



**Flood Infrastructure Fund  
(FIF)  
Program Guidance Manual**



# Contents

Definitions .....	6
Program Overview.....	7
Financial Assistance.....	7
Financial Assistance Categories and Eligibilities .....	8
Categories .....	9
In-kind Services .....	11
Allocation of Funds .....	11
Project Solicitation.....	12
Step 1: Abridged Application .....	12
Step 2: Prioritization.....	12
Step 3: Invitation.....	12
Step 4: Financial Assistance Commitments .....	13
Step 5: Borrower Closings.....	13
United States Iron and Steel Requirements.....	13
Minimum Standards .....	13
Loan Terms .....	16
Project Useful Life Determination for Loans .....	16
Abridged Application Phase .....	17
Complete / Full Application Phase .....	17
General.....	17
Environmental .....	17
Funding Approval and Financial Assistance Commitment Period .....	17
Special Conditions.....	18
Closing and Release of Funds.....	18
Closing .....	18
Release of Funds – Outlays, Escrow Releases and other Methods of Disbursements.....	20
Procurements .....	20
Compliance with the Texas Grant Management Standards .....	21
Disbursement of Grant funds and Maintaining the Grant Percentage.....	21
Buyouts – under Categories 2 and 3 (not eligible under Categories 1 and 4).....	22
Category 1 – Flood Protection Planning for Watersheds .....	23
Flood Protection Planning for Watersheds Submittals .....	23

TWDB Status Reporting .....	24
TWDB Closeout Submittals .....	24
Category 2 – Planning Acquisition, Design, Construction, Rehabilitation (All combinations of these activities) .....	24
Planning Phase .....	24
Environmental Review Process, Documents, and Findings .....	25
State Funding Only Level Environmental Review .....	25
Federal Funding Component Level Environmental Review .....	25
Engineering Feasibility Report (EFR) .....	26
Anticipated or Required Permits .....	27
Land Acquisition, Buffer Zones, Rights-of-Way, and Easements .....	27
Design Phase .....	27
Design Report .....	28
Plans and Specifications .....	28
Bidding Phase .....	28
Competitive Bidding .....	28
Advertising .....	29
Bid Documents .....	29
Pre-Bid Conference .....	29
Addenda .....	29
Bid Opening and Bidder Evaluation .....	30
Bidding Documents and TWDB Approval to Award Contract .....	30
Contract Award Document Submittals .....	30
Alternative Delivery for Construction Projects .....	30
Construction Phase .....	31
Preconstruction Conference .....	31
Applicant Inspection .....	31
Contractor Claims .....	31
TWDB Access to Construction Site .....	31
Retainage .....	32
Change Orders .....	32
Project Records .....	32
Operation & Maintenance .....	32

Operations .....	33
TWDB Status Reporting .....	33
TWDB Closeout Submittals .....	33
Post Construction.....	34
Category 3 – Federal Award Matching Funds.....	34
TWDB Status Reporting .....	35
TWDB Closeout Submittals .....	35
Category 4 – Measures Immediately Effective in Protecting Life and Property .....	35
Preliminary engineering feasibility report.....	35
Construction-Oriented Projects.....	35
Non-Construction-Oriented Projects .....	35
TWDB Status Reporting .....	36
TWDB Closeout Submittals .....	36
Monitoring.....	36
Major Goal .....	36
Loan Monitoring .....	37
Project Monitoring.....	37
Attachment 1 – Resources.....	38
TWDB Flood Infrastructure Fund webpage .....	38
Affidavit Templates .....	38
Memorandum of Understanding - Flood Control Project.....	38
Memorandum of Understanding and Affidavit Flow Chart.....	38
Flood Intended Use Plan .....	38
Texas Administrative Code - 31 TAC Part 10, Chapter 363, Subchapters A and D.....	38
Applications.....	39
Other FIF-related Guidance Manuals .....	39
Sample FIF Funding Determination letter .....	39

## Definitions

COA	Certificate of Approval
EFR	Engineering Feasibility Report
FIF	Flood Infrastructure Fund
IUP	Intended Use Plan
NFIP	National Flood Insurance Program
O&M	Operation & Maintenance
PDF	Portable Digital Format
RPLS	Registered Professional Land Surveyor
TAC	Texas Administrative Code
TWDB	Texas Water Development Board

## Program Overview

The 86th Texas Legislature passed several bills entrusting the Texas Water Development Board (TWDB) with new responsibilities related to funding flood mitigation projects and planning for future flood events. On November 5, 2019, Texas voters approved Proposition 8, a constitutional amendment providing for the creation of the Flood Infrastructure Fund (FIF) to assist in the financing of drainage, flood mitigation, and flood control projects, including:

- planning and design activities;
- work to obtain necessary regulatory approvals; and
- construction and/or implementation of flood projects.

This program is governed by administrative rules found in 31 Texas Administrative Code (TAC) Part 10, Chapter 363, Subchapters A (general provisions governing state-funded programs) and D (provisions specific to flood mitigation project funding) and the Flood Intended Use Plan (Flood IUP) applicable to the TWDB's commitment. The Flood IUP contains the eligibility criteria, structure of financial assistance, including any subsidies, and criteria to be used by the executive administrator in prioritization of applications for a particular time period or funding cycle.

This manual provides basic information for applicants and recipients, along with those assisting in the implementation of funded projects, on the processes used to administer the TWDB's FIF program and as a general guide for achieving compliance with certain program rules and requirements.

## Financial Assistance

The FIF program currently offers financial assistance in the form of loans at a zero percent interest rate and grants under four Project Categories, as shown in the table that follows and explained in greater detail in the most recent Flood IUP.

## Financial Assistance Categories and Eligibilities

Project Category	Financing Available	Eligibility
<p><u>CATEGORY 1</u> Flood Protection Planning for Watersheds (“flood control planning” before a flood event)</p>	<p>Loans with interest rate of 0% and grant funds.</p> <p>Recipient may either use its own available funds or borrow FIF funds at 0% for any portion of the required local share not provided through the FIF grant funds</p> <p>In-kind services may be substituted for any part of the local share, if such services are directly in support of the planning effort, are fully explained and documented in the complete application, and approved as part of the TWDB commitment.</p> <p>See the current Flood IUP for the details on the amount of eligible grant funding</p>	<p>Conduct planning of entire watersheds no smaller than Hydrologic Unit Code 10-digit (HUC-10) to better inform the development of strategies using structural and nonstructural measures before a flood event, such as determining and describing problems from or related to flooding, identifying and planning solutions to flooding problems, and estimating the benefits and costs of these solutions.</p> <p>All activities under this category must be considered “flood control planning” as defined in Texas Water Code Section 15.405.</p> <p>It does not include the actual preparation of a Federal Emergency Management Agency Flood Insurance Rate Map.</p>
<p><u>CATEGORY 2</u> Planning, Acquisition, Design, Construction, Rehabilitation (All combinations of these activities)</p>	<p>Loans with interest rate of 0% and grant funds</p> <p>Recipient may use its own available funds or borrow FIF funds at 0% for any portion of the remainder of the project not provided through the FIF grant funds.</p> <p>Use of in-kind services requires prior TWDB approval.</p> <p>See the current Flood IUP for the details on the amount of eligible grant funding</p>	<p>Includes nonstructural and nature-based solutions that do not meet Category 4 requirements and planning studies that do not meet Category 1 requirements.</p>
<p><u>CATEGORY 3</u> Federal Award Matching Funds</p>	<p>Loans with interest rate of 0% and grant funds for all or a portion of the applicant’s required federal match</p> <p>Recipient may use its own available funds for any portion of the required match not covered by the grant funds instead of borrowing FIF funds at 0%.</p>	<p>Must provide documentation of an existing federal award contingent on availability of matching funds.</p>

	See the current Flood IUP for the details on the amount of eligible grant funding	
<p><b>CATEGORY 4</b></p> <p>Measures <u>immediately</u> effective in protecting life and property</p>	<p>Loans with interest rate of 0% and grant funds</p> <p>Recipient may use its own available funds for any portion of the remainder of the project not provided through the FIF grant funds.</p> <p>Use of in-kind services requires prior TWDB approval.</p> <p>See the current Flood IUP for the details on the amount of eligible grant funding</p>	<p>Examples include:</p> <ul style="list-style-type: none"> <li>• Warning systems</li> <li>• Crossing barriers</li> <li>• Public education and outreach</li> <li>• Reverse 911 systems</li> <li>• Dam Emergency Action Plans</li> </ul>

## Categories

Both loans and grants are available, depending on the activity funded and the economic factors of the applicant entity. Eligible activities are organized into four categories.

**Category 1** – Conduct planning of entire watersheds no smaller than Hydrologic Unit Code 10-digit (HUC-10) to better inform the development of strategies using structural and nonstructural measures before a flood event, such as determining and describing problems from or related to flooding, identifying and planning solutions to flooding problems, and estimating the benefits and costs of these solutions.

