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# **Clean Water State Revolving Fund Loan Program (CWSRF)**

**Program Guidance  
Manual**

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Forms and Guidance materials referenced throughout this manual are available through the TWDB's website: <https://www.twdb.texas.gov/financial/instructions/index.asp>

Use the Search box of the Finance & Construction Assistance Guidance and Forms Library on the webpage to type in the form or guidance number needed.

## I. Introduction

The Clean Water State Revolving Fund (CWSRF) Program is administered for the U.S. Environmental Protection Agency (EPA) and the State of Texas by the Texas Water Development Board (TWDB). The program provides low interest loans and principal forgiveness to eligible applicants for activities such as:

- the construction of and improvements to wastewater treatment and collection facilities;
- projects that facilitate compliance with wastewater regulations;
- projects that significantly further the health protection objectives of the Clean Water Act;
- projects implementing a non-point source program;
- developing and implementing management plans for bays and estuaries, and
- projects that provide measures to manage, reduce, treat, or recapture stormwater of subsurface drainage water.

This manual provides basic information for Applicant's and their consultants to understand how the TWDB's CWSRF Program works and to comply with the Program's rules and requirements, which are provided in [31 Texas Administrative Code \(TAC\) Chapter 375](#).

## II. Financial Assistance

Financial assistance is available for any or all phases of a project, including planning, acquisition, design and construction, and for refinancing existing debt. Based on an evaluation of the Applicant's [Project Information Form](#) (PIF), the financial assistance application and availability of funds, the Executive Administrator will make a recommendation that includes the project phase funding to be considered by the Board. Applicants may be required to segment funding depending on the project's readiness to proceed to construction.

### Phases on the Initial Invited Projects Lists (IIPL)

#### 1. Pre-Design Funding Option (or Planning, Acquisition, Design and Construction Funding)

The pre-design funding option allows an applicant to receive a single commitment for all phases of a project. The construction portion of the project must be deemed ready to proceed before funds for the construction phase will be released.

#### 2. Construction Funding Only

All projects that were determined to be ready to proceed to construction based on the current status of their planning, acquisition, and design activities will receive an invitation to fund the construction portion of the project.

#### 3. Planning, Acquisition, and Design Funding

A project on the IIPL that has not completed planning, acquisition, and design activities and was not deemed ready to proceed to construction may receive an invitation to fund only the PAD portion of the project.

4. **Refinancing.** Funds for refinancing are available when (a) the project complies with all of the CWSRF Program rules and requirements, including evidence that the environmental review and engineering criteria considered by the original lender were conducted in a manner consistent with the criteria in 31 TAC, Chapter 375 and (b) the federal tax regulations allow such refinancing.

## **Loan Benefits and Subsidies**


The CWSRF Program offers fixed interest rates significantly below the market rate based on the Applicant's underlying credit rating.

The CWSRF has two types of projects: Equivalency and Non-Equivalency.

Equivalency (Federal Requirements) - A portion of the CWSRF funds must follow all federal requirements. These projects are referred to as Equivalency projects.

Non-Equivalency (State Requirements) - Non-Equivalency financial assistance is not subject to all federal requirements. They must comply; however, with some federal requirements such as the requirement to perform a National Environmental Policy Act-like environmental review and adhere to all federal anti-discrimination laws. This type of assistance offers less of an interest rate reduction from the applicable market rate than Equivalency projects.

Rates for a specific funding year can be found in the applicable [Intended Use Plan](#) (IUP). For more information on the IUP, see Section III of this guidance document. Repayment periods can be offered for up to 30 years for any phase of an eligible project, however, the term of a loan may not exceed to the projected useful life of the project. The TWDB also offers multi-year commitments to assist applicants that need to fund large projects over a period of time.

Additional subsidization for qualifying disadvantaged communities and green projects may also be available. The total amount of additional loan subsidization available and the eligibility criteria for disadvantaged communities are identified each year in the Intended Use Plan (IUP). The guidance for determining eligibility for the Green Project subsidy, [TWDB-0161](#)  is available on the TWDB's website. Additional subsidies are highly competitive; therefore, eligible Applicant's seeking additional subsidies should consider the following guidelines for the best chances to receive subsidy:

- ✓ Submit a [Project Information Form](#) (PIF) during the annual CWSRF project solicitation period to ensure the project is scored, ranked and listed in the IUP in time for the first cycle of funding invitations.
- ✓ After TWDB approves the Intended Use Plan, the first round of funding invitations will be distributed. The invitations to apply will include a deadline to submit an application. Make sure to submit a complete application by the deadline.
- ✓ Be aware that an application which includes additional subsidies funding may be bypassed if it is submitted late or is incomplete. If your application is incomplete, you will have fourteen (14) days from receipt of the incomplete application notice to remedy any deficiency.

