

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

FROM: Clay Schultz, Director, Regional Water Project Development
Jessica Taylor, Program Specialist
Joe Reynolds, Assistant General Counsel

SUBJECT: Alternative Project Delivery Rulemaking

ACTION REQUESTED

Consider authorizing publication of proposed additions and amendments to 31 Texas Administrative Code (TAC) Chapters 363, 371, and 375 relating to the use of alternative project delivery methods for construction projects financed by the Texas Water Development Board (TWDB).

BACKGROUND

Currently, the primary delivery method for the construction of projects financed by the TWDB is known as Design-Bid-Build. The proposed additions and amendments to 31 TAC Chapters 363, 371, and 375 will accommodate the use of project delivery methods such as Construction Manager-at-Risk and Design-Build as alternative means of delivery by reference to the Alternative Delivery Guidance for relevant policies, procedures, and forms.

KEY ISSUES

The proposed rules will be published in the October 21, 2022, edition of the Texas Register, opening a 30-day comment period. The TWDB has prepared guidance for the use of such methods. The proposed additions and amendments incorporate this document by reference into TWDB's rules to provide the guidance necessary for efficient use of these delivery methods with projects financed by the TWDB.

A definition of Alternative Delivery Guidance is added to each chapter to identify the document that provides for the alternative methods of delivery.
A new section is added to each chapter to describe the process by which an applicant will use an alternative delivery method.

RECOMMENDATION

The Executive Administrator recommends approval of the publication of the attached rule proposals that amend 31 TAC Chapters 363, 371, and 375 to relating to the use of alternative project delivery methods for construction projects financed by the TWDB.

Attachments:

1. Proposed Addition and Amendment to 31 TAC Ch. 363
2. Proposed Addition and Amendment to 31 TAC Ch. 371
3. Proposed Addition and Amendment to 31 TAC Ch. 375

The Texas Water Development Board (TWDB) proposes adding new 31 Texas Administrative Code (TAC) §363.45 and amending existing 31 TAC §363.2 relating to the use of Alternative Delivery Guidance.

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE PROPOSED AMENDMENT.

The Texas Legislature amended Texas Government Code Chapter 2269 to allow the use of alternative project delivery methods for the construction of public works projects, including water and wastewater projects, financed by the TWDB. Regardless of the project delivery method employed, all applicants for TWDB program funding must meet program requirements.

To accommodate methods such as Construction Manager-at-Risk (CMAR) and Design-Build (D-B) in addition to the more common Design-Bid-Build, the TWDB has prepared guidance for the use of CMAR and DB delivery methods. Concurrent with the review of these proposed amendments, the draft guidance will provide further detail and explanation. The draft guidance may be found on the TWDB website and comments on the guidance may be submitted to public-comment@twdb.texas.gov. The proposed additions and amendments to TWDB rules incorporate this document to provide the guidance necessary for efficient use of these delivery methods with projects financed by the TWDB.

SECTION BY SECTION DISCUSSION OF PROPOSED AMENDMENTS.

31 TAC §363.2(26) Definitions of Terms

Section 363.2 is amended by adding subsection (26) "Alternative Delivery Guidance" to identify the Guidance for Use of Construction-Manager-at-Risk and Design-Build Project Delivery Methods that provides for the alternative methods of delivery.

31 TAC §363.45 Use of Alternative Delivery Guidance

Section 363.45 is added to describe the process by which an applicant will use an alternative delivery method rather than Design-Bid-Build project delivery.

FISCAL NOTE: COSTS TO STATE AND LOCAL GOVERNMENTS (Texas Government Code §2001.024(a)(4))

Ms. Rebecca Trevino, Chief Financial Officer, has determined that there will be no fiscal implications for state or local governments as a result of the proposed rulemaking. For the first five years these rules are in effect, there is no expected additional cost to state or local governments resulting from their administration.

These rules are not expected to result in reductions in costs to either state or local governments. There is no change in costs for state and local governments. Any savings will relate to local project costs. These rules are not expected to have any impact on state or local revenues. The rules do not require any increase in expenditures for state or local

governments as a result of administering these rules. Additionally, there are no foreseeable implications relating to state or local governments' costs or revenue resulting from these rules. While these rules do not directly result in changes in costs for state or local governments, the use of alternative delivery methods in general may provide cost savings to local governments who utilize those methods. These rules clarify that local governments may use these statutorily-authorized alternative delivery methods for TWDB-financed projects.