All activities under this category must be considered “flood control planning” as defined in Texas Water Code Section 15.405; however, it does not mean all activities under listed in Section 15.405 are eligible under Category 1. For example, design activities, including engineering plans and specifications, would be funded under Category 2 rather than Category 1. This category does not include the actual preparation of a Federal Emergency Management Agency Flood Insurance Rate Map.

Political subdivisions of the state, along with other entities, are eligible to apply for funds to support Category 1 projects, including some entities that are not eligible for other categories. (See “Eligible Applicants” section for details)

Note: the minimum standard requiring an MOU does not apply to this category of projects. If the project is undertaken to achieve NFIP compliance, the minimum standard requiring enforcement of standards at least equivalent to NFIP minimum standard does not apply.

Category 1 Notice Requirements – Prior to the complete application, but not prior to the submitting the abridged application, applicants must notify all cities, counties, non-profit water supply corporations, regional planning agencies, regional water planning groups, and all districts and authorities created under the Texas Constitution, Article III, Section 52, or Article XVI, Section 59, in the planning area by certified mail that an application for planning assistance is being filed with the TWDB. The notice shall include the name and address of the applicant and the name of the applicant's manager or official representative; and brief description of the planning area; the purposes of the planning project; the TWDB's name, address, and the name of a contact person with the TWDB; a statement that any comments must be filed with the TWDB Executive Administrator and the applicant within 30 days of the date on which the notice is mailed. As part of the complete application, and prior to action by the TWDB, the applicant must provide one copy of the notice sent to affected political subdivisions, a list of the political subdivisions to which notice was sent, and the date on which the notice was sent. If approved by TWDB, this may be submitted after the application due date. The TWDB may not act on such application before the end of the 30-day notice period unless all political subdivisions to which notice is required to be sent agree in writing to waive the notice period.

Affidavit – As part of the complete application, an applicant under Category 1 must provide TWDB an affidavit attesting to the following:

(A) that the applicant has acted cooperatively with other political subdivisions (as defined in 31 TAC § 363.402(2)) to address flood control needs in the area in which the eligible political subdivisions are located; and

(B) that all eligible political subdivisions (as defined in 31 TAC § 363.402(2)) substantially affected by the proposed flood project have participated in the process of developing the proposed flood project, recognizing that providing adequate notice and ample opportunity to any such eligible political subdivision that elects not to participate further would fulfill this requirement, provided evidence of notification is included in the application.

Category 1 applications will be evaluated by the TWDB considering, at a minimum, the following criteria: (A) degree to which proposed planning duplicates previous or ongoing flood plans; (B) project service area is regional versus local; (C) history of flooding in project area; (D) participation in National Flood Insurance Program; (E) project organization and budget; (F) scope and potential benefits of project; and (G) the relative need of the political subdivision for the money, giving greater importance to a county that has a median household income that is not greater than 85 percent of the median state household income.

**Category 2** - (a) Planning, Acquisition, and Design includes activities related to planning, land acquisition, and/or design of the project. Planning includes feasibility analyses, detailed hydraulic and hydrological studies, activities to obtain regulatory approval, and coordination of other related work; and (b) Construction, Rehabilitation, and Implementation includes construction and rehabilitation activities, but may also include demolition, decommissioning, and other activities not

necessarily thought of as construction. Rehabilitation must take into consideration methods of improving resiliency.

Minimum standards require applicants requesting funds for Category 2 to state that they have:

- For construction and/or rehabilitation projects, planned for operations and maintenance costs resulting from the proposed project (because operations and maintenance are not eligible costs under this program);
- evaluated possible floodwater capture techniques that may be implemented; and
- coordinated with other entities in the watershed.

**Category 3** – for communities that have received a federal award for flood-related activities contingent on the availability of local matching funds. Grant funds may be provided for a portion of the applicant’s required federal match amount.

**Category 4** – projects are those that can be implemented quickly and are understood to be immediately effective in protecting life and property. Eligible Category 4 projects include warning systems, crossing barriers, gages, and public education and outreach. This category does not include large scale, major planning, acquisition, and design and/or construction/rehabilitation-type projects. TWDB does not maintain an exhaustive list of activities eligible under Category 4, and applicants are encouraged to discuss possible Category 4 proposals with TWDB staff.

## **In-kind Services**

The TWDB will review each proposal that requests the use of in-kind services.

TWDB will determine if there are adequate activities available in the proposal for a project of a certain size and scope to realistically permit a certain level of in-kind services. Further, the applicant may need to provide additional justification and documentation for higher levels on larger planning projects given both the scope and nature of the planning activities to be performed, to make a determination on the availability and expertise of those who would provide any in-kind services, and to take into consideration any proposal that may encompass multiple jurisdictions.

After considering these factors and any other relevant information on the proposal, TWDB will make a determination on the level of in-kind services as part of the FIF commitment.

## **Allocation of Funds**

The TWDB may limit the amount of grant funding and loan financing available in each category and in total as well as the total amount of grant or loan funding provided to a project or applicant. The TWDB may allocate funds to specific categories and rank separately as appropriate.

The TWDB will determine specific limits that will be posted for public notice on the TWDB website periodically. It does not anticipate allocating a large proportion of the total available grant and/or loan funds under this program to a single project or applicant.

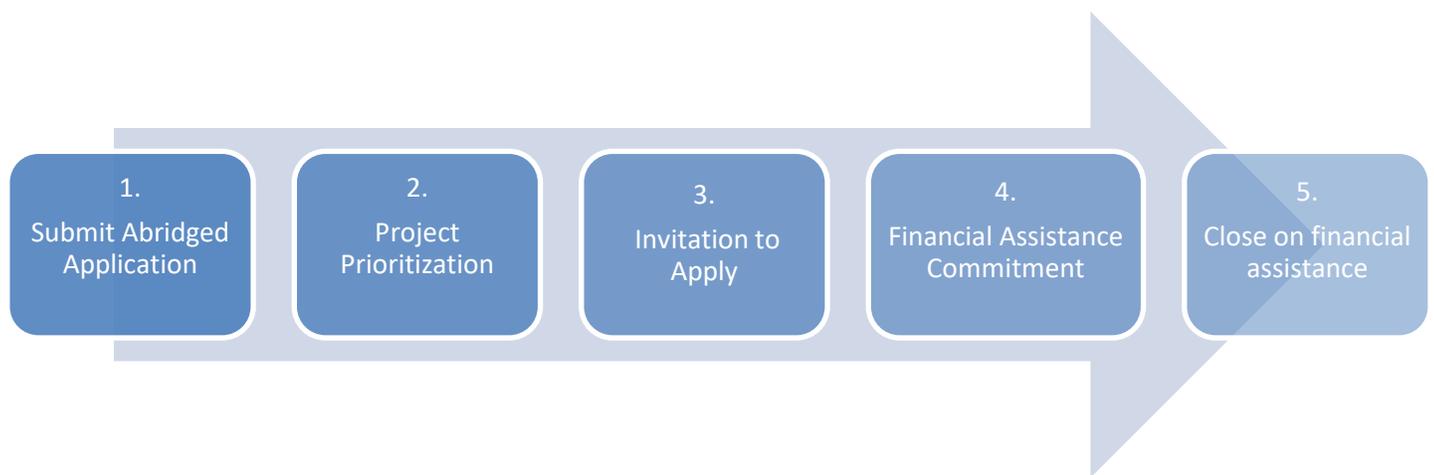
The TWDB may bypass a higher scoring project, if necessary, to fulfill these allocation goals.

To the extent a project on the prioritization list does not move forward to commitment within the timeframes prescribed by TWDB, funds may be reallocated to other eligible projects in any category that are on the prioritization list, as determined by the TWDB.

## Project Solicitation

Funding for flood mitigation projects operates on an annual funding cycle with a two-stage application process. Projects are prioritized based on information submitted in the abridged application and entities are then invited to submit complete financial assistance applications based on project prioritization and a determination of funding availability.

The anticipated process for the inaugural funding cycle is as follows:



### Step 1: Abridged Application

The abridged application is a tool designed to help the TWDB collect the information necessary to prioritize projects and determine the best source of funding without requiring every interested entity to fill out a complete TWDB financial assistance application.

### Step 2: Prioritization

TWDB will prioritize projects according to the IUP and submit to the Board for review and consideration.

### Step 3: Invitation

After the prioritization is approved and funding allocations established, the TWDB will invite selected applicants to submit complete applications for financial assistance. An invited applicant must submit any information requested and a complete application by TWDB's deadlines to remain in active consideration for funding. The application is a TWDB document that asks for the detailed engineering, legal, fiscal, and other information necessary to make a funding recommendation. Final confirmation of compliance with applicable Minimum Standards as described in a following section must occur prior to Board consideration of a financial assistance commitment.

#### Step 4: Financial Assistance Commitments

After reviewing each complete application, TWDB will make a financial assistance recommendation to be considered by the Board in a public meeting.

#### Step 5: Borrower Closings

Entities in receipt of financial assistance commitments will have up to six months to close on their financing, unless an exception for cause is specifically recommended by the Executive Administrator and approved by the Board.