Due to the high demand and limited availability of subsidized funding, it is imperative that applicants offered these funds proceed in a timely manner. Therefore, the TWDB has established commitment timeframes for projects that qualify and have been designated to receive additional subsidization in the form of principal forgiveness. If an applicant does not proceed through the application process and obtain a funding commitment within four (4) months, the additional subsidization may be re-allocated to another eligible project. In extenuating circumstances, TWDB may grant an extension of time for obtaining a commitment if an applicant demonstrates sufficient reason for a delay.

- ✓ Stay in close contact with the [Regional Team Manager](#) for the latest information on available subsidization and any additional details that may change in the IUP from year to year. The Regional Team Manager is your central point of contact and will work diligently to ensure that you are able to capitalize on any and all benefits available to you.
- ✓ Even though the best chance of receiving additional subsidization is on the initial invitation round, project may be submitted year-round and receive additional subsidization if available.

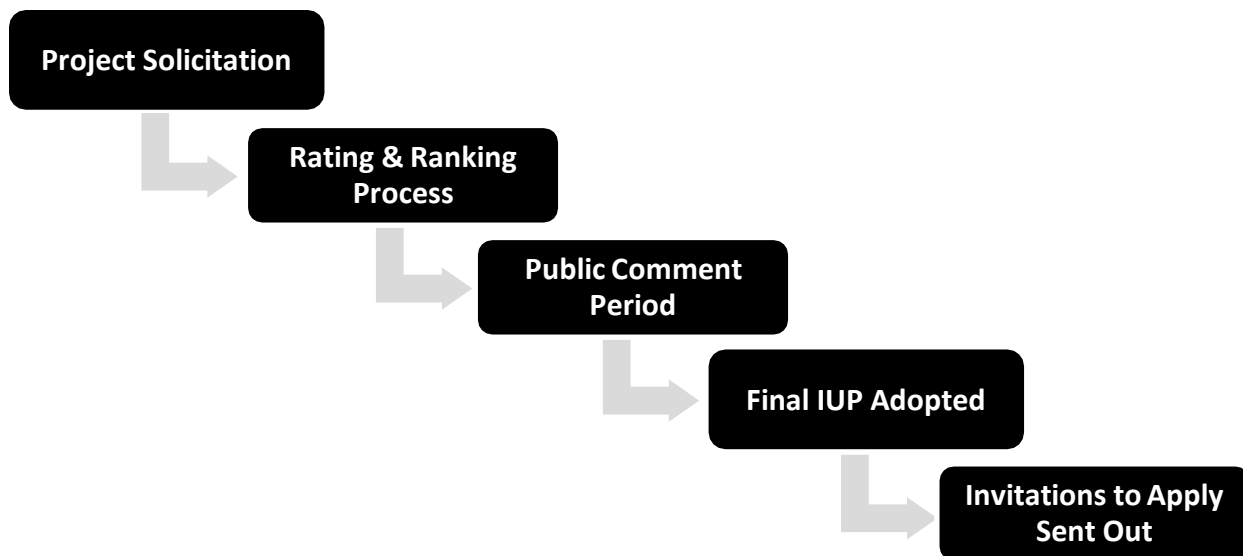
### **Green Project Reserve:**

Your project (or project component) may qualify for additional subsidization as “green” if the primary purpose of the project (or project component) qualifies under EPA rules as green infrastructure, energy efficient, water efficient, or other environmentally innovative activity.

For further information go to the TWDB [Green Project Reserve](#) web page and review the TWDB guidance ([TWDB-0161](#)) for determining project eligibility with the Green Project Reserve.

