letter from the CMAR (or Owner, when appropriate) certifying that all work has been completed and that all close out documents have been received.
 2. CMAR firm affidavit that all bills, except for retainage, have been paid.
 3. Owner's project acceptance letter including the language "the project has been completed according to the approved plans and specifications."
 4. Engineer's project acceptance letter including the language "the project has been completed according to the approved plans and specifications."
 5. CMAR's project acceptance letter including the language "the project has been completed according to the approved plans and specifications."
 6. Request for release of any eligible funds that have not yet been released, following the procedures discussed above.
 7. Confirmation by the Owner of the receipt of a complete set of "as-built" drawings (if applicable).
 8. Any remaining final pay requests.
 9. Warranty statement (from engineer or Owner) with a duration of at least 12 months from the date of project completion.
 10. Responsible Engineer's certification of contract completion date.
 11. Certification by the Owner and CMAR firm that the project was completed in compliance with the U.S. Iron and Steel Requirements ([TWDB-1105-A](#)) (if applicable).
 12. Final American Iron and Steel Certification ([TWDB-1106-C](#)) from the Owner and CMAR firm (if applicable).
 13. All change orders not previously submitted/approved.
 14. Project Public Awareness Certification ([TWDB-1109-A](#)) (if applicable)
 15. Fiscal Sustainability Plan (if applicable)
- The TWDB will conduct a review of the close out documents. A comment letter will be provided, if necessary, to communicate any needed revisions.
- After all comments have been appropriately addressed, the TWDB will issue a COA for the project.
- If applicable, after the COA is issued, a final outlay can be submitted for the retainage.

Part II – Design-Build Method

Requirements when using the DB Delivery Method

DB Delivery Method

Design-Build is a project delivery method that provides single-point accountability for both design and construction. In DB, the Owner contracts with a single entity to provide both design and construction services for the construction, rehabilitation, alteration, or repair of a facility.

This guidance is written to ensure compliance with [Texas Gov't Code Chapter 2269 Subchapter H](#), and programmatic requirements. The industry currently identifies a variety of DB processes, such as Progressive Design-Build and Fixed-Price Design Build. The Owner should consult the *Water and Wastewater Design-Build Handbook* (Fifth Edition), from the Water Collaborative Delivery Association (originally published under the Water Design-Build Council) and Design-Build Institute of America (2019), or other relevant literature, for further details on DB options available and consideration on how to structure its DB capital project. It is the Owner's responsibility to identify and ensure the DB process chosen is compliant with all applicable Texas Gov't Code requirements.

DB Phases:

- The Owner designates an engineer, independent of the DB firm, to serve as the Owner's representative throughout the project.
 - The selection of a DB firm is a two-step process, that begins with an RFQ prepared by the Owner. The RFQ shall include the criteria for selection of the DB firm as well as a design criteria package ([Texas Gov't Code § 2269.357](#)).
 - Each firm responding to the RFQ must be ready to certify to the Owner that each member of the DB firm's team was selected based on demonstrated competence and qualifications ([Texas Gov't Code § 2254.004](#)).
 - The Owner shall evaluate each DB's response, cost-related or price-related evaluation factors are not permitted at this stage ([Texas Gov't Code § 2269.359](#)).
 - The Owner will then request an additional proposal from qualified DB firms and shall select a DB firm using a combination of technical and cost proposals ([Texas Gov't Code § 2269.361](#)).
- Additionally, the Owner shall procure an Independent Engineer (if not in-house), based on demonstrated competence and qualifications ([Texas Gov't Code § 2254.004](#) & [Texas Gov't Code § 2269.355](#)).
- The Owner shall contract for other professional services, such as inspection services, materials testing, and verification of testing services ([Texas Gov't Code § 2269.356](#)).
 - The DB firm submits the design to the Owner to ensure scope compliance.
 - The DB proceeds to construct the project.

A. Project Pre-Planning when Seeking TWDB Funding

The Owner should keep the following steps in mind when seeking funding from the TWDB for the development of a project using the DB method.

1. Project Pre-Planning

The Owner should begin to plan its project and evaluate the appropriate delivery method to use based on criteria such as project complexity, size, cost, schedule, and risk. The Owner

should also begin to evaluate potential financing options that would be compatible with the delivery method chosen.

TWDB staff strongly recommends that the project Owner consider engaging an in-house Project Management Team, consisting of representatives from engineering, operations and maintenance, finance, procurement, legal, and communications, to assist in the project definition, procurement of consultants and contractors, and implementation aspects of the DB method.

See Chapter One of the *Water and Wastewater Design-Build Handbook* (Fifth Edition), Water Collaborative Delivery Association (originally published under the Water Design-Build Council), and Design Build-Institute of America (2019) for additional information on the owner's project implementation team membership and roles, as well as an example Organization Positions and Responsibilities table.

The TWDB recommends the Owner request an informational meeting with TWDB Regional staff at this phase to discuss potential funding options and TWDB funding requirements.

2. *Risks and Responsibilities*

As part of the *Project Implementation Plan*, the TWDB recommends that the Owner develop a detailed risk and responsibilities matrix, to be included in the procurement documents. As described in the *Water and Wastewater Design-Build Handbook*, a risk and responsibilities matrix "identifies foreseeable risks, the probability that each risk will occur, the potential impact of each risk, the party responsible for the risk, and how each risk will be managed if realized." Once the DB firm is selected, the matrix becomes fundamental in the preparation and negotiation of the agreement.