### United States Iron and Steel Requirements

For informational purposes to applicants, the United States Iron and Steel (US I&S) requirements in Texas Government Code, Chapter 2252, Subchapter G apply to the FIF. Construction of projects funded through the FIF are required to use iron and steel products made in the United States. However, if the recipient can justify a claim made under one of the categories below, a waiver may be granted. Until a waiver is granted by the TWDB, the recipient must adhere to the US I&S requirements.

A waiver may be granted if TWDB determines that:

- Iron and steel products produced in the United States are not produced in sufficient quantities, reasonably available, or of satisfactory quality.
- Use of iron and steel products produced in the United States will increase the cost of the overall project by more than 20 percent, or
- Complying with the US I&S requirements is inconsistent with the public interest.

The TWDB Guidance on U.S. Iron and Steel requirements may be found here:

<https://www.twdb.texas.gov/financial/instructions/doc/TWDB-1105.pdf>

### Minimum Standards

Items on this list constitute minimum eligibility criteria that must be met by all projects seeking funding consideration:

1. The benefit/cost ratio of the proposed project.

It is required that, for all construction-oriented (i.e., structural flood improvements, elevations, and buyouts) abridged applications to be eligible, both the costs and the benefits of proposed projects must be quantified and reported. The benefits may include a variety of items including, but not limited to: property losses avoided, risk of injuries or fatalities prevented, and economic disruption or environmental losses avoided.

- A. A benefit-cost ratio (BCR) must be reported within the abridged application as a number with at least one decimal place (e.g. "1.1"). Additionally, the BCR must include:

- (i) A description of the BCR methodology used including the specific analysis tool and version used;

(ii) A list of the key assumptions/parameters used to generate the BCR must be provided; and

(iii) A detailed BCR calculation, to be provided upon TWDB request.

- B. A BCR greater than 1.0 is generally preferred to justify investments in the construction of flood projects. **If the reported BCR of the proposed project is less than 1.0**, the applicant must also provide a detailed explanation for why the applicant considers the project to be justified, including a discussion of the primary benefits of the project, if any, that could not be quantified and were therefore not included in the BCR calculation.

There are no specific BCR tools that must be used in determining the BCR, but links to these two, free tools may be found at:

<https://www.fema.gov/grants/tools/benefit-cost-analysis>

<https://www.hec.usace.army.mil/software/hec-fda/>

BCRs are not required to be provided for eligible studies that are aimed at identifying potential projects, for example, related to: identification of flood risk, flood modeling and inundation mapping studies, population or buildings and other structures at risk of flooding. Nor are BCRs required for Flood Early Warning Systems or Flood Response Plans.

The following information is required in the abridged applications:

A. For non-study funding applications:

(i) the current flood risk in the project area and

(ii) the revised flood risk of the project area if the project is constructed/implemented.

B. For all non-study funding applications, the level of protection (i.e., 4%, 2%, 1% annual chance storm events) provided by the proposed project must be reported. For Flood Early Warning System (FEWS) projects, this would include the flood-hardening level of the FEWS system (i.e., FEWS equipment able to withstand 2% or 1% annual chance storm events etc.).

C. For low water crossing construction-oriented funding applications, the following information must be provided: roadway classification; traffic count; detour distances; accident data; inundation risk (including depths); and velocities during 50%, 10%, 4%, 2%, 1% and 0.02% annual chance storm events.

D. For FEWS construction-oriented funding applications, quantitative information on the population impacted must be provided.

E. For all construction-oriented funding applications, applicant must identify and explain the responsible party for operation and maintenance (O&M) of the infrastructure and from what funding source O&M will be provided.

2. Required Memoranda of Understanding:

If the project is a flood control project, as defined by 31 TAC § 363.402(3), and the project watershed is partially located outside the political subdivision that is filing the application, the applicant must submit a memorandum of understanding (MOU) relating to management of the project watershed. The MOU must be approved and signed by all governing bodies of eligible political subdivisions located in the project watershed. The MOU may include all governing bodies of all political subdivisions required to sign, or the applicant may develop individual MOUs with each political subdivision or groups of political subdivisions within the watershed. All of the required MOUs must relate to the management of the watershed. If individual MOUs are submitted, they must be consistent in the management of the watershed and cannot conflict on that issue.

Abridged application: the applicant must submit a list of all eligible political subdivisions that will be required to approve and sign an MOU and a certification that it has provided a copy of the proposed MOU and an adequately detailed description of the proposed project to all eligible political subdivisions on the list. A copy of an TWDB-approved Memorandum of Understanding template may be found on TWDB's website at <https://www.twdb.texas.gov/financial/programs/FIF/index.asp>, but applicants may also use their own template if approved by the Executive Administrator.

Complete application: the applicant must submit a Memorandum of Understanding approved and signed by all governing bodies of eligible political subdivisions located in the project watershed to be considered a complete application. If approved by TWDB, this may be submitted after any application due date.

Note: this minimum standard on MOUs does not apply to Category 1 projects.

3. An affidavit that the applicant has acted cooperatively with other political subdivisions (as defined in 31 TAC § 363.402(2)) to address flood control needs in the area in which the eligible political subdivisions are located; and all eligible political subdivisions (as defined in 31 TAC § 363.402(2)) substantially affected by the proposed flood project have participated in the process of developing the proposed flood project, recognizing that providing adequate notice and ample opportunity to any such eligible political subdivision that elects not to participate further would fulfill this requirement, provided evidence of notification is included in the application. The affidavit must be provided with the complete application, not the abridged application.
4. The funding request must not include redundant funding for activities already performed and/or funded through another source.
5. The area to be served by the proposed project must have floodplain ordinances or orders, as applicable, in place and the appropriate entity must certify that it is currently enforcing floodplain management standards at least equivalent to National Flood Insurance Program (NFIP) minimum standards, but may exceed the NFIP minimum standard. The only

exception to the certification is an entity that is requesting FIF funding to fulfill additional requirements for participation in the National Flood Insurance Program.

6. The proposed project must be developed using the best/most recent available data.
7. Applicants for construction funds must be able to document that they:
  - A. planned for operations and maintenance costs associated with the proposed facilities, (note: operations and maintenance are not eligible costs under this program) and
  - B. considered possible floodwater capture techniques that could be associated with the proposed project for water supply purposes.

## **Loan Terms**

In general, the TWDB will establish loan terms appropriate for the type of activities being financed. As described further in the Flood IUP, a recipient may use its own available funds in lieu of borrowing FIF funds at 0% for any portion of the remainder of the project not provided through the FIF grant funds.

Specifically, for 2020, the following terms will apply:

1. The interest rate on loans will be zero percent;
2. For construction projects, financing may be offered for a term of up to 30 years, provided it may not exceed the projected useful life of the project, and principal payments will commence no later than 18 months after estimated completion of project construction;
3. For planning, acquisition, and/or design only projects, financing may be offered a term of up to 10 years and principal payments will commence no later than 18 months after estimated completion of the last activity phase being financed;
4. No additional deferrals of principal will be offered in 2020;
5. Level principal repayments will be required; and
6. The recipient of a loan must establish an adequate source of revenue and/or demonstrate adequate security for the repayment of the loan as it becomes due.

## **Project Useful Life Determination for Loans**

A registered engineer must provide TWDB a sealed letter showing the calculation of projected useful life of the assets being financed with FIF loan funds. In general, the registered engineer would provide for the project assets or components grouped into categories or types, the respective cost, the respective projected useful life, and a calculation of the weighted average useful life of all project assets / components.

# Abridged Application Phase

## Abridged Applications

Each Abridged Application should describe proposed projects from one category described above. Applicants may submit multiple Abridged Applications if they seek to propose projects from multiple categories in a single prioritization cycle.

### Prioritization and Selection Process

The Board will approve prioritization of projects and then invitations will be sent for entities to submit complete financial assistance applications.

The TWDB may consider and allocate funding for any proposed project, including in cases that involve bypassing a higher-ranking project. The TWDB may allocate funding to the highest rank projects in a particular category regardless of the score.

All initial determinations of overall eligibility, eligible Category, compliance with minimum standards, grant percentage, and priority ranking for all projects are subject to change upon further review of the projects.

# Complete / Full Application Phase

## General

The requirements for the complete or full application are found in Texas Administrative Code § 363.408, the current Flood IUP, and the FIF Application associated with the applicable FIF Category. Applicants must provide all information requested in the applicable FIF Application to be considered administratively complete. Only administratively complete applications will be considered for FIF commitments. A copy of the FIF applications are located at <https://www.twdb.texas.gov/financial/programs/fif/applications.asp>.

## Environmental

During the application phase, the TWDB Environmental Reviewer will determine which level of environmental review will be required based on the scope of the project and the potential for environmental impacts. This assessment will be made based on information provided in the application. If additional information is required by TWDB staff, a request for supplemental information will be sent to the Applicant or their consultant at that time. For additional information about the environmental review requirements of the FIF Program, see the “Category 2 - Planning Phase - Environmental Review Process” section of this guidance document.