Because these rules will not impose a cost on regulated persons, the requirement included in Texas Government Code, §2001.0045 to repeal a rule does not apply. Furthermore, the requirement in §2001.0045 does not apply because these rules are amended to reduce the burden or responsibilities imposed on regulated persons by the rule; are necessary to protect water resources of this state as authorized by the Texas Water Code; and are necessary to protect the health, safety, and welfare of the residents of this state.

The TWDB invites public comment regarding this fiscal note. Written comments on the fiscal note may be submitted to the contact person at the address listed under the Submission of Comments section of this preamble.

PUBLIC BENEFITS AND COSTS (Texas Government Code §2001.024(a)(5))

Ms. Rebecca Trevino also has determined that for each year of the first five years the proposed rulemaking is in effect, the public will benefit from the rulemaking as it clarifies requirements for TWDB borrowers. Ms. Rebecca Trevino also has determined that for each year of the first five years the proposed rulemaking is in effect, the rules will not impose an economic cost on persons required to comply with the rule as participation in TWDB financial assistance programs is voluntary.

LOCAL EMPLOYMENT IMPACT STATEMENT (Texas Government Code §2001.022)

The TWDB has determined that a local employment impact statement is not required because the proposed rule does not adversely affect a local economy in a material way for the first five years that the proposed rule is in effect because it will impose no new requirements on local economies. The TWDB also has determined that there will be no adverse economic effect on small businesses, micro-businesses, or rural communities as a result of enforcing this rulemaking. The TWDB also has determined that there is no anticipated economic cost to persons who are required to comply with the rulemaking as proposed. Therefore, no regulatory flexibility analysis is necessary.

DRAFT REGULATORY IMPACT ANALYSIS DETERMINATION (Texas Government Code §2001.0225)

The TWDB reviewed the proposed rulemaking in light of the regulatory analysis requirements of Texas Government Code §2001.0225 and determined that the rulemaking is not subject to Texas Government Code §2001.0225, because it does not meet the definition of a "major environmental rule" as defined in the Administrative Procedure Act. A "major environmental rule" is defined as a rule with the specific intent to protect the

environment or reduce risks to human health from environmental exposure, a rule that may adversely affect in a material way the economy or a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. The intent of the rulemaking is to clarify requirements for TWDB borrowers.

Even if the proposed rule were a major environmental rule, Texas Government Code §2001.0225 still would not apply to this rulemaking because Texas Government Code §2001.0225 only applies to a major environmental rule, the result of which is to: (1) exceed a standard set by federal law, unless the rule is specifically required by state law; (2) exceed an express requirement of state law, unless the rule is specifically required by federal law; (3) exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or (4) adopt a rule solely under the general powers of the agency instead of under a specific state law. This rulemaking does not meet any of these four applicability criteria because it: (1) does not exceed any federal law; (2) does not exceed an express requirement of state law; (3) does not exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; and (4) is not proposed solely under the general powers of the agency, but rather under Texas Water Code §§15.439, 15.537, 17.183, and 17.186. Therefore, this proposed rule does not fall under any of the applicability criteria in Texas Government Code §2001.0225.

The TWDB invites public comment regarding this draft regulatory impact analysis determination. Written comments on the draft regulatory impact analysis determination may be submitted to the contact person at the address listed under the Submission of Comments section of this preamble.

TAKINGS IMPACT ASSESSMENT (Texas Government Code §2007.043)

The TWDB evaluated this proposed rule and performed an analysis of whether it constitutes a taking under Texas Government Code, Chapter 2007. The specific purpose of this rule is to clarify requirements for TWDB borrowers. The proposed rule would substantially advance this stated purpose by ensuring consistency with current law and improving the effectiveness of the financing programs.

The TWDB's analysis indicates that Texas Government Code, Chapter 2007 does not apply to this proposed rule because this is an action that is reasonably taken to fulfill an obligation mandated by state law, which is exempt under Texas Government Code §2007.003(b)(4). The TWDB is the agency that reviews contract documents, including those using alternative delivery methods.