Additionally, the TWDB recommends that a preliminary risk register be developed for the project. A risk register catalogs risks and identifies the party responsible for mitigating them. More on the benefits of a risk and responsibilities matrix and risk register concepts, as well as examples of a risks and responsibilities matrix and a risk register, can also be found in the *Water and Wastewater Design Build Handbook* (See Table 3.2 – Examples of Allocated Risks and Responsibilities in Collaborative-Delivery Approaches, and Figure 3.2 – Sample Project Risk Register.)

3. *Selection of a DB firm:*

The Owner shall select the DB firm in compliance with all the requirements of [Texas Gov't Code Chapter 2269](#). All contracts to be funded by the TWDB shall include the applicable TWDB Supplemental Contract Conditions (SCC) in their entirety (or as modified with agreement and prior written approval of the TWDB) and all applicable TWDB programmatic forms (see "*Resources*" section).

For DWSRF and CWSRF Equivalency funding, all services must follow the DBE requirements set forth in [TWDB-0210](#). Procurement of the DB firm must be approved **prior** to contract execution to ensure funding eligibility. A summary of the DBE forms required from the Owner and AD firm can be found in Attachment No. 5.

DB contract – A comprehensive list of items to consider when preparing a DB contract can be found in the [Water/Wastewater Sector, Design-Build Done Right™](#) 2015 publication from

the Design-Build Institute of America⁷. TWDB staff recommends that the Owner refers to this resource when preparing its DB contract.

The TWDB recommends that the DB contract include:

- identification of significant project-specific risks and a clear identification of how those risks will be handled;
- fair (and clear) process for review and resolution of potential changes to the contract and adjustments in contract price and time;
- dispute resolution process;
- the contract should clearly specify the owner's role during project execution, including acting upon design and other submittals, and role in quality assurance/quality control (QA/QC);
- define the role of the engineer of record and how they will communicate with the owner; and,
- documentation to address responsibilities for testing, and inspection, and quality control during construction must be provided.

B. TWDB Project Implementation Processes using DB

The sections below outline the general TWDB project process when using the DB delivery method. The Owner should discuss the process below with the Regional Water Project Development (RWPD) Team assigned to its project and clarify any questions early in the process.

The Alternative Delivery Contract Submittal Form (Attachment No. 1 – TWDB-0250) and the Design Package Submittal Form (Attachment No. 2 – TWDB-0300A), provide an overview of the requirements applicable to each funding program. **All submittals must be in a high quality, fully searchable, PDF format, contain the correct TWDB project identifier, be bookmarked, or indexed, and address all required submittal items. Submittals not meeting these requirements will not be accepted for review.**

1. Application Phase

- a. A pre-application meeting must be held prior to submittal of an application for funding to discuss the proposed project and the alternative delivery method being considered. For CWSRF, DWSRF, SWIFT, and FIF projects, this meeting may be scheduled after the Owner receives an invitation to apply.
- b. The Owner submits a complete application. See [TWDB application form](#) or the [online application \(OLA\)](#).
- c. If the Owner is only requesting funds for the design and construction phases, then an Engineering Feasibility Report (EFR) and a [Federal Environmental Review Form](#) (for Federal Programs) or an [Environmental Data Form](#) (for State Programs) will be required as part of the application.
- d. The Owner will provide a formal letter outlining the implementation of the DB method. The Owner shall ensure that the following are addressed in their letter:
 - document the benefits of using an AD method in accordance with the requirements of [Texas Gov't Code § 2269.056](#);
 - reference the appropriate section of [Texas Gov't Code Chapter 2269, Subchapter H](#), including (but not limited to)

⁷ *Water/Wastewater Sector, Design-Build Done Right™, Design-Build Practices, Design-Build Institute of America. December 2015.*

- Owner has used the minimum criteria as a minimum basis for determining the design-build method is appropriate for the project ([Texas Gov't Code § 2269.353\(c\)](#)):
 - The extent to which the entity can adequately define the project requirements;
 - The time constraints for the delivery of the project;
 - The ability to ensure that a competitive procurement can be held; and
 - The capability of the entity to manage and oversee the project, including the availability of experienced personnel or outside consultants who are familiar with the design-build method of project delivery.
- Project is a single integrated project ([Texas Gov't Code § 2269.353\(b\)](#));
- Owner's population is greater than 100,000 within its geographic boundary or service area ([Texas Gov't Code § 2269.352\(1\)](#));
- Entity is a board of trustees governed by Chapter 54, Transportation Code ([Texas Gov't Code § 2269.352\(2\)](#));
- Owner's service area and number of DB projects ([Texas Gov't Code § 2269.354](#)); and,
- Independence of the Owner's Engineer from the DB firm ([Texas Gov't Code § 2269.355\(a\)](#)).

2. Independent Engineer Firm Selection

- a. Contracts for engineering services shall be submitted for review prior to execution. Note that this review by the TWDB is not to determine the legal validity of the contract, but to evaluate scope of work and eligibility for funding through the TWDB funding programs.
- b. For DWSRF and CWSRF Equivalency funding, all professional services must follow the DBE requirements set forth in [TWDB-0210](#). All DBE forms must be submitted for review and approval, prior to execution of the contract to ensure eligibility of funding.
- c. For CWSRF Equivalency funding, the Applicant must certify that the consulting engineer services were procured in accordance with the requirements of the Federal Water Pollution Control Act as interpreted by the Environmental Protection Agency (See [TWDB-1108](#))
- d. The Owner shall provide a certification regarding independence of its representative engineer (Independent Engineer) per [Texas Gov't Code § 2269.355](#).