## Funding Approval and Financial Assistance Commitment Period

The TWDB will provide the recipient a Funding Determination letter showing the amount of FIF grant and/or loan funds allocated to the project. A sample is found in the Attachment 1 at the end of

this document. This letter will be provided during the application review phase prior to the Board considering a funding commitment. To the extent a project does not move forward to commitment within the timeframes prescribed by TWDB, FIF funds may be reallocated to other eligible projects in any category that are on the prioritization list, as determined by the TWDB.

**Sufficiency of Funds** - The Applicant must provide evidence satisfactory to TWDB that it has sufficient funds to complete the project at both the commitment and closing stages. If proposing the use of its own funds in lieu of a FIF loan, the Applicant must provide evidence to TWDB that it has funds available in an amount at least equal to the calculated FIF loan amount. The TWDB may require that prior to release of funds for each project phase or portion of a project phase, the Applicant must deposit into the Applicant's construction account or project account, as applicable, the Applicant's cash contribution of funds, based on the Board-approved grant percentage, necessary to complete the upcoming phase(s) or portion of the phase of the project, as approved by the Executive Administrator.

If the application is recommended for approval by the Executive Administrator, the application is placed on the TWDB Board meeting agenda. Entities in receipt of financial assistance commitments will have up to six months to close on their financing or have a fully executed FIF contract with TWDB, unless an exception for cause is specifically recommended by the Executive Administrator and approved by the TWDB. To request an extension, submit a written request at least 45 days prior to the expiration date explaining the need for the extension and proposing a specific date for closing or fully executing the TWDB FIF contract.

### **Special Conditions**

The TWDB may establish special conditions as considered appropriate for the project.

## **Closing and Release of Funds**

### **Closing**

After a financial assistance commitment has been approved by the Board, additional legal, financial, and engineering documentation must be submitted to close the loan and release funds. The documentation required will depend on whether a loan is being provided and the type of entity, among other considerations. TWDB will schedule a closing due diligence call with the recipient.

1. The **closing date** requested in the application will be used to plan the closing of the Applicant's commitment. The requested date may be revised if desired, with concurrence from TWDB.
2. Submit the following items to the TWDB for approval **at least 20 business days prior to the adoption date** of the bond ordinance or resolution by the Applicant's governing body:
  - Bond only - Bond Counsel's legal opinion, draft.
  - Bond only - No-Arbitrage (Federal Tax) Certificate, draft. No-Litigation Certificate, draft.
  - Bond only - Private Placement Memorandum, draft. Proposed bond ordinance or

resolution, draft.

- Copies of executed engineering contracts and other draft contracts. Sufficiency of funds statement & Release of funds request:
  - Option A: IF the project is funded 100% with TWDB funds, submit a statement which identifies the funds to be released at closing.
  - Option B: IF the project is funded with a combination of TWDB funds and other funds, provide a statement as to the status of securing non-TWDB funds and identify the TWDB funds to be released at closing, including a current budget of costs and sources of funds.

Any permits TWDB determines are required prior to closing.

3. Approximately **15 business days prior to the Applicant's closing date**, the Applicant will adopt a bond ordinance (bond only) or resolution to approve the conditions of the TWDB financial commitment.

4. **After the Applicant has adopted a bond ordinance (bond only) or resolution to approve the conditions of the TWDB financial commitment**, submit the final closing documents to the TWDB to close the commitment:

- Bond only - Attorney General Opinion and Comptroller's Certificate
- Bond only - Blanket Issuer Letter of Representation (BLOR)
- Bonds and Loans - Debt Service Schedule
- Escrow Agreement(s) - separate agreement for grant funds and loan/bond proceeds, executed
- Bond only - Financial Advisor's Closing Instructions, Paying Agent Agreement, executed
- Bond only - Private Placement Memorandum – with all attachments
- Sufficiency of Funds Statement/Certification (also must submit at closing even if it is a 100% FIF grant and there are no other sources of funds for the project but Applicant elected to use its own funds "in lieu of" taking a FIF loan)
- Vendor Identification Form
- Executed Grant Agreement, if receiving grant
- Executed Loan Agreement, if receiving loan and not issuing bonds
- Category 1 - Request for funds at closing, including supporting source documentation. Submit at least 15 business days prior to Closing to allow for TWDB review.
- Category 2 - Outlay Report, if funded with grant funds. Invoices and an outlay report must be submitted prior to the release of funds. Submit Outlay Report at least 15 business days prior to Closing to allow for TWDB review.
- Category 3 – Evidence of received federal award for flood-related activities contingent on the availability of local matching funds. Request for funds at closing, including supporting source documentation. Submit at least 15 business days prior to Closing to allow for TWDB review.

- Category 4 - Outlay Report, if funded with grant funds. Invoices and an outlay report must be submitted prior to the release of funds. Submit Outlay Report at least 15 business days prior to Closing to allow for TWDB review.

## Release of Funds – Outlays, Escrow Releases and other Methods of Disbursements

The FIF program generally releases funds through a reimbursement request (or outlay) submittal process. Advance disbursements will only be considered if TWDB determines it is absolutely necessary. For grant funds under Categories 1, 2, and 4, expenses must be incurred and documented by invoices or other acceptable proof of expenditure **before** payment will be made. Under Category 3, the amount disbursed may not exceed the required local share or match for the federal award.

If the FIF financial assistance consists of loan funds only, TWDB will use an escrow release authorization process and invoices will not be required to receive the funds.

Release of FIF grant funds requires submittal of an outlay report or reimbursement request, as applicable, and invoices to document costs for project expenditures. Grant and loan funds that are not eligible for release at the time of closing will be held in an escrow account until TWDB has approved the release of funds. The cost of the escrow accounts may be paid from either FIF grant and/or loan funds that have been disbursed to the FIF project account or construction account, as applicable. TWDB may approve an exception to the use of an escrow account on a case-by-case basis if it determines it is necessary. Installment funding for loans will not be allowed unless TWDB determines it is absolutely necessary.

Escrow and FIF project/construction accounts should be interest bearing accounts. Any interest earned on grant funds must be applied to the FIF project or returned to TWDB, at TWDB's discretion. Any interest earned on loan funds must be used in accordance with the bond ordinance/resolution or the loan agreement, as applicable. Funds released from escrow must be deposited into the recipient's separate FIF project/construction account and then disbursed.

A **minimum** of 5 percent (5%) of the project funds for retainage will be withheld, except for Category 3 projects which will not have retainage withheld. Any remaining retainage will be disbursed upon receipt by TWDB of all close-out documents and issuance of the Certificate of Approval (COA). For disbursements related to construction contracts, for each outlay TWDB will reimburse 95% of TWDB's share of eligible activities taking into account any retainage already deducted from the invoices or other supporting documents.

Project administration/delivery fees and charges and engineering costs must be reasonable as determined by TWDB to be considered eligible FIF activity costs. TWDB may consider the FIF award amount(s), size of the FIF eligible amount or project, and/or nature of project activities in making this determination of a reasonable amount that would be considered eligible FIF activity costs.

## Procurements

The applicant must comply with all applicable statutes and local rules regarding procurement. Applicants should consult their legal counsel to determine which specific procurement laws apply to

a particular project.

## **Compliance with the Texas Grant Management Standards**

For grant agreements entered into before 9/1/2021: If the FIF financial assistance under Flood IUP Categories 2, 3 and 4 includes any portion of grant funding, then the project must comply with Texas Grant Management Standards (TxGMS) found at Texas Government Code Title 17 Chapter 783, as modified by any variation incorporated into the TWDB's rules. TxGMS does not apply to Flood IUP Category 1 projects. The statute allows the TWDB to establish a variation to the uniform assurances or standard conditions through its rule-making process; however, the TWDB has not adopted any variation as of this date.

For grant agreements entered into on or after 9/1/2021: TxGMS does not apply to these grants.

The requirement to comply with TxGMS does not apply if only FIF loan funds have been provided to the project. If another FIF commitment for the same project includes FIF grant funds, then the TxGMS requirements would apply to the project if the FIF grant agreement was entered into before 9/1/2021.

## **Disbursement of Grant funds and Maintaining the Grant Percentage**

For the disbursement of the grant funds, the recipient is required to provide TWDB with source documentation covering the amount of funds requested. This would typically include invoices or other forms of source documentation acceptable to TWDB in support of the grant funds requested. TWDB will not use the percentage of completion method to disburse any FIF grant funds.

If the financial assistance from the FIF includes grant funding, the TWDB must ensure that the FIF grant percentage of the total FIF project costs is maintained upon project completion. The FIF grant percentage of the total FIF project costs must be maintained even if any FIF loan funds are prepaid or the recipient is using its own funds for all or a portion of the remainder of the proposed project cost, as well through the use of in-kind services covering the required local share. Total FIF projects costs are defined as the amount multiplied by the eligible FIF grant percentage to calculate the eligible FIF grant amount.