## **III. Intended Use Plan**

The Intended Use Plan (IUP) is produced each year and provides information related to the funds available through the CWSRF and itemizes how those funds will be used. The TWDB accepts project information forms (PIFs) for the CWSRF program year-round. Projects can be added throughout the year until funding is fully utilized, however, the amount of subsidies available generally decreases as the year progresses. Based on the information provided in the PIFs submitted, each project will be scored, ranked and listed on the IUP to be considered for CWSRF funding. Below is a general overview of the IUP process.



Additional information about the IUP, including copies of current or past IUP's, can be found on the website at: <https://www.twdb.texas.gov/financial/programs/CWSRF/>

## IV. Application Phase

### Pre-Application Meeting

Applicants are required to participate in a pre-application meeting that will guide them through the application process. Pre-application teleconferencing is available. The following individuals should attend the pre-application meeting:

- a member of the governing body of the Applicant;
- the consulting engineer; and
- the financial advisor.

### Application Information

#### General

The financial assistance application can be submitted [online](#) using the On-line Loan Application tool. A Microsoft Word version is also available. The financial assistance application is used for all funding programs and includes simple step-by-step instructions of the legal, financial, engineering and environmental information required for TWDB staff to prepare a recommendation to the Board to fund your project.



For Applicants who qualify for additional subsidization, it is especially important to submit an application by the date specified in the invitation to apply. Failure to timely submit the application or any additional information requested may result in the bypass of the project on the IUP priority list, which can compromise an Applicant's ability to receive subsidies they were offered. If your project is on the IUP, but you are not eligible for additional subsidization, your deadline to submit a complete application is prior to TWDB approving the IUP for the next fiscal year, typically in August.

The Applicant will be notified in writing if their application is administratively complete or incomplete. If the application is incomplete, you will have fourteen (14) days from receipt of the notice of an incomplete application to remedy any deficiency.

### **Engineering**

Preliminary Engineering Feasibility data, as outlined in the application, is required. During the planning phase of the project, the applicant must provide a final Engineering Feasibility Report (EFR) in accordance to the Guidance for the Preparation of Wastewater Project Engineering Feasibility Reports ([TWDB-0556](#)).

### **Environmental**

During the application phase, the TWDB Environmental Reviewer will determine which level of environmental review will be required based on the type and scope of the project and the potential for adverse environmental impacts. This assessment will be made based on information provided in the engineering and environmental sections of the financial assistance 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 CWSRF Program, see the "Planning Phase - Environmental Review Process" section of this guidance document.

### **TWDB forms applicable to CWSRF applications:**

Forms and Guidance materials referenced below can be accessed online through the TWDB's Finance & Construction Assistance [Guidance and Forms Library](#) by using the Search box and typing in the form or guidance number needed.

- Resolution from the governing body requesting financial assistance ([TWDB-0201A](#))
- Application Affidavit ([TWDB-0201](#)), or for Private Entities ([TWDB-0201P](#)) Certificate of Secretary ([TWDB-0201B](#))
- [Water Use Survey](#)
- [Water Loss Audit](#)
- Project Draw Schedule ([TWDB-1202](#)) Project
- Cost Estimate Budget ([TWDB-1201](#))
- Wastewater Project Information Form ([WRD-253a](#))
- Assurances – Construction Programs ([EPA-424D](#))
- Designated Management Agency – This requires the applicant governing approval/resolution
- IF** assistance requested is > \$500,000, two copies of the Water Conservation Plan Required prior to closing the loan.
- Loan recipients must maintain an approved water conservation program in effect until all financial obligations to the state have been discharged.
  - Guidance ([TWDB-1968](#)), and
  - Water Conservation Utility Profile Form: Wholesale ([TWDB-1965W](#)), or
  - Water Conservation Utility Profile Form: Retail ([TWDB-1965R](#))

If your project will benefit wholesale customers, each of them will also be required to submit a water conservation plan prior to closing or, you will be required to include a clause in your contracts with wholesale customers that they will adopt and submit a water plan that conforms to TWDB's requirements at the time of the next contract renewal or amendment.