3. DB Firm Selection, Documentation, and Contract Review

The Owner's contract with the DB firm, as well as the advertisement for proposals, must include all program specific language and bonding requirements as found in the TWDB SCC:

CWSRF & DWSRF Equivalency projects ([TWDB-0550](#))
CWSRF & DWSRF Non-Equivalency projects ([TWDB-0551](#))
State loan projects ([TWDB-0552](#))

Please note, the TWDB SCC should be included in the contract documents and will not be accepted if added as an appendix.

For DWSRF and CWSRF Equivalency funding, all services must follow the DBE requirements set forth in [TWDB-0210](#). Procurement of the DB firm must be approved

prior to contract execution to ensure funding eligibility. A summary of the DBE forms required from the Owner and DB firm can be found in Attachment No. 5.

a. Draft DB Contract Review

- The Owner shall provide documentation that the Owner meets the legal requirements to use the DB delivery method to construct the project, including:
 - Owner has used the minimum criteria as a minimum basis for determining the design-build method is appropriate for the project ([Texas Gov't Code § 2269.353\(c\)](#)):
 - The extent to which the entity can adequately define the project requirements;
 - The time constraints for the delivery of the project;
 - The ability to ensure that a competitive procurement can be held; and
 - The capability of the entity to manage and oversee the project, including the availability of experienced personnel or outside consultants who are familiar with the design-build method of project delivery.
 - Project is a single integrated project ([Texas Gov't Code § 2269.353\(b\)](#));
 - Owner's population is greater than 100,000 within its geographic boundary or service area ([Texas Gov't Code § 2269.352\(1\)](#));
 - Entity is a board of trustees governed by Chapter 54, Transportation Code ([Texas Gov't Code § 2269.352\(2\)](#));
 - Owner's service area and number of DB projects ([Texas Gov't Code § 2269.354](#)); and,
 - Independence of the Owner's Engineer from the DB firm ([Texas Gov't Code § 2269.355\(a\)](#)).
- Owner shall provide documentation to demonstrate compliance with [Texas Gov't Code § 2269.357](#) through [§ 2269.362](#). All submittals shall be in a high quality, fully searchable PDF format (see Attachment No. 1 – Alternative Delivery Contract Submittal Form). Documentation shall include:
 - Copy of the Request for Qualifications ([Texas Gov't Code § 2269.357](#));
 - Design Criteria Package ([Texas Gov't Code § 2269.358](#));
 - Evaluation of DB Firms ([Texas Gov't Code § 2269.359](#)). Including DB certification that its designated or selected engineer was procured based on demonstrated competence and qualifications as required in [Texas Gov't Code § 2254.004](#) ([Texas Gov't Code § 2269.359](#)); and
 - If DWSRF or CWSRF Equivalency funding, the applicable set of Disadvantaged Business Enterprise forms (see [TWDB-0210](#)) and appropriate supporting documentation.
- The Owner submits a copy of the draft DB contract, for review for compliance with TWDB funding program requirements:
 - All TWDB programmatic requirements as provided in the appropriate version of the TWDB SCC ([TWDB-0550](#), [TWDB-0551](#) or [TWDB-0552](#)) must be included in the DB contract. Any modifications to the SCC must receive prior written approval by the TWDB project manager.
- The contract should clearly identify the Owner's and the DB firm's expectations on issues such as role of the Owner's representative (if applicable), expectations on performance guarantees, role of the designer(s) of record (Design Engineer or Engineer of Record), commissioning, acceptance, testing, inspection, project close out, etc.

- TWDB will provide a comment letter, if necessary, to communicate any concerns with the draft contract.
- Once all concerns have been addressed, the TWDB will concur in the award of the contract.

b. Executed DB Contract Review

- The Owner will execute the DB contract and submit a copy of the executed contract to the TWDB (see Attachment No. 1 – Alternative Delivery Contract Submittal Form).
 - Note that the DB will provide the performance and payment bonds in an amount not less than 100-percent of the construction amount and meet the requirements of [Texas Water Code §17.183\(2\)\(A\) and \(B\)](#). Per [Texas Gov't Code § 2269.367\(c\)](#), if at this time the DB cannot provide performance and payment bonds, it shall provide a bid bond or other financial security acceptable to the Owner, to ensure that the performance and payment bonds will be provided before beginning of construction activities, as provided in [Texas Gov't Code § 2269.311](#).
- The TWDB will provide a comment letter, if necessary, to communicate any concerns with the executed contract.
- Once all comments have been addressed the TWDB will accept the DB contract. For details on when work elements are eligible for funding see Part II.C Availability of Funds for DB Projects.

4. Planning and Acquisition for DB Projects

Planning phase submittals include (1) an Environmental Document, and (2) an Engineering Feasibility Report (EFR). Guidance for these submittals is discussed in the following documents, which can be found at the TWDB website:

- Engineering Feasibility Report Guidance:
 - [Water Projects](#)
 - [Wastewater Projects](#)
 - [Flood Projects](#)
- [Federal Environmental Review \(EID\)](#)
- [Environmental Data Form for State Programs](#)

The Planning phase is complete upon issuance of an Environmental Determination and subsequent approval of the EFR.

If land acquisition is a project component, the environmental review related to the land acquisition must be completed and an environmental determination issued by the TWDB, prior to the release of funds for land acquisition. Requirements for release of funds for design and construction activities are outlined in [TAC § 363.43\(c\) and \(d\) and \(d\)](#), [§ 371.73\(c\)](#) (DWSRF), and [§ 375.93\(c\)](#) (CWSRF).