For FIF financing including both grant and loan funds, the loan funds will be disbursed before any grant funds. If the loan funds have been prepaid prior to the use of the all FIF funds for project activities or the recipient is using its own funds in lieu of a FIF loan, the TWDB will provide a pro rata amount of grant funds based on the FIF grant amount in the commitment as a percentage of the FIF grant and the entity's own funds being provided in lieu of a FIF loan and the recipient would provide the remaining funds to cover the costs shown on the source documentation (e.g., to pay the amount on the invoices). For example, if the FIF commitment provided 50 percent of the project as grant funds and the loan portion were prepaid entirely during the project implementation phase or the recipient is using its own funds in lieu of a FIF loan, the TWDB would disburse 50 percent of amount shown in the invoice or other source document covering activities not previously submitted for reimbursement, reduced as applicable for the 5% retainage, and the recipient will provide the remaining portion from other sources. The amount of FIF grant funds TWDB disburses will be reduced for applicable 5% retainage amount, which varies by FIF Category and the phase of planning/design/construction for Category 2 projects. TWDB will consider whether the invoice already reflected a reduction for the 5% retainage.

As an example of disbursements for a recipient receiving a FIF grant, FIF loan, using its own funds in lieu of a FIF loan, and receiving TWDB approval for providing in-kind services; assume the Eligible Total FIF Projects Costs are \$10,000,000. The eligible FIF grant percentage based on the IUP was 50 percent, yielding a FIF grant of \$5,000,000. Assume for the remaining 50 percent, the recipient elected to receive a FIF loan of \$2,000,000, will use its own funds in lieu of a FIF loan in the amount of \$2,500,000, and will provide \$500,000 worth of eligible in-kind services. The FIF loan funds of \$2,000,000 will be disbursed first, then the FIF grant funds will be disbursed based on a ratio of  $\$5,000,000 / (\$5,000,000 + \$2,500,000)$  or 67% of the amount shown in each outlay request based on invoices or other source documents reduced as applicable for the 5% retainage and the recipient will provide the remaining portion from its own funds. If the invoice covering activities not previously submitted for reimbursement was \$10,000, no retainage had been reduced from the invoiced amount, and it was a Category 2 project in the construction phase, then the amount of FIF grant funds would be  $\$10,000 \times 67\%$  less the 5% retainage yielding \$6,365. If retainage had been removed from this particular invoice, then the amount of FIF grant funds disbursed for that invoice would be simply  $\$10,000 \times 67\%$  or \$6,700. TWDB approval of the use of the in-kind services totaling \$500,000 is separate from the disbursement of FIF loan and FIF grant funds.

If the commitment approved the use of in-kind services, the recipient would provide documentation acceptable to TWDB of the use of in-kind services on the project. To account for in-kind services being provided at different times during the project, the TWDB would allow up to 25 percent of the total grant funding to be provided before the recipient would need to demonstrate it had provided the approved percentage of project activities incurred to date through the use of in-kind services. Prior to providing more than 75 percent of the grant, the TWDB would need to receive documentation that the in-kind services percentage provided to date is same as the original percentage in the FIF commitment.

At project close-out, for any financial assistance that contained grant funding in the original TWDB commitment, the recipient would be required to provide evidence satisfactory to TWDB that the final project maintained the grant to loan, its own funds, and/or in-kind services ratio in the FIF commitment. As part of project close-out, the recipient may use a portion of any FIF grant funds remaining in the escrow account to repay a portion of its existing FIF project loan in order to maintain the approved FIF grant percentage of total FIF project costs, as determined and approved by TWDB. The recipient must use the approved portion of remaining FIF grant funds to repay the FIF loan at project close-out within TWDB's prescribed timeframe. Any remaining FIF grant funds must be returned to TWDB as part of project close-out as prescribed by TWDB.

### **Buyouts – under Categories 2 and 3 (not eligible under Categories 1 and 4)**

For property acquisition and structure demolition or relocation projects for the purpose of creating open space, a FIF funding recipient and any subrecipient must comply in general with the requirements found in Title 44 of the Code of Federal Regulations Part 80 and the Federal Emergency Management Agency (FEMA) Hazard Mitigation Assistance Guidance Addendum for the Hazard Mitigation Grant Program, Pre-Disaster Mitigation Program, and Flood Mitigation Assistance Program, in a manner determined by TWDB. For the purpose of creating open space, only property acquired from a willing, voluntary seller is eligible for FIF funding. Reimbursement for condemnation proceedings may only be approved (on a case-by-case basis) when used for the purpose of creating open space if the space is a critical component necessary to complete a drainage project as defined in 31 TAC § 363.402(1).

## Open Space Restrictions

The recipient or any subrecipient will dedicate and maintain the property in perpetuity for uses that are compatible with open space, recreational, or wetlands management practices and that are consistent with conservation of natural floodplain functions by recording deed restrictions consistent with the FEMA Model Deed Restriction. The FEMA Model Deed Restriction is available on the FEMA website at

[https://www.fema.gov/sites/default/files/2020-08/fema\\_model-deed-restriction.pdf](https://www.fema.gov/sites/default/files/2020-08/fema_model-deed-restriction.pdf)

No new structures may be built on the property, except:

- Public buildings that are open on all sides and functionally related to a designated open space or recreational use
- Public restrooms
- Structures that are compatible with open space, recreational, or wetlands management use and applicable floodplain management policies and practices, and for which compatibility is confirmed in writing by TWDB before construction of the structures begins
- Structures described in the three bullets above that will be elevated or floodproofed to the Base Flood Elevation (BFE) plus 1 foot of freeboard and that meet the applicable requirements of the National Flood Insurance Program floodplain management regulations at 44 CFR Section 60.3

## Category 1 – Flood Protection Planning for Watersheds

### Flood Protection Planning for Watersheds Submittals

The following items must be submitted to and approved by the TWDB Project Manager/Engineer/Reviewer before the submission of the first request for payments other than closing costs:

- Executed engineering contracts for development of flood protection planning of the entire watershed, including:
  - a detailed statement of the purpose for which the funding is to be used
  - the total amount to be paid from the FIF under the contract
  - the time for completion
  - proposed use of any in-kind services to be provided to the project
  - any other terms and conditions required by TWDB or agreed to by the contracting parties

## **TWDB Status Reporting**

The recipient must provide TWDB Status reports/updates on a quarterly basis until TWDB project closeout. This status update may be part of any request for disbursement.

## **TWDB Closeout Submittals**

The following items must be submitted to and approved by the TWDB Project Manager/Engineer/Reviewer before project close out and release of final retainage:

- All reports, planning documents, and any other work products resulting from watershed planning assistance.
- For any financial assistance that contained grant funding in the original TWDB commitment, the recipient would be required to provide evidence satisfactory to TWDB that the final project maintained the FIF grant as a percentage of total FIF project costs, used its own funds or other sources of funds as approved, and/or in-kind services as approved.
- Documented use of any TWDB-approved in-kind services.

All reports, planning documents, plans and specifications, and any other work products resulting from watershed planning assistance must be provided to TWDB and will be deemed public information. The Applicant should submit one (1) physical copy (bound) or more, as requested by the TWDB project engineer, and one (1) portable digital format (PDF) copy, with searchable text, of project work products. The Applicant and subcontractors shall be available for presentations of results, if requested by the Executive Administrator.

## **Category 2 – Planning Acquisition, Design, Construction, Rehabilitation (All combinations of these activities)**

### **Planning Phase**

Planning includes feasibility analyses, detailed hydraulic and hydrological studies, activities to obtain regulatory approval, and coordination of other related work. The planning phase prepares the framework required for accomplishing the purpose and objectives of the project. During planning, specific requirements and needs are identified to prepare for the project's design phase.

The following items must be submitted to and approved by the TWDB Project Engineer/Reviewer during the planning phase:

- Sufficiency of Funds Statement.
- Environmental Review complete.
- Engineering Feasibility Report meeting the guidance of TWDB-0554.
- Modeling and Mapping Data.

- Executed engineering contract for design phase services.
- TWDB approval is required prior to any use of in-kind services to be provided to the project.

### Environmental Review Process, Documents, and Findings

Environmental review and approval of FIF projects is a requirement for the use of FIF financial assistance. The environmental review must be completed prior to the approval of the Engineering Feasibility Report and release of funds for acquisition and design phases, and/or construction projects. If an existing environmental finding for the project meets FIF Program requirements, it can be adopted by the TWDB. At all times throughout the design and operation of the project, the Applicant shall comply with the findings resulting from the environmental review. Environmental findings that are five years old or older, and for which the project has not yet been implemented, must be reevaluated by the TWDB to determine whether to conduct a supplemental review or to affirm the original finding.

### State Funding Only Level Environmental Review

If FIF financial assistance is used to fund a project **without a federal level funding component**, then a state-level environmental finding will be issued. At the culmination of the environmental review process for projects without a federal-level funding component, the TWDB will issue one of the following environmental findings:

1. **Determination of No Effect (DNE):** Exclusion from a full environmental review. Based on the eligibility criteria described in 31 TAC Section § 363.14; and Review of information submitted by the Applicant in the application and additional information requested by TWDB and provided by the Applicant.