Nevertheless, the TWDB further evaluated this proposed rule and performed an assessment of whether it constitutes a taking under Texas Government Code Chapter 2007. Promulgation and enforcement of this proposed rule would be neither a statutory nor a constitutional taking of private real property. Specifically, the subject proposed regulation does not affect a landowner's rights in private real property because this rulemaking does

not burden, restrict, or limit the owner's right to property and reduce its value by 25% or more beyond that which would otherwise exist in the absence of the regulation. In other words, this rule requires compliance with state law regarding construction of public works projects financed by the TWDB without burdening or restricting or limiting the owner's right to property and reducing its value by 25% or more. Therefore, the proposed rule does not constitute a taking under Texas Government Code, Chapter 2007.

GOVERNMENT GROWTH IMPACT STATEMENT (Texas Government Code §2001.0221)

The TWDB reviewed the proposed rulemaking in light of the government growth impact statement requirements of Texas Government Code §2001.0221 and has determined, for the first five years the proposed rule would be in effect, the proposed rule will not: (1) create or eliminate a government program; (2) require the creation of new employee positions or the elimination of existing employee positions; (3) require an increase or decrease in future legislative appropriations to the agency; (4) require an increase or decrease in fees paid to the agency; (5) create a new regulation; (6) expand, limit, or repeal an existing regulation; (7) increase or decrease the number of individuals subject to the rule's applicability; or (8) positively or adversely affect this state's economy.

SUBMISSION OF COMMENTS (Texas Government Code §2001.024(a)(7))

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. Comments will be accepted until 5:00 p.m. of the 31st day following publication the Texas Register. Include Chapter 363 in the subject line of any comments submitted.

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STATUTORY AUTHORITY (Texas Government Code §2001.024(a)(3))

The amendment is proposed under the authority of Texas Water Code §6.101, which provides the TWDB with the authority to adopt rules necessary to carry out the powers and duties in the Water Code and other laws of the State, and also under the authority of Texas Water Code §§15.439, 15.537, 17.183, and 17.186.

This rulemaking affects Water Code, Chapters 15 and 17.

<rule>

SUBCHAPTER A GENERAL PROVISIONS

§363.2. Definitions of Terms.

The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise. Words defined in the Texas Water

Code, Chapter 15, 16 or 17, and not defined here shall have the meanings provided by the appropriate Texas Water Code chapter.

(1)—(25) no change.

(26) Alternative Delivery Guidance—a document prepared by the Board after public review and comment and reviewed periodically that identifies alternative methods of project delivery available to applicants for financial assistance and the requirements for utilizing an alternative delivery method.

§363.45. Use of Alternative Delivery Guidance.

An applicant choosing to follow an alternative delivery method must elect to do so, and notify the Board, prior to commitment of TWDB funds. Once a funding request is approved by the Board, release of funds for project-specific tasks is governed by the provisions of the Alternative Delivery Guidance rather than the rules and procedures generally applied to Design-Bid-Build project delivery as set out in Subchapter A, Divisions 4 and 5 of this Chapter.

The Texas Water Development Board (TWDB) proposes adding new 31 Texas Administrative Code (TAC) §371.64 and amending existing 31 TAC §371.1 relating to the use of Alternative Delivery Guidance.

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE PROPOSED AMENDMENT.

The Texas Legislature amended Texas Government Code Chapter 2269 to allow the use of alternative project delivery methods for the construction of public works projects, including water and wastewater projects, financed by the TWDB. Regardless of the project delivery method employed, all applicants for TWDB program funding must meet program requirements.

To accommodate methods such as Construction Manager-at-Risk (CMAR) and Design-Build (D-B) in addition to the more common Design-Bid-Build, the TWDB has prepared guidance for the use of CMAR and DB delivery methods. Concurrent with the review of these proposed amendments, the draft guidance will provide further detail and explanation. The draft guidance may be found on the TWDB website and comments on the guidance may be submitted to public-comment@twdb.texas.gov. The proposed additions and amendments to TWDB rules incorporate this document to provide the guidance necessary for efficient use of these delivery methods with projects financed by the TWDB.

SECTION BY SECTION DISCUSSION OF PROPOSED AMENDMENTS.

31 TAC §371.1(68) Definitions of Terms

Section 371.1 is amended by adding subsection (68) "Alternative Delivery Guidance" to identify the Guidance for Use of Construction-Manager-at-Risk and Design-Build Project Delivery Methods that provides for the alternative methods of delivery.

31 TAC §371.64 Use of Alternative Delivery Guidance

Section 371.64 is added to describe the process by which an applicant will use an alternative delivery method rather than Design-Bid-Build project delivery.

FISCAL NOTE: COSTS TO STATE AND LOCAL GOVERNMENTS (Texas Government Code §2001.024(a)(4))

Ms. Rebecca Trevino, Chief Financial Officer, has determined that there will be no fiscal implications for state or local governments as a result of the proposed rulemaking. For the first five years these rules are in effect, there is no expected additional cost to state or local governments resulting from their administration.

These rules are not expected to result in reductions in costs to either state or local governments. There is no change in costs for state and local governments. Any savings will relate to local project costs. These rules are not expected to have any impact on state or

local revenues. The rules do not require any increase in expenditures for state or local governments as a result of administering these rules. Additionally, there are no foreseeable implications relating to state or local governments' costs or revenue resulting from these rules. While these rules do not directly result in changes in costs for state or local governments, the use of alternative delivery methods in general may provide cost savings to local governments who utilize those methods. These rules clarify that local governments may use these statutorily-authorized alternative delivery methods for TWDB-financed projects.

Because these rules will not impose a cost on regulated persons, the requirement included in Texas Government Code, §2001.0045 to repeal a rule does not apply. Furthermore, the requirement in §2001.0045 does not apply because these rules are amended to reduce the burden or responsibilities imposed on regulated persons by the rule; are necessary to protect water resources of this state as authorized by the Texas Water Code; and are necessary to protect the health, safety, and welfare of the residents of this state.

The TWDB invites public comment regarding this fiscal note. Written comments on the fiscal note may be submitted to the contact person at the address listed under the Submission of Comments section of this preamble.

PUBLIC BENEFITS AND COSTS (Texas Government Code §2001.024(a)(5))

Ms. Rebecca Trevino also has determined that for each year of the first five years the proposed rulemaking is in effect, the public will benefit from the rulemaking as it clarifies requirements for TWDB borrowers. Ms. Rebecca Trevino also has determined that for each year of the first five years the proposed rulemaking is in effect, the rules will not impose an economic cost on persons required to comply with the rule as participation in TWDB financial assistance programs is voluntary.

LOCAL EMPLOYMENT IMPACT STATEMENT (Texas Government Code §2001.022)

The TWDB has determined that a local employment impact statement is not required because the proposed rule does not adversely affect a local economy in a material way for the first five years that the proposed rule is in effect because it will impose no new requirements on local economies. The TWDB also has determined that there will be no adverse economic effect on small businesses, micro-businesses, or rural communities as a result of enforcing this rulemaking. The TWDB also has determined that there is no anticipated economic cost to persons who are required to comply with the rulemaking as proposed. Therefore, no regulatory flexibility analysis is necessary.

DRAFT REGULATORY IMPACT ANALYSIS DETERMINATION (Texas Government Code §2001.0225)

The TWDB reviewed the proposed rulemaking in light of the regulatory analysis requirements of Texas Government Code §2001.0225 and determined that the rulemaking is not subject to Texas Government Code §2001.0225, because it does not meet the

definition of a “major environmental rule” as defined in the Administrative Procedure Act. A “major environmental rule” is defined as a rule with the specific intent to protect the environment or reduce risks to human health from environmental exposure, a rule that may adversely affect in a material way the economy or a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. The intent of the rulemaking is to clarify requirements for TWDB borrowers.

Even if the proposed rule were a major environmental rule, Texas Government Code §2001.0225 still would not apply to this rulemaking because Texas Government Code §2001.0225 only applies to a major environmental rule, the result of which is to: (1) exceed a standard set by federal law, unless the rule is specifically required by state law; (2) exceed an express requirement of state law, unless the rule is specifically required by federal law; (3) exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or (4) adopt a rule solely under the general powers of the agency instead of under a specific state law. This rulemaking does not meet any of these four applicability criteria because it: (1) does not exceed any federal law; (2) does not exceed an express requirement of state law; (3) does not exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; and (4) is not proposed solely under the general powers of the agency, but rather under Texas Water Code §§15.001, 15.6041, and 15.605. Therefore, this proposed rule does not fall under any of the applicability criteria in Texas Government Code §2001.0225.

The TWDB invites public comment regarding this draft regulatory impact analysis determination. Written comments on the draft regulatory impact analysis determination may be submitted to the contact person at the address listed under the Submission of Comments section of this preamble.

TAKINGS IMPACT ASSESSMENT (Texas Government Code §2007.043)

The TWDB evaluated this proposed rule and performed an analysis of whether it constitutes a taking under Texas Government Code, Chapter 2007. The specific purpose of this rule is to clarify requirements for TWDB borrowers. The proposed rule would substantially advance this stated purpose by ensuring consistency with current law and improving the effectiveness of the financing programs.

The TWDB’s analysis indicates that Texas Government Code, Chapter 2007 does not apply to this proposed rule because this is an action that is reasonably taken to fulfill an obligation mandated by state law, which is exempt under Texas Government Code §2007.003(b)(4). The TWDB is the agency that reviews contract documents, including those using alternative delivery methods.

Nevertheless, the TWDB further evaluated this proposed rule and performed an assessment of whether it constitutes a taking under Texas Government Code Chapter 2007.

Promulgation and enforcement of this proposed rule would be neither a statutory nor a constitutional taking of private real property. Specifically, the subject proposed regulation does not affect a landowner's rights in private real property because this rulemaking does not burden, restrict, or limit the owner's right to property and reduce its value by 25% or more beyond that which would otherwise exist in the absence of the regulation. In other words, this rule requires compliance with state law regarding construction of public works projects financed by the TWDB without burdening or restricting or limiting the owner's right to property and reducing its value by 25% or more. Therefore, the proposed rule does not constitute a taking under Texas Government Code, Chapter 2007.

GOVERNMENT GROWTH IMPACT STATEMENT (Texas Government Code §2001.0221)

The TWDB reviewed the proposed rulemaking in light of the government growth impact statement requirements of Texas Government Code §2001.0221 and has determined, for the first five years the proposed rule would be in effect, the proposed rule will not: (1) create or eliminate a government program; (2) require the creation of new employee positions or the elimination of existing employee positions; (3) require an increase or decrease in future legislative appropriations to the agency; (4) require an increase or decrease in fees paid to the agency; (5) create a new regulation; (6) expand, limit, or repeal an existing regulation; (7) increase or decrease the number of individuals subject to the rule's applicability; or (8) positively or adversely affect this state's economy.

SUBMISSION OF COMMENTS (Texas Government Code §2001.024(a)(7))

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.

Comments will be accepted until 5:00 p.m. of the 31st day following publication the Texas Register. Include Chapter 363 in the subject line of any comments submitted.

STATUTORY AUTHORITY (Texas Government Code §2001.024(a)(3))

The amendment is proposed under the authority of Texas Water Code §6.101, which provides the TWDB with the authority to adopt rules necessary to carry out the powers and duties in the Water Code and other laws of the State, and also under the authority of Texas Water Code §§15.001, 15.6041, and 15.605.

This rulemaking affects Water Code, Chapter 15.

<rule>

SUBCHAPTER A GENERAL PROVISIONS

§371.1. Definitions of Terms.

The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise. Words defined in the Texas Water

Code, Chapter 15, 16 or 17, and not defined here shall have the meanings provided by the appropriate Texas Water Code chapter.

(1)–(67) no change.

(68) Alternative Delivery Guidance—a document prepared by the Board after public review and comment and reviewed periodically that identifies alternative methods of project delivery available to applicants for financial assistance and the requirements for utilizing an alternative delivery method.

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STATUTORY AUTHORITY (Texas Government Code §2001.024(a)(3))

The amendment is proposed under the authority of Texas Water Code §6.101, which provides the TWDB with the authority to adopt rules necessary to carry out the powers and duties in the Water Code and other laws of the State, and also under the authority of Texas Water Code §§15.001, 15.6041, and 15.605.

This rulemaking affects Water Code, Chapter 15.

<rule>

SUBCHAPTER F ENGINEERING REVIEW AND APPROVAL

§371.64. Use of Alternative Delivery Guidance.

An applicant choosing to follow an alternative delivery method must elect to do so, and notify the Board, prior to commitment of TWDB funds. Once a funding request is approved by the Board, release of funds for project-specific tasks is governed by the provisions of the Alternative Delivery Guidance rather than the rules and procedures generally applied to Design-Bid-Build project delivery as set out in Subchapters F, G, and H of this Chapter.

The Texas Water Development Board (TWDB) proposes adding new 31 Texas Administrative Code (TAC) §375.84 and amending existing 31 TAC §375.1 relating to the use of Alternative Delivery Guidance.

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE PROPOSED AMENDMENT.