5. Preparation of Design Packages

This section discusses DB Design Package submittals that will be reviewed for TWDB program funding requirements and TCEQ Design Criteria. For a TWDB funded project, approval of the Design Packages must be obtained in order to ensure the project maintains its eligibility for TWDB funding.

This section discusses the process to submit Design Packages for review and approval. Prior to submitting documents for review, please ensure that the following items are addressed:

- a. The TWDB will provide a web portal file sharing page where all project documents will be stored and accessible to the TWDB for the life of the project. Documents must be named following the Naming Convention found in Attachment No. 4.
- b. [Texas Water Code § 17.183\(b\)](#) requires plans and specifications submitted to the board in connection with an application for financial assistance must include a seal by a licensed engineer affirming that the plans and specifications are consistent with and conform to current industry design and construction standards.
- c. The applicable Document Submittal Checklist is completed including page references to all review items.
 - Design Package Submittal Form (TWDB-0300)
- d. Bookmark or index all submittals to reduce review time and potential comments. Submittals that are not bookmarked will not be accepted.
- e. Submittals shall be in a high quality, fully searchable PDF format. Submittals that are not searchable will not be accepted.
- f. The Owner shall perform a Quality Assurance and Quality Control (QA/QC) review on the documents submitted to TWDB for review or approval. The Owner shall ensure:
 - The correct TWDB project identifier is used on all documents.
 - Documents are properly signed and notarized, as applicable.
 - If the Owner is seeking funding from TWDB for all project elements, then all project elements should receive approval from TWDB prior to construction.
 - The submittal is complete (bookmarked, searchable, no missing pages or information), concise, and accurate
 - There is no duplication of attachments, guidance, or forms within a document.

a. Design Package Review:

This section outlines the procedure for Design Package review. For projects with an agreed fixed price, the process will be followed for the construction set. For projects utilizing Progressive Design Build, the process will be followed iteratively for each Design Package issued.

- The Owner or DB Firm will submit for review a complete Design Package, signed and sealed by a licensed professional engineer registered in the State of Texas.
- The Design Package submittal must include:
 - A completed copy of the **Design Package Submittal Form (Attachment No. 2 - TWDB-0300A)**. If you have questions, please discuss with the TWDB project manager.
 - **Note:** per LOA between the TWDB and TCEQ ([Texas Administrative Code \(TAC\) § 354.5](#)), TCEQ retains review authority over certain water projects. For these projects, TWDB will rely on TCEQ's technical review and approval of the complete Design Package.
 - **Note:** Exceptions and variances to TCEQ rules must be approved by the TCEQ ([TAC § 290.39\(f\)](#) and [§ 217.2\(78\)](#) and [§ 217.4](#)). The consultant shall contact TCEQ to obtain approval of any variance or exception and submit a copy of TCEQ's approval to the TWDB.
- The TWDB will conduct a review of the Design Package for compliance with TCEQ

rules. A comment letter will be provided, if necessary, to communicate any needed revisions.

- Once all comments have been addressed, the Design Package will be stamped approved by the TWDB, and the TWDB will issue a Concurrence with Notice to Proceed letter.
 - For projects utilizing Progressive Design Build, the Concurrence with Notice to Proceed will be for up to 95% of the scope of work in the approved Design Package.

6. Other Construction Phase Activities

a. Contract Amendments:

- The Owner shall submit contract amendments throughout the construction phase.
- The TWDB will conduct a review of the amendment and a comment letter will be provided, if necessary, to communicate any needed revisions.
- Once all comments have been appropriately addressed, an amendment approval letter will be issued.

b. Use of Contingency Funds:

- The Owner shall submit change requests from the DB, per the terms of the DB contract, to reallocate funds from contingency throughout the construction phase.
- The TWDB will conduct a review of the change request and a comment letter will be provided, if necessary, to communicate any needed revisions.
- Once all comments have been appropriately addressed, a change request approval letter will be issued, and ineligible contingency funds will be reallocated to eligible change request work items.

c. Use of Allowance Funds:

- Requirements related to material, equipment, and other allowances must be clearly outlined in the DB contract.
- During review of a Design Package, allowances must be clearly outlined in the bid form, if applicable. The TWDB will review the included allowances and determine if they are eligible costs.
- The TWDB will note eligible allowance costs as part of the Design Package approval and Concurrence with Notice to Proceed letters.

C. Availability of Funds for DB Projects

Funds for planning, land acquisition, design, and construction are made available according to the funding program's specific rules and requirements; and upon receipt of sufficient documentation, approval by TWDB, and completion of all required milestones.

The general progression for the availability of funds is as follows:

1. Closing, Planning, and Land Acquisition Costs:

- Fiscal Services funds:* Are released after Board commitment and completion of all closing prerequisites.
- Planning Phase funds* (Permitting, Environmental, Engineering-Planning, and applicable special engineering): Are released after receipt of executed professional services

contracts for the planning or permitting phase and upon completion of all planning-phase prerequisites.

- c. *Land Acquisition funds*: Are released after completion of applicable State or Federal land acquisition and appraisal rules (based on funding program). Land Acquisition funds may only be released after the issuance of the environmental determination.