If a project is potentially eligible for a DNE, the TWDB Environmental Reviewer will request from the Applicant any additional information required to make a determination. The Applicant must provide all requested information to TWDB in a timely manner. Once a DNE is issued, it will be posted on the TWDB website,

2. **Environmental Determination (ED):** Full environmental review. Based on review of the Applicant’s Environmental Data Form (EDF) ([TWDB-0800](#)); and other requested information
3. **Memorandum to File (MTF):** An environmental finding issued by the TWDB to correct, clarify, modify, or adopt a previous environmental finding, issued by the TWDB or another agency.
  - a. Based on review of a previous environmental finding for the proposed project; or
  - b. Based on review of proposed project modifications for consistency with a previous environmental finding.

### Federal Funding Component Level Environmental Review

If FIF financial assistance is used to fund a project in conjunction **with a federal-level funding component**, then TWDB will preferably adopt their environmental finding. At the culmination of the environmental review process for projects with a federal-level funding component, the TWDB will issue one of the following environmental findings:

1. **Categorical Exclusion (CE):** Exclusion from a full environmental review.
  - Based on the eligibility criteria described in 31 TAC Section § 363.14 as supplemented by

federal requirements.

- Review of information submitted by the Applicant in the application and any requested information.

Process: If a project is potentially eligible for a CE, the TWDB Environmental Reviewer will request from the Applicant any additional information required to make a determination. The Applicant must provide all requested information to TWDB in a timely manner. Once a CE is issued, it will be posted on the TWDB website, and the TWDB Environmental Reviewer will notify the Applicant that they must publish notification of the CE issuance (only once) in a local newspaper with general circulation in the project area. The Environmental Reviewer will provide the wording as it should appear in the newspaper, including a shorter option that refers to the TWDB website posting.

**2. Finding of No Significant Impact (FONSI):** Full environmental review.

- Based on review of the Applicant's Environmental Information Document ([TWDB- 0801](#)) and other requested information; and
- The Executive Administrator's Environmental Assessment (EA).

Process: A FONSI is a legal document supported by an EA. The EA is prepared by the TWDB but is based primarily on the EID submitted by the Applicant. Once a FONSI is issued it is subject to a 30-day public comment period.

**3. Record of Decision (ROD):** Environmental review required for projects that have significant adverse environmental impacts.

- Based on review of an Environmental Impact Statement (EIS) prepared by the Applicant's third-party contractor.

Process: Typically, EIS level projects are elevated to this level of review by a regulatory agency during the permitting process (e.g. U.S. Army Corps of Engineers). The TWDB will then evaluate the ROD issued by the lead regulatory agency and adopt the finding.

**4. Statement of Finding (SOF):** An environmental finding issued by the TWDB to correct, clarify, modify, or adopt a previous environmental finding, issued by the TWDB or another agency.

- Based on review of a previous environmental finding for the proposed project; or
- Based on review of proposed project modifications for consistency with a previous environmental finding.

### **Engineering Feasibility Report (EFR)**

Refer to Guidelines for the Preparation of Flood Mitigation Project Engineering Feasibility Reports ([TWDB-0554](#)) for details on information required in the EFR, including modeling and mapping. The EFR sent to the TWDB Project Engineer/Reviewer must contain one (1) physical copy and one (1) portable digital format (PDF) copy, with searchable text, and must be signed, sealed, and dated by a professional engineer registered in Texas.

The EFR should also include (as applicable), the following:

- **United States Iron and Steel requirements ([TWDB-1105](#)):** FIF assistance recipients are required to adhere to the United States Iron and Steel requirements in Texas Government

Code, Chapter 2252, Subchapter G. Construction of projects funded through the FIF are required to use iron and steel products made in the United States. The entity may not use funds from other funding sources, including the entity's own funds, to pay for a non-compliant iron or steel product used in the project. The EFR should include a discussion of any known issues or special considerations that may affect the design or construction as a result of the applicable iron and steel requirements. In addition, include a discussion of any potential waivers that are being considered.

- Revised **project schedule**, if applicable
- Revised **project budget**, if applicable
- List and status of **anticipated permits** and the permitting agency
- Description of any **force account** work planned for design work

The TWDB Guidance on U.S. Iron and Steel requirements may be found here:  
<https://www.twdb.texas.gov/financial/instructions/doc/TWDB-1105.pdf>

### **Anticipated or Required Permits**

The Applicant or Consulting Engineer should apply early and secure all permits that may be required for the project. Action should be taken as soon as practicable prior to completion of plans and specifications and advertising for construction bids. Plans and specs cannot be approved prior to necessary permits having been secured.

### **Land Acquisition, Buffer Zones, Rights-of-Way, and Easements**

Land acquisition, buffer zones, rights-of-way, and easements needs should be discussed in the EFR and addressed early in the planning phase to avoid redesign of the project. The Applicant should perform an initial site assessment to verify that hazardous waste contamination of the site has not occurred. The TWDB's funding cannot be used for the testing, removal, or remediation of contaminated or potentially contaminated material.

The requirements for a project involving property acquisition for open space (commonly referred to as a 'buy-out') are described elsewhere in the guidance.

### **Design Phase**

Detailed plans and specifications will be developed during the design phase. Refer to Guidance for the Preparation of Flood Mitigation Project Design Documents ([TWDB-0511](#)) for details on information required in the plans and specifications. Acquisition of the sites and easements and issuance of all permits should be completed by the end of the design phase.

The following items must be submitted to and approved by the TWDB Project Engineer/Reviewer during the design phase:

- Complete Plans and Specifications.
- Engineering Design Report meeting the guidance of TWDB-0554 and TWDB-0511.
- Sufficiency of Funds Statement, if applicable.
- Site Certificate, [ED-101](#), signed by the Applicant's Representative. Geotechnical Report, if available.

- Revised Modeling and Mapping Data.
- Site Map showing regulatory floodway, if applicable.  
Fulfillment of special board resolution or environmental finding conditions.
- TWDB approval is required prior to any use of in-kind services to be provided to the project.

## Design Report

TWDB Guidance for the Preparation of Flood Mitigation Project Design Documents ([TWDB-0511](#)) must be followed in the design of all work affecting flood infrastructure facilities. The Applicant's Consulting Engineer is required to prepare and submit a Design Report for review.

## Plans and Specifications

Plans and specifications must conform with and contain all documents required in the Supplemental Contract Conditions and Instructions, mitigation measures identified in the environmental finding, and conditions identified in required permits. The Supplemental Contract Conditions for State Loan Projects ([TWDB-0552](#)) must be incorporated in its entirety into the General and Special Conditions section of the construction contract documents.

The plans and specifications submitted to TWDB for review must be sealed by a professional engineer registered in Texas. The Applicant should submit one (1) physical copy (bound) or more, as requested by the TWDB project engineer, and one (1) portable digital format (PDF) copy, with searchable text, of the plans and specifications for initial review. The Applicant should immediately notify the TWDB Project Engineer/Reviewer and Environmental Reviewer if modifications have been made to the project scope in the final engineering report(s) and/or the plans and specifications. Amendments to the information provided in the EFR may require revisions to the environmental finding(s) and significant changes to the project scope that occur after loan commitment may require Board approval.

A checklist for plans and specifications review is available through the TWDB [Financial Assistance website](#).

## Bidding Phase

### Competitive Bidding

Competitive bidding is a widely used method of obtaining and selecting contractors for construction projects. Typically, the use of competitive bidding is mandated by law or regulation. The Applicant and its Consulting Engineer must comply with all applicable statutes and local rules. Applicants should consult their legal counsel to determine which specific bidding laws apply to a particular project.

In general, the Bid Phase includes the following steps:

- Advertising
- Pre-bid conference
- Bid opening and bid evaluation
- Bid document review and TWDB approval to award contract
- Contract Award and issuance of Notice to Proceed

## Advertising

Authorization from TWDB's Project Engineer/Reviewer should be obtained prior to advertising bids and based on the following documentation:

- TWDB approval of Plans & Specifications, Design Report, EFR, and Environmental Review
- Acquisition of all property needed for the project certified on TWDB Site Certificate Form ([ED-101](#))
- A project involving property acquisition for open space must conform to the requirements described elsewhere in this guidance.
- All permits, licenses, and other legal authorizations required by federal, state, and local agencies.

The advertisement for Bids should clearly state the below requirements. For detailed information on language to be used in the advertisement for bids, see Supplemental Contract Conditions for State Loan Projects ([TWDB-0552](#)).

## Bid Documents

The Invitation to Bid and Instructions to Bidders should summarize key information about the project. Its purpose is to attract bidders, announce the bidding schedule for the project, and provide sufficient information to enable prospective bidders to determine whether they should obtain copies of the bidding documents.