- \*IF** assistance is requested from the CWSRF Equivalency Program, you will be required to:
  - (1) Submit an Architectural and Engineering Procurement Certification ([TWDB-1108](#), [TWDB-1108-A](#))
  - (2) Submit a Certificate Regarding Lobbying Activities ([TWDB-213](#))
  - (3) Provide Certification Regarding Debarment, Suspension, and other Responsibility Requirements, also required of the contractor during construction ([SRF-404](#))

- (4) Submit a Fiscal Sustainability Plan Certification Form ([TWDB-1700](#), [TWDB-1700-A](#))
- (5) Procure for all prime contracts for services, equipment, supplies and construction, by demonstrating a “good faith effort” towards affording opportunity for Small Business Enterprises, Minority Business Enterprise, Women Business Enterprise, and Small Business in Rural Area participation:
  - Affirmative Steps Certification and Goals ([TWDB-0215](#))
  - Affirmative Steps Solicitation Report ([TWDB-0216](#))
  - Prime Contractor Affirmative Steps Certification and Goals ([TWDB-0217](#))
  - Loan/ Grant Participation Summary ([TWDB-0373](#))

### **Funding Approval and Financial Assistance Commitment**

If the application is recommended for approval by TWDB staff, the application is placed on the TWDB Board meeting agenda. The Board’s commitment for financial assistance expires on the date noted in the commitment or if no date is noted then the commitment expires after:

100% Bonds/Loan

12 months
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Bonds/Loan & Principal Forgiveness

6 months
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If you are unable to close your commitment prior to its expiration, you may request an extension of the expiration period. 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.

## V. 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. A full explanation of TWDB closing requirements for the CWSRF Program is provided in 31 Texas Administrative Code (TAC) Subchapter G, Loan Closings and Availability of Funds §375.91 and §375.92.

1. Please provide the TWDB financial analyst or Team manager a tentative closing schedule with your preferred **loan closing date**.
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 Counsel's legal opinion, draft.
- No-Arbitrage (Federal Tax) Certificate, draft.
- No-Litigation Certificate, draft.
- 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.
- IF** assistance requested is > \$500,000, an approved or approvable Water Conservation Plan.

- \***IF** CWSRF Equivalency Program, include the following Disadvantaged Business Enterprise documentation:
  - [TWDB-0216](#) Affirmative Steps Solicitation Report
  - [TWDB-0217](#) Prime Contractor Affirmative Steps Certification and Goals
  - [TWDB-0373](#) Loan Grant Participation Summary
- IF** applicable, evidence that a wastewater permit application has been filed with TCEQ.
- IF** seeking release of Design funds at closing: see “Design Phase – Release of Funds” section of this document for requirements.
- IF** seeking release of Construction funds at closing: see “Construction Phase – Release of Funds” section of this document for requirements.

**3.** Approximately **15 business days prior to your loan closing date**, you will adopt a bond ordinance or resolution to approve the conditions of the TWDB financial commitment.