2. Design and Construction Costs:

- a. *Design Phase funds*: Engineering design tasks are eligible for funding after receipt of executed contracts for the design phase and upon approval of an engineering feasibility report and issuance of an environmental determination. DB contracts must be accepted by TWDB prior to eligibility for design funding (see Part II.B.4 above). Any special fees included in this contract will be made available in accordance with the terms of the contract and after all applicable requirements as described above have been met.
- b. *Construction Phase funds*: Construction phase costs are eligible for funding after issuance of any applicable permits and after design package approval and issuance of concurrence with NTP (see Part II.B.5. above).
 - Ninety-five percent of the design package cost are available when a NTP is issued. Note that funds are released according to program guidelines.
 - Availability of the remaining five percent will be contingent upon TWDB's issuance of a Certificate of Approval (COA) for work associated with the approved Design Package. A list of documents needed to issue a COA for a DB Design Package can be found in Section 4 – Releasing Retainage on Construction Design Packages below. There may be a few exceptions to the required documents, about which the TWDB project manager will be able to provide clarification at the beginning of the construction project.
 - All contract amendments and change requests must be submitted to TWDB for review and approval prior to execution.

3. Ineligible Project Components:

In general, the following are not eligible for TWDB funding (note this is not an exhaustive list):

- a. Testing, remediation, or disposal of contaminated, potentially contaminated, or hazardous materials.
- b. Street paving beyond what is required to bring a street to the condition it was before the work began (for line work and other projects within roadways).
- c. Release of unallocated contingencies. Any contingency funds must be reallocated to an approved budget line item or specified and eligible task before release (see Part No. II.B.6.b).
- d. Release of unallocated expenses such as Owner's or Contract Allowance.

4. Releasing Final Retainage

Prior to approval for the release of final retainage on the project, the TWDB's Executive Administrator must issue a Certificate of Approval (COA):

- Once all work has been completed, the Owner will provide a copy of the following documentation:
 1. A letter from the DB (or Owner, when appropriate) certifying that all work has been completed and that all close out documents have been received.

2. DB firm affidavit that all bills, except for retainage, have been paid.
 3. Owner's project acceptance letter including the language "the project has been completed according to the approved plans and specifications."
 4. DB's project acceptance letter including the language "the project has been completed according to the approved plans and specifications."
 5. Request for release of any eligible funds that have not yet been released, following the procedures discussed above.
 6. Confirmation by the Owner of the receipt of a complete set of "as-built" drawings (if applicable).
 7. Any remaining final pay requests.
 8. Warranty statement (from engineer or Owner) with a duration of at least 12 months from the date of project completion.
 9. Responsible Engineer's certification of contract completion date.
 10. Certification by the Owner and DB firm that the project was completed in compliance with the U.S. Iron and Steel Requirements ([TWDB-1105-A](#)) (if applicable).
 11. Final American Iron and Steel Certification ([TWDB-1106-C](#)) from the Owner and DB firm (if applicable).
 12. All change orders not previously submitted/approved.
 13. Project Public Awareness Certification ([TWDB-1109-A](#)) (if applicable)
 14. Fiscal Sustainability Plan (if applicable)
- The TWDB will conduct a review of the close out documents. A comment letter will be provided, if necessary, to communicate any needed revisions.
 - After all comments have been appropriately addressed, the TWDB will issue a COA for the project.
 - If applicable, after the COA is issued, a final outlay can be submitted for the retainage.

Attachment No. 1:

Alternative Delivery Contract Submittal Form

The Alternative Delivery Contract Submittal Form (TWDB-0250) must be included with a contract review submittal for TWDB review and approval. If there are any questions about the required documentation or language, please contact the project's TWDB Review Engineer.

| | | CONTRACT (a Y in the columns below means the completed document IS REQUIRED) | | Location (Section, page, etc.) |
|---|---|--|--|--------------------------------|
| | | CMAR | DB | |
| 4.00 | The following Items are required for TWDB issuance of Concurrence of Award: | Owner-CMAR | Owner-DB | |
| 4.01 | TWDB Draft Contract Review Comments Addressed | Y | Y | |
| 4.02 | A copy of the RFP for a one-step process or RFP and RFQ for a two-step process (Texas Gov't Code § 2269.253 and 2269.357) | Y | Y | |
| 4.03 | Bid Advertisement and Publisher's Affidavit | | | |
| 4.04 | Bid Tabulation showing all bids received. Including certification that its designated or selected engineer was procured based on demonstrated competence and qualifications as required in Texas Gov't Code § 2254.004 | For CMAR procurement requirements see guidance (TWDB-0570) | For DB procurement requirements see guidance (TWDB-0570) | |
| 4.05 | Recommended Alternative Delivery contractor's complete and signed bid proposal | | | |
| 4.06 | Bid Bond (required if the AD firm is not able to furnish payment and performance bonds within ten (10) days after the AD firm executes the contract) | Y | Y | |
| 4.07 | Entity's letter of recommendation to award contact to AD firm | Y | Y | |
| 4.08 | Statement outlining any bidding irregularities | Y | Y | |
| 4.09 | Debarment/Suspension Certification (SRF-404) – by Owner for AD Firm (if funding through DWSRF Equivalency or CWSRF Equivalency) | Y | Y | |
| 4.10 | Vendor compliance with Reciprocity of Non-Resident Bidder (TWDB-0459) (if funded through state programs) | Y | Y | |
| 4.11 | DBE – TWDB-0216 with Supporting Documentation (if funding through DWSRF Equivalency or CWSRF Equivalency) | Y | Y | |
| 4.12 | DBE – TWDB-0217 (if funding through DWSRF Equivalency or CWSRF Equivalency) | Y | Y | |
| 4.13 | DBE – TWDB-0373 (if funding through DWSRF Equivalency or CWSRF Equivalency) | Y | Y | |
| 5.00 | The following Items are required for TWDB issuance of Concurrence in Notice to Proceed: | Owner-CMAR | Owner-DB | |
| 5.01 | Fully Executed Contract Agreement | Y | Y | |
| 5.02 | Appropriate and up to date TWDB Supplemental Contract Conditions for the funding source (in the body of the contract, not as an appendix) | Y | Y | |
| 5.03 | Contractor's Act of Assurance (ED-103) | Y | Y | |
| 5.04 | Contractor's Act of Assurance Resolution (ED-104) | Y | Y | |
| 5.05 | Executed Payment Bond (Water Code Sec 17.183: bond in a penal sum of not less than 100 percent of the contract price and remain in effect for one year beyond the date of approval by the engineer of the political subdivision) This language must be included in the body of the Bond. | Y | Y | |
| 5.06 | Executed Performance Bond (Water Code Sec 17.183: bond is in a penal sum of not less than 100 percent of the contract price and remain in effect for one year beyond the date of approval by the engineer of the political subdivision) This language must be included in the body of the Bond. | Y | Y | |
| 5.07 | Bidder's Certification (WRD-255) - Required for both, subcontracts and purchase orders and for the provision of services and materials (OGC-Ref.41 CFR 60-1.1) (If funding through DWSRF or CWSRF) | Y | Y | |
| 5.08 | Workman's Compensation and other insurance coverage | Y | Y | |
| 5.09 | Plan for EPA's Public Awareness Program TWDB-1109-A with supporting documentation | Y | Y | |
| Acronym Definitions: | | | | |
| AD: Alternative Delivery (as in Alternative Delivery Firm). | | | | |
| Y = Yes, please submit | | | | TWDB-0250 |
| 10/24/2022 | | | | |