Specific contract wording for bid documents is presented in the Supplemental Contract Conditions for State Loan Projects Section II ([TWDB-0552](#)). The Invitation to Bid shall include language in Section I.6 of TWDB-0552. The Instruction to Bidders shall include the language in Section II of TWDB-0552. The language within Section III shall be included with the contract's special or general conditions.

## Pre-Bid Conference

Pre-bid conferences help to familiarize prospective bidders with the site and scope of the work on projects. TWDB's Project Engineer/Reviewer should be notified concurrent with Bidders of the date, time, and location of the pre-bid conference.

It is advisable that no oral statements be made at the conference that cannot be appropriately reduced to written form in subsequent addenda.

## Addenda

Bidders must acknowledge receipt of all addenda with their bids to ensure that all bidders are bidding on the same effort. Addenda should be issued in an expeditious manner to all document holders of record. If addenda cannot be issued to bidders four days in advance of bid opening, a brief postponement of the bid opening may be justified. The addenda should be submitted to TWDB concurrent with issuance to Bidders for review.

## Bid Opening and Bidder Evaluation

Procedures to follow at the bid opening should be established ahead of time and included in the Instructions to Bidders. The TWDB Project Engineer/Reviewer should be notified concurrent with Bidders of the time, date and place of the bid opening.

After the bids have been opened and tabulated, the Applicant and Consulting Engineer should evaluate the bids and bidders according to the criteria and process outlined in the bid documents for determining responsiveness and responsibility of the bidder.

## Bidding Documents and TWDB Approval to Award Contract

The TWDB Project Engineer/Reviewer should receive the following information and documents as soon as possible after bid opening and before execution of the construction contract:

- Bid tabulation
- Bid proposal of apparent low bidder with Bid Bond Advertisement and affidavit of advertisement
- Consulting Engineer's recommendation to Applicant for award. Explanation for any rejected bids or other bidding irregularities Construction inspection proposal
- Site Certificate ([ED-101](#))
- Vendor Compliance with Reciprocity of Non-Resident Bidder ([TWDB-0459](#))

After receiving and reviewing the information identified as bid document submittals, the TWDB Project Engineer/Reviewer will authorize the Applicant to contingently award the construction contract.

## Contract Award Document Submittals

The Applicant/Consulting Engineer should submit the following documents as soon as possible after contract award and prior to issuance of a Notice to Proceed to the contractor. Fully executed and bound construction contract documents must include the following submittals:

- Specifications as approved by TWDB with executed bid proposal Payment, Performance, and other Bonds with Power of Attorney Contingently executed Contract Agreement
- Proof of Insurance Certificate
- Executed Contractor's Act of Assurance ([ED-103](#))
- Executed Contractor's Resolution on Authorized Representative ([ED-104](#))
- Sufficiency of Funds Letter (if not previously submitted)

## Alternative Delivery for Construction Projects

If, during the **application** process, the community is interested in utilizing an alternative delivery method, **it should be discussed with TWDB staff at the pre-application meeting**. Design-build, construction manager at risk, and other alternative methods of project delivery are eligible approaches that can be used in accordance with programmatic requirements, as outlined in the

Alternative Delivery Guidance (TWDB-0570) and is consistent with the requirements in 31 TAC Chapter 363 Subchapter D. The TWDB will provide written guidance regarding modifications of the review, approval, and release of funds processes for alternative delivery projects based on the type of financial assistance and method of alternative delivery.

## **Construction Phase**

After approval of contingently executed contract documents, if applicable, the TWDB Project Engineer/Reviewer will issue a letter concurring with the issuance of a Notice to Proceed with construction.

Prior to issuing a Notice to Proceed and before initiating construction, the Applicant should take steps to verify that all prerequisites are in place to ensure construction is performed in accordance with the approved contract documents. The following are steps to help with this goal.

TWDB approval is required prior to any use of in-kind services to be provided to the project.

### **Preconstruction Conference**

A preconstruction conference should be scheduled prior to the entity's issuance of a Notice to Proceed and be attended by the owner, project engineer, contractor, and TWDB Project Engineer/Reviewer. The purpose of this meeting is to establish a working understanding among the parties as to the work to be accomplished and to discuss project schedules, milestones, procedures, program requirements, etc., for each construction contract.

### **Applicant Inspection**

The Applicant should provide adequate inspection of the project under the supervision of a licensed registered professional engineer and require the Engineer's assurance that the work is being performed in a satisfactory manner in accordance with the approved plans and specifications and sound construction principles and practices. The Applicant should require that a thorough, daily log of activities be maintained. The Applicant is responsible for ensuring that all required testing is conducted, observed, and documented.

### **Contractor Claims**

Awareness, documentation, and communication will aid in prevention and resolution of contractor claims. Loan money may not be eligible for increased costs due to claims.

The following construction phase issues are discussed in detail in the Supplemental Contract Conditions for State Loan Projects Section III ([TWDB-0552](#)).

### **TWDB Access to Construction Site**

TWDB personnel shall have access to the project site and any project records or reports.

- The TWDB Project Engineer/Reviewer will schedule periodic project site visits. The intent

of these visits is to keep the TWDB informed of construction phase activities and progress of each contract.

- The TWDB Project Engineer/Reviewer will issue inspection reports. This report will be made available to the Applicant and the Consulting Engineer.
- The inspection report and Construction Observation visits are not intended to relieve the Applicant of the responsibility to provide adequate on-site inspection and engineering review to determine acceptability of the work, but is to ensure construction is in accordance with approved plans and specifications and in compliance with the contract documents.

## Retainage

Generally a minimum of 5% retainage is required by law on all public works contracts ([Texas Governmental Code § 2252.032](#)). For FIF-eligible districts, [Texas Water Code § 49.276](#) generally applies. The amount, deposit, and investment requirements for retainage are unique to each construction project. If there is any uncertainty regarding specific situations, the Applicant's legal counsel should be consulted.

Retainage must not be released or reduced below 5% without the consent of the TWDB. A Certificate of Approval will be issued by TWDB after each contract is finalized and close out materials have been provided to the TWDB Project Engineer/Reviewer. This Certificate of Approval authorizes the Applicant to release the retainage to the contractor.

## Change Orders

The construction contract is between the Applicant and the Contractor and any change orders signed by these two parties become part of that contract regardless of TWDB funding eligibility or participation. An electronic copy in Adobe Acrobat PDF format of the change order is to be sent to the TWDB's Project Engineer/Reviewer for review and approval in order to determine funding eligibility. TWDB Staff reviews and approves change orders for the following:

- Eligibility of funding
- Compliance with design criteria as outlined in [TWDB-0511](#)
- Avoidance of environmental impacts
- A change order resulting in a change of scope of the project that may require action by the TWDB
- A change order that may require action by any other authority

## Project Records

It is in the Applicant's interest to keep an organized system of documentation for the project. Refer to Project Files & Construction Records, [WRD-017](#) for guidance.

## Operation & Maintenance

Flood mitigation projects require indefinite Operation & Maintenance (O&M) costs to ensure proper functioning of the system and protection of citizenry. Each flood project must have a dedicated O&M revenue stream, identified by the Applicant. Examples of possible streams are:

- Creation of a stormwater utility with a method of collecting fees.
- Adoption of an alternate political subdivision – such as a regional stormwater authority – with taxing authority.

Additionally, preparation of an O&M manual is encouraged and is an eligible use of TWDB funds. We suggest that the final O&M manual should be submitted to the Applicant before construction is 85% complete so that the manual will be available during start-up. For guidance, see O&M Manual Recommendations, [ED-006](#).

## Operations

The following are staffing guidelines for the Applicant’s project:

- Hire and train operating personnel who will operate and maintain the flood mitigation facility. They should be available during the later stages of construction and start-up, and if possible, they should have some input into the O&M manual.
- Operating personnel should visit the project during construction. Caution them to give no direction to the Contractor. However, their comments and suggestions should be forwarded to the Consulting Engineer for consideration.
- Provide operator training prior to acceptance of the facility that includes review of the O&M manual and, if possible, on-site training by supplier's representatives during start- up.
- Staffing should be in accordance with the Operation and Maintenance manual.

## TWDB Status Reporting

The recipient must provide TWDB Status reports/updates on a quarterly basis until TWDB project closeout. This status update may be part of any request for disbursement.

## TWDB Closeout Submittals

The following information and documents should be submitted to the TWDB Project Engineer/Reviewer prior to TWDB issuance of a Certificate of Approval and authorization of release of final retainage:

- A copy of the contractor's final payment request.
- Verification of dedicated O&M revenue stream and managing authority.
- Modeling and mapping data performed under the project
- Two (2) copies of any outstanding change orders not approved by TWDB to date or a statement that there are no further change orders.
- Final U.S. Iron and Steel documentation ([TWDB-1105-A](#)).
- Consulting Engineer's and Applicant’s certification that the contract has been completed and that the work was constructed in accordance with the approved plans and specifications.
- Contractor’s final pay request and affidavit that all bills have been paid, less retainage.
- Notification of the beginning date of the warranty period for the contract and confirmation that the as-built or record drawings have been received from the contractor.
- **IF** monitoring and/or collection equipment are placed under the project, provide locations of

- equipment as surveyed by a RPLS licensed in the State of Texas.
- For any financial assistance that contained grant funding in the original TWDB commitment, the recipient would be required to provide evidence satisfactory to TWDB that the final project maintained the FIF grant as a percentage of total FIF project costs, used its own funds or other sources of funds as approved, and/or in-kind services as approved.
- Documentation of any TWDB-approved in-kind services provided to the project.