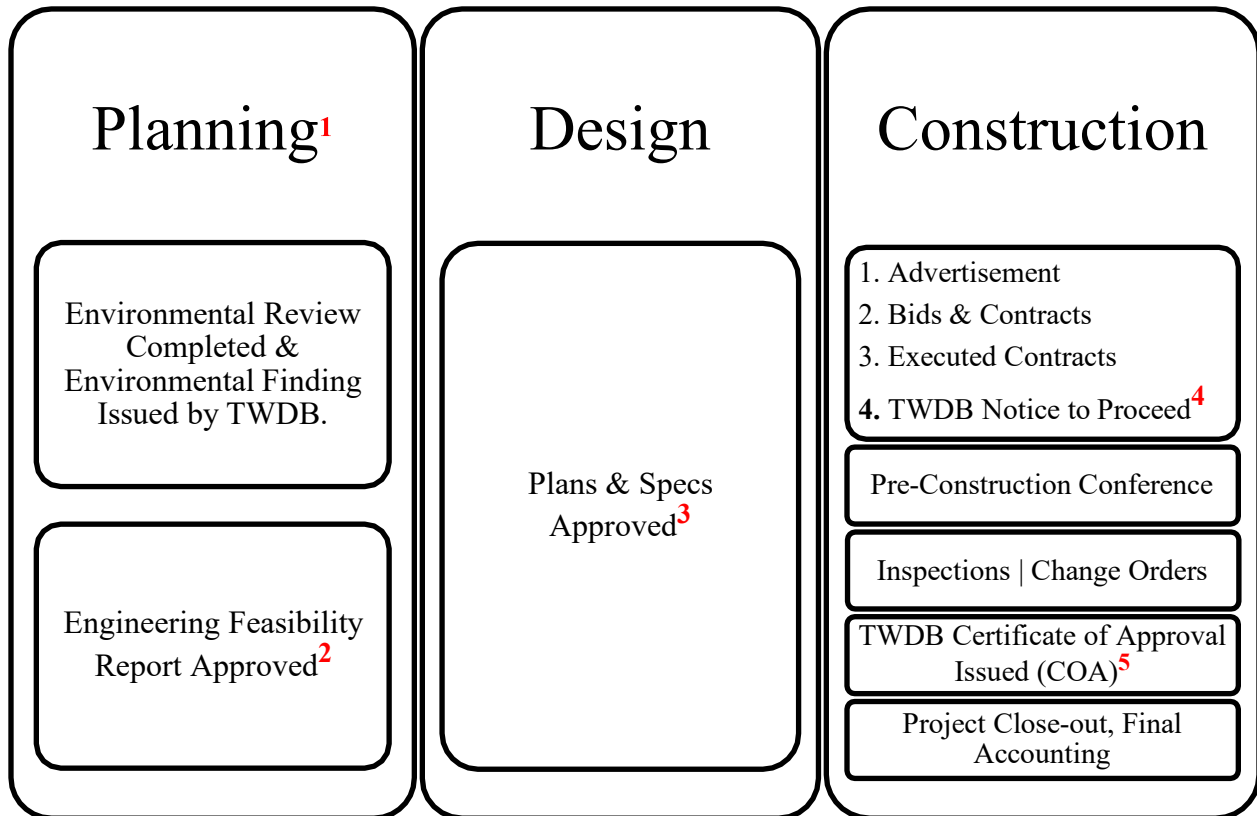
**4.** After you have adopted a bond ordinance, submit the final closing documents **8 business days prior to the closing date** to your TWDB financial analyst to close the commitment:

- Attorney General Opinion Comptroller’s Certificate
- Blanket Issuer Letter of Representation (BLOR)
- Debt Service Schedule Escrow Agreement, executed
- Financial Advisor’s Closing Instructions Paying Agent Agreement, executed
- Private Placement Memorandum – with all attachments Sufficiency of Funds Statement
- Vendor Identification Form
- Executed Principal Forgiveness Agreement (if receiving principal forgiveness)
- Outlay Report, approved

\*Invoices and an outlay report must be submitted prior to the release of funds.

## Release of Funds

The CWSRF program releases funds as project milestones are achieved. When a CWSRF loan includes a principal forgiveness component, the program operates as a reimbursement program, meaning there is an additional requirement that expenses must be incurred and documented by invoices or other acceptable proof of expenditure before payment will be made. All CWSRF loans require submittal of an outlay report and invoices to document costs for your project expenditures. Funds not eligible for release on the closing date will be held in an escrow account until the required project milestones have been completed and approved. Below is a simplified diagram which illustrates key project milestones during the planning, design and construction phase of a project that are tied to the release of funds:



### RELEASE OF FUNDS:

1. Planning: Funds for planning and permitting costs can be released once all loan closing documents have been submitted and approved.
2. Design Costs: Funds for design can be released once the environmental review and EFR have been completed and approved and the executed contracts for the design phase have been received.
3. Soft Costs: Soft costs can be released (construction engineering fees, inspection, etc.).
4. Construction Costs: Construction funds for a contract can be released after issuance of any applicable permits, and after contract documents, including plans & specs are approved and executed construction documents are contingently awarded.
5. Retainage: Contract retainage can be released once the TWDB issues a COA.

## Outlay Report

Outlay Reports are required quarterly from the time of closing until construction begins. Monthly reports are required thereafter. Further information on Outlay Reports can be obtained from the TWDB Website at: [https://www.twdb.texas.gov/about/contract\\_admin/outlay/](https://www.twdb.texas.gov/about/contract_admin/outlay/)

The key policies and procedures may be summarized as follows:

- Outlay Reports require invoices. Provide documentation for each reimbursable cost, except the origination fee. If an invoice includes costs associated with a different project, the CWSRF costs included in the invoice must be clearly distinguished.
- Within each budget category (engineering, construction, etc.), the TWDB can only reimburse up to the amount approved in the commitment for that category. However, you can reallocate funds