Attachment No. 2:

Design Package Submittal Form

The Alternative Delivery Design Package Submittal Form (TWDB-0300A) must be included with a Design Package submittal for TWDB review and approval. If there are any questions about the required documentation or language, please contact the project's TWDB Review Engineer.

| 1.00 | To be included in the Notice to Bidders, and Instructions to Bidders (refer to the most recent version of the appropriate Supplemental Contract Conditions under item 2.00 below): | CWSRF EQ | CWSRF NEQ | DWSRF EQ | DWSRF NEQ | SWIF T | EDA P | All Other State Funded | Location (Section, page, etc.) |
|--|--|----------|-----------|----------|-----------|--------|-------|------------------------|--------------------------------|
| 1.01 | Contingent Award of Contract | Y | Y | Y | Y | Y | Y | Y | |
| 1.02 | U.S. Iron and Steel and Manufactured Goods* | | | | | Y | Y | Y | |
| 1.03 | American Iron and Steel | Y | Y | Y | Y | | | | |
| 1.04 | Award of Contract to Nonresident Bidder (see form TWDB-0459) | | Y | | Y | Y | Y | Y | |
| 1.05 | Davis-Bacon Wage Act | Y | Y | Y | Y | | | | |
| 1.06 | Disadvantaged Business Enterprise | Y | | Y | | | | | |
| 1.07 | Funded by TWDB Language | Y | Y | Y | Y | Y | Y | Y | |
| 1.08 | Equal Employment Opportunity and Affirmative Action | Y | Y | Y | Y | | | | |
| 1.09 | Debarment and Suspension Certification | Y | | | | | | | |
| Applicable Programs | | | | | | | | | |
| 2.00 | TWDB Documents/Forms To be Included in the Front-End Document Template (refer to TWDB-0570 Part No. 1.5.a): | CWSRF EQ | CWSRF NEQ | DWSRF EQ | DWSRF NEQ | SWIF T | EDA P | All Other State Funded | Location (Section, page, etc.) |
| 2.01 | Supplemental Contract Conditions for State Loan Projects (TWDB-0552) | | | | | Y | Y | Y | |
| 2.02 | Supplemental Contract Conditions for CWSRF / DWSRF Equip. Projects (TWDB-0553) | Y | | Y | | | | | |
| 2.03 | Supplemental Contract Conditions for CWSRF / DWSRF Non-Equip. Projects (TWDB-0554) | | Y | | Y | | | | |
| 2.04 | Vendor Compliance with Reciprocity of Non-Resident Bidders (TWDB-0459) | | Y | | Y | Y | Y | Y | |
| 2.05 | Bidder's Certifications Form (WRD-255) | Y | Y | Y | Y | | | | |
| 2.06 | Debarment / Suspension Certification (SRF-404) | Y | | Y | | | | | |
| 2.07 | Monthly Davis Bacon Wage Rates | Y | Y | Y | Y | | | | |
| 2.08 | Bid Proposal | Y | Y | Y | Y | Y | Y | Y | |
| 2.09 | Separate eligible and ineligible bid items (if applicable) | Y | Y | Y | Y | Y | Y | Y | |
| 2.10 | Trench Safety as separate bid item, and priced per linear foot (if applicable) | Y | Y | Y | Y | Y | Y | Y | |
| 2.11 | Green components as separate bid items (if applicable) | Y | Y | Y | Y | | | | |
| 2.12 | Notice to Bidders | Y | Y | Y | Y | Y | Y | Y | |
| 2.13 | Contract Agreement Template | Y | Y | Y | Y | Y | Y | Y | |
| 2.14 | Equipment Purchase Order Template (if applicable) | Y | Y | Y | Y | Y | Y | Y | |
| Applicable Programs | | | | | | | | | |
| 3.00 | To be included in the Specifications (refer to TWDB-0570 Part No. 1.5.b): | CWSRF EQ | CWSRF NEQ | DWSRF EQ | DWSRF NEQ | SWIF T | EDA P | All Other State Funded | Location (Section, page, etc.) |
| 3.01 | Monthly American Iron and Steel Certificate (TWDB-1106-A) | Y | Y | Y | Y | | | | |
| 3.02 | American Iron and Steel (AIS) De Minimis Log (TWDB-1106-E) | Y | Y | Y | Y | | | | |
| 3.03 | United States (U.S.) Iron and Steel Certificate (TWDB-1105-A) | | | | | Y | Y | Y | |
| 3.04 | Monthly Davis Bacon Wage Rate Certificate of Compliance Submittal by Owner (Sub-Recipient) (DB-0154) | Y | Y | Y | Y | | | | |
| 3.05 | Special Environmental Conditions | Y | Y | Y | Y | Y | Y | Y | |
| Applicable Programs | | | | | | | | | |
| 4.00 | To be Mentioned in Plans: | CWSRF EQ | CWSRF NEQ | DWSRF EQ | DWSRF NEQ | SWIF T | EDA P | All Other State Funded | Location (Section, page, etc.) |
| 4.01 | U.S. Iron and Steel and Manufactured Goods* | | | | | Y | Y | Y | |
| 4.02 | American Iron and Steel | Y | Y | Y | Y | | | | |
| 4.03 | Special Environmental Conditions | Y | Y | Y | Y | Y | Y | Y | |
| Applicable Programs | | | | | | | | | |
| 5.00 | Additional Information: | CWSRF EQ | CWSRF NEQ | DWSRF EQ | DWSRF NEQ | SWIF T | EDA P | All Other State Funded | Location (Section, page, etc.) |
| 5.01 | Construction inspection provisions*** | Y | Y | Y | Y | Y | Y | Y | |
| 5.02 | Site Certificate (ED-101)** | Y | Y | Y | Y | Y | Y | Y | |
| 5.03 | Materials associated with environmental special conditions included in the environmental finding, such as USACE or floodplain permits | Y | Y | Y | Y | Y | Y | Y | |
| 5.04 | Any permits required for the operation of the project (such as wastewater discharge permit and water rights permit) | Y | Y | Y | Y | Y | Y | Y | |
| 5.05 | TCEQ Acceptance: Variances, waivers or exceptions to the state design criteria must be reviewed and approved by TCEQ. For new construction or improvements to surface water treatment plants, public water supply wells, new interconnections, disinfection and treatment projects, the project has been reviewed and has received approval from TCEQ. | Y | Y | Y | Y | Y | Y | Y | |
| 5.06 | Final Design Report as required by Texas Administrative Code § 290.39(e)(1) and § | Y | Y | Y | Y | Y | Y | Y | |
| 5.07 | Biddability and Constructability Certification: I _____ (engineer name and PE number) certify that I have reviewed the construction drawings and specification to provide adequate information so that a contractor can bid and construction the project without additional details or | Y | Y | Y | Y | Y | Y | Y | |
| Applicable Programs | | | | | | | | | |
| Guidance Documents - For Information Purposes ONLY (available online at www.twdb.texas.gov/financial/instructions) | | CWSRF EQ | CWSRF NEQ | DWSRF EQ | DWSRF NEQ | SWIF T | EDA P | All Other State Funded | Location (Section, page, etc.) |
| Disadvantaged Business Enterprise Guidance (TWDB-0210) | | Y | | Y | | | | | |
| U.S. Iron and Steel and Manufactured Goods (TWDB-1105)* | | | | | | Y | Y | Y | |
| Requirements for American Iron and Steel (AIS) Guidance (TWDB-1106) | | Y | Y | Y | Y | | | | |