## Post Construction

The TWDB has an interest in the continuing performance of the facility for the life of the loan.

- TWDB representatives may make a visit to the facility during the one-year warranty period to assist the Applicant in reviewing performance, operations, and maintenance.
- TWDB's Financial Compliance Staff will monitor the Applicant for the life of the loan to ensure compliance with the bond indenture.
- TWDB staff will monitor compliance with any special environmental mitigation measures, as appropriate.

## Category 3 – Federal Award Matching Funds

### Engineering

Under Category 3, the TWDB is only providing financial assistance for entities to gain access to federal funding. Therefore, the construction project requirements will not apply. TWDB will not be reimbursing specific construction costs, only providing funds for the required local share or match for the federal award. The TWDB will provide funds for the entity's required match that are associated with the project activities covered in the amount of federal program funds that have been awarded to date. A Preliminary Engineering Feasibility Report is not required. TWDB will verify that the payments made under the federal award have occurred and the FIF disbursements do not exceed the applicable local share or match.

### Environmental Review

TWDB is only providing financial assistance for entities to gain access to funding under a federal award; therefore, TWDB will not be undertaking an environmental review of the project.

Throughout the life of the project, the Applicant's submittals related to expenditures and local share made to the federal award program must also be submitted to the TWDB Manager/Project Engineer/Reviewer.

The following items must be submitted to and approved by the TWDB Manager/Project Engineer/Reviewer before project close out:

- All native working files, final deliverables, and any other work products resulting from or related to TWDB funding assistance.
- Calculation of the final required local share or match for the federal award as approved by the federal agency and certifying the amount of FIF funds used on the approved project.

- All other identified TWDB close out submittals, as appropriate for the project.

## **TWDB Status Reporting**

The recipient must provide TWDB Status reports/updates on a quarterly basis until TWDB project closeout. This status update may be part of any request for disbursement.

## **TWDB Closeout Submittals**

The following information and documents should be submitted to the TWDB Project Manager:

- Certification from the recipient that the FIF assisted project was completed.
- Evidence of the final local share calculation, including the amount provided to the project from the federal program, and the final FIF financial expenditure report.
- For any financial assistance that contained grant funding in the original TWDB commitment, the recipient would be required to provide evidence satisfactory to TWDB that the final project maintained the FIF grant as a percentage of total FIF project costs, used its own funds or other sources of funds as approved, and/or in-kind services as approved.
- Documentation of any TWDB-approved in-kind services provided to the project.

## **Category 4 – Measures Immediately Effective in Protecting Life and Property**

### **Preliminary engineering feasibility report**

A preliminary engineering feasibility report will not be required at the application review stage. Prior to commencing construction of the project, the Applicant must submit the information listed in 31 TAC § 363.13, signed and sealed by a professional engineer registered in the State of Texas. However, if taking this approach, the Applicant understands it will need to be able to cover any additional costs identified in the project engineering feasibility report.

### **Construction-Oriented Projects**

As applicable, all construction-oriented work products funded under this Category must conform to the planning, acquisition, design, construction, and rehabilitation guidance under Category 2 and other programmatic requirements of this and associated guidance.

### **Non-Construction-Oriented Projects**

For non-construction-oriented projects, all executed contracts for the development of project work products must be submitted to and approved by the TWDB Project Manager/Engineer/Reviewer before the submission of the first outlay. Executed contracts will include:

- a detailed statement of the purpose for which the money is to be used
- the total amount of money to be paid from the FIF under the contract

- the time for completion
- any other terms and conditions required by TWDB or agreed to by the contracting parties

Throughout the life of the project, all submittals made as a product of TWDB funding will also be submitted to the TWDB Project Manager for review and concurrence.

Environmental Review – please see the Category 2 – Planning phase section for more information on environmental reviews.

## **TWDB Status Reporting**

The recipient must provide TWDB Status reports/updates on a quarterly basis until TWDB project closeout. This status update may be part of any request for disbursement.

## **TWDB Closeout Submittals**

The following items must be submitted to and approved by the TWDB Project Manager/Engineer/Reviewer before project close out and release of final retainage:

- All native working files, final deliverables, and any other work products resulting from or related to TWDB funding assistance.
- Documentation of any TWDB-approved in-kind services provided to the project,
- For any financial assistance that contained grant funding in the original TWDB commitment, the recipient would be required to provide evidence satisfactory to TWDB that the final project maintained the FIF grant as a percentage of total FIF project costs, used its own funds or other sources of funds as approved, and/or in-kind services as approved.
- All other identified TWDB close out submittals, as appropriate for the project.

All non-engineering work products resulting from Category 4 assistance must be provided to TWDB and will be deemed public information. The Applicant and subcontractors shall be available for presentations of results as required by TWDB staff.

## **Monitoring**

For loans under the FIF program, the Financial Compliance Staff of TWDB's Finance Division is responsible for monitoring the Applicant's financial stability and compliance from the first receipt of funds until final repayment of the debt. Compliance staff is available by phone to assist all borrowers or grant recipients and can arrange a visit to the Applicant's location to assist in financial compliance matters.

## **Major Goal**

Financial Compliance's goal is to provide the TWDB with reasonable assurance that all grant and loan

recipients continue with agreed upon terms of any debt or grant agreement, and that loan recipients continue to have the ability to repay debt in a timely and agreed upon manner.

### **Loan Monitoring**

Financial Compliance monitors loan activities, including reviews of audited financial statements of every entity in the TWDB's portfolio. In addition, Financial Compliance can arrange on-site assistance if appropriate.

### **Project Monitoring**

Project monitoring activities include reviews of final accountings which are a recap of the sources and uses of funds provided usually at the completion of a project.

## **Attachment 1 – Resources**

### **TWDB Flood Infrastructure Fund webpage**

The main Flood Infrastructure Fund (FIF) webpage that contains other guidance manuals and FIF-related resources is found here: <https://www.twdb.texas.gov/financial/programs/FIF/index.asp>

### **Affidavit Templates**

The affidavit templates may be found on the TWDB website.

1. Flood Application Affidavit (Category 1) -  
<https://www.twdb.texas.gov/financial/instructions/doc/TWDB-0171.pdf>
2. Flood Application Affidavit (Category 2, 3, and 4 – planning, acquisition, and design) –  
<https://www.twdb.texas.gov/financial/instructions/doc/TWDB-0172.pdf>
3. Flood Application Affidavit (Category 2, 3, and 4 – construction) -  
<https://www.twdb.texas.gov/financial/instructions/doc/TWDB-0173.pdf>

### **Memorandum of Understanding - Flood Control Project**

The Flood Control Project Memorandum of Understanding Template is found under the Flood IUP and Application Documents drop-down menu -  
<https://www.twdb.texas.gov/financial/programs/FIF/index.asp>

### **Memorandum of Understanding and Affidavit Flow Chart**

This flowchart will assist in determining what cooperation-related documents are required -  
<https://www.twdb.texas.gov/financial/programs/fif/doc/MOUflowchart.pdf>

### **Flood Intended Use Plan**

The current Flood IUP used to administer the Flood Infrastructure Fund, in conjunction with the Texas Administrative Code (31 TAC Part 10, Chapter 363, Subchapters A and D), is found under the Flood IUP and Application Documents drop-down menu -  
<https://www.twdb.texas.gov/financial/programs/FIF/index.asp>

### **Texas Administrative Code - 31 TAC Part 10, Chapter 363, Subchapters A and D**

These subchapters may be found at-  
[https://texreg.sos.state.tx.us/public/readtac\\$ext.ViewTAC?tac\\_view=4&ti=31&pt=10&ch=363](https://texreg.sos.state.tx.us/public/readtac$ext.ViewTAC?tac_view=4&ti=31&pt=10&ch=363)

## **Applications**

The current applications are found on the TWDB website -  
<https://www.twdb.texas.gov/financial/programs/fif/applications.asp>

## **Other FIF-related Guidance Manuals**

Other FIF-related guidance manuals are found here:

[TWDB-0511: Guidance for the Preparation of Flood Mitigation Project Design Documents](#)

[TWDB-0554: Guidance for the Preparation of Flood Mitigation Project Engineering Feasibility Reports](#)

## **Sample FIF Funding Determination letter**

A sample template of the FIF Funding Determination letter is found here:

<https://www.twdb.texas.gov/financial/instructions/doc/FIF-Funding-Determination-Letter-Template.pdf>