The Texas Legislature amended Texas Government Code Chapter 2269 to allow the use of alternative project delivery methods for the construction of public works projects, including water and wastewater projects, financed by the TWDB. Regardless of the project delivery method employed, all applicants for TWDB program funding must meet program requirements.

To accommodate methods such as Construction Manager-at-Risk (CMAR) and Design-Build (D-B) in addition to the more common Design-Bid-Build, the TWDB has prepared guidance for the use of CMAR and DB delivery methods. Concurrent with the review of these proposed amendments, the draft guidance will provide further detail and explanation. The draft guidance may be found on the TWDB website and comments on the guidance may be submitted to public-comment@twdb.texas.gov. The proposed additions and amendments to TWDB rules incorporate this document to provide the guidance necessary for efficient use of these delivery methods with projects financed by the TWDB.

SECTION BY SECTION DISCUSSION OF PROPOSED AMENDMENTS.

31 TAC §375.1(68) Definitions of Terms

Section 375.1 is amended by adding subsection (68) "Alternative Delivery Guidance" to identify the Guidance for Use of Construction-Manager-at-Risk and Design-Build Project Delivery Methods that provides for the alternative methods of delivery.

31 TAC §375.84 Use of Alternative Delivery Guidance

Section 375.84 is added to describe the process by which an applicant will use an alternative delivery method rather than Design-Bid-Build project delivery.

FISCAL NOTE: COSTS TO STATE AND LOCAL GOVERNMENTS (Texas Government Code §2001.024(a)(4))

Ms. Rebecca Trevino, Chief Financial Officer, has determined that there will be no fiscal implications for state or local governments as a result of the proposed rulemaking. For the first five years these rules are in effect, there is no expected additional cost to state or local governments resulting from their administration.

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The TWDB invites public comment regarding this fiscal note. Written comments on the fiscal note may be submitted to the contact person at the address listed under the Submission of Comments section of this preamble.

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may adversely affect in a material way the economy or a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. The intent of the rulemaking is to clarify requirements for TWDB borrowers.

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TAKINGS IMPACT ASSESSMENT (Texas Government Code §2007.043)

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more beyond that which would otherwise exist in the absence of the regulation. In other words, this rule requires compliance with state law regarding construction of public works projects financed by the TWDB without burdening or restricting or limiting the owner's right to property and reducing its value by 25% or more. Therefore, the proposed rule does not constitute a taking under Texas Government Code, Chapter 2007.

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SUBMISSION OF COMMENTS (Texas Government Code §2001.024(a)(7))

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STATUTORY AUTHORITY (Texas Government Code §2001.024(a)(3))

The amendment is proposed under the authority of Texas Water Code §6.101, which provides the TWDB with the authority to adopt rules necessary to carry out the powers and duties in the Water Code and other laws of the State, and also under the authority of Texas Water Code §§15.001, 15.601, 15.603, and 15.605.

This rulemaking affects Water Code, Chapter 15.

<rule>

SUBCHAPTER A GENERAL PROGRAM REQUIREMENTS

§375.1. Definitions of Terms.

The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise. Words defined in the Texas Water Code, Chapter 15, 16 or 17, and not defined here shall have the meanings provided by the appropriate Texas Water Code chapter.

(1)—(70) no change.

(71) Alternative Delivery Guidance—a document prepared by the Board after public review and comment and reviewed periodically that identifies alternative methods of project delivery available to applicants for financial assistance and the requirements for utilizing an alternative delivery method.

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STATUTORY AUTHORITY (Texas Government Code §2001.024(a)(3))

The amendment is proposed under the authority of Texas Water Code §6.101, which provides the TWDB with the authority to adopt rules necessary to carry out the powers and duties in the Water Code and other laws of the State, and also under the authority of Texas Water Code §§15.001, 15.601, 15.603, and 15.605.

This rulemaking affects Water Code, Chapter 15.

<rule>

SUBCHAPTER F ENGINEERING REVIEW AND APPROVAL

§375.84. Use of Alternative Delivery Guidance.

An applicant choosing to follow an alternative delivery method must elect to do so, and notify the Board, prior to commitment of TWDB funds. Once a funding request is approved by the Board, release of funds for project-specific tasks is governed by the provisions of the Alternative Delivery Guidance rather than the rules and procedures generally applied to Design-Bid-Build project delivery as set out in Subchapters F, G, and H of this Chapter.