Attachment No. 3:

Bid Package Procurement Submittal Form

Based on the funding program, the following language and forms must be included in the Bid Package contracts. These documents must be provided to the TWDB for all Bid Packages and remain available for the life of the project. Please submit the Bid Package Procurement Submittal Form (TWDB-0400A) for each Bid Package.

| | | CONTRACT (a Y in the columns below means the completed document IS REQUIRED) | | Location (Section, page, etc.) |
|------|--|--|---------------------|--------------------------------|
| | | CMAR | DB | |
| | | CMAR – GMP Package | DB – Design Package | |
| 4.00 | The following Items are required for TWDB issuance of Concurrence of Award: | | | |
| 4.01 | TWDB Design Package Approval Letter(s) for scope of work in GMP Package | Y | Y | |
| 4.02 | Bid Advertisement and Publisher's Affidavit | Y | | |
| 4.03 | Bid Tabulation or Market Information showing all bids received | Y | | |
| 4.04 | Alternative Delivery firm's Recommendation to Award Letter | | | |
| 4.05 | Recommended sub-contractor's complete and signed bid proposal | Y | | |
| 4.06 | All Addenda issued | Y | | |
| 4.07 | Debarment/Suspension Certification (SRF-404) – AD firm certify for all sub-contractors (if funding through DWSRF Equivalency or CWSRF Equivalency) | Y | | |
| 4.08 | Vendor compliance with Reciprocity of Non-Resident Bidder for all sub-contractors (TWDB-0459) (if funded through state programs) | Y | | |
| 4.09 | Statement from Alternative Delivery firm describing any bidding irregularities on the GMP Package (from Owner or Engineer if AD firm bids on package) | Y | | |
| 4.10 | Alternative Delivery firm's Inspection proposal including resumes. | Y | | |
| 4.11 | Certification from Alternative Delivery firm of compliance with the Davis Bacon Wage Requirements (if funding through DWSRF or CWSRF) or Prevailing Wage Rate (State Programs) | Y | | |
| 4.12 | If the CMAR seeks to self-perform a portion of the work, the Owner shall provide a description of the bid process and certification that: (1) the CMAR submitted its bid or proposal for the Bid Package in the same manner as all other trade contractors or subcontractors, and (2) the Owner determined that the CMAR's bid proposal provided the best value. | | | |
| 4.13 | DBE – TWDB-0216 with Supporting Documentation (if funding through DWSRF Equivalency or CWSRF Equivalency) | Y | Y | |
| 4.14 | DBE – TWDB-0217 (if funding through DWSRF Equivalency or CWSRF Equivalency) | Y | Y | |
| 4.15 | DBE – TWDB-0373 (if funding through DWSRF Equivalency or CWSRF Equivalency) | Y | Y | |
| 5.00 | The following Items are required for TWDB issuance of Concurrence in Notice to Proceed: | CMAR – GMP Package | DB – Design Package | |
| 5.01 | Fully Executed GMP Amendment | Y | | |
| 5.02 | Bidder's Certification (WRD-255) from all sub-contractors - Required for both, subcontracts and purchase orders and for the provision of services and materials (OGC-Ref.41 CFR 60-1.1) (if funding through DWSRF or CWSRF) | Y | | |
| 5.03 | Plan for EPA's Public Awareness Program TWDB-1109-A with supporting documentation | Y | | |
| 5.04 | TWDB issued Water Rights Certification (When project develops water) | Y | | |

Attachment No. 4:

Alternative Delivery Document Naming Convention

The CMAR shall upload all required documentation to the project web portal. The documents must follow the TWDB naming convention below and remain accessible for the duration of the project.

| Alternative Delivery Document Naming Convention | | | |
|---|--------------|---|--------------|
| Document Type | Abbreviation | Document Type | Abbreviation |
| AD Work Package Award Submittal Form | TWDB-0400A | Engineering Feasibility Report Comments | EFRC |
| Addendum/Addenda | AA | Final Engineering Report | ER |
| Award Documents | AC | Green Project Reserve Review Documents | GPR |
| Bid Bond | B-BID | Guaranteed Maximum Price | GMP |
| Bid Documents | BID-D | Invitation to Bid | ITB |
| Bid Package | BP | Issued for Bid | IFB |
| Bid Recommendation | BR | Issued for Construction | IFC |
| Bid Tab | BID-T | Monthly Progress Report | MPR |
| Certificate of Insurance | COI | Payment Bond | B-PAY |
| Change Log | CL | Performance Bond | B-PER |
| Change Order | CO | Plans and Specs Approval | PSA |
| Close Out Document | COA | Plans and Specs Review Comments | PSRC |
| CMAR Agreement | CMAR-AGR | Preconstruction Conference | PCC |
| CMAR Agreement Amendment | CMAR-AGR-A | Preliminary Engineering Report | PER |
| DB Agreement | DB-AGR | Purchase Order | PO |
| DB Agreement Amendment | DB-AGR-A | Recommendation of Award | ROA |
| Design Package | DP | Recommended Bid Proposal | RBP |
| Design Package Submittal Form | TWDB-0300A | Reduction in Retainage | RR |
| EFR Submittal Form | TWDB-0200 | Subcontract Agreement | SA |
| Engineering Agreements | ENG-AGR | TCEQ Design Approval | TCEQ-DA |
| Engineering Agreements Amendments | ENG-AGR-A | Technical Review Comment Response | TRCR |
| Engineering Feasibility Report Approval | EFRA | Work Package | WP |

Attachment No. 5:

Disadvantaged Business Enterprise Process for CMAR and DB Projects

Construction Manager at Risk (CMAR) Projects:

1. Approval of loan recipient's procurement of the CMAR:
 - a. Forms needed from loan recipient: [TWDB-0216](#) with supporting documentation and [TWDB-0373](#).
 - b. Forms needed from CMAR: [TWDB-0217](#).

2. CMAR procurement of sub-contractors:
 - a. *If Using a One-Step Procurement Process:*

As the CMAR procures sub-contractors, the CMAR submits form [TWDB-0216](#) with supporting documentation and form [TWDB-0373](#) for each sub-contractor.

 - b. *If Using a Two-Step Procurement Process:*
 - i. The two-step process includes the CMAR issuing a Request for Qualifications (RFQ), creating a pre-qualification list, then issuing a Request for Proposal (RFP).
 1. Goal of the RFQ: to compile a list of sub-contractors that are interested in performing work on the project. The RFQ informs all interested contractors of the TWDB and other requirements on the project.
 2. Goal of the RFP: a selected scope of work from the overall RFQ scope of work for the smaller Work Package. Please note that during the RFP additional solicitation may be done to ensure the bid is competitive if not enough sub-contractors in that line of work responded to the RFQ.

 - ii. DBE forms to be submitted to the TWDB:
 1. If the Recommended Contractor is on the RFQ Pre-Qualification List, then the CMAR submits [TWDB-0216](#) with supporting documentation from RFQ; and [TWDB-0373](#).
 2. If the Recommended Contractor is not on the RFQ Pre-Qualification List, then the CMAR submits [TWDB-0216](#) with supporting documentation for the additional solicitation done during the RFP and revised [TWDB-0373](#).

Design-Build Projects:

1. Approval of loan recipient's procurement of the DB Firm:
 - a. Forms needed from loan recipient: [TWDB-0216](#) with supporting documentation; and [TWDB-0373](#).
 - b. Forms needed from DB Firm: [TWDB-0217](#)

2. Design-Builder procurement of sub-contractors:
 - a. As the Design-Builder procures sub-contractors, the DB firm submits, for each sub-contractor form [TWDB-0216](#) with supporting documentation and form [TWDB-0373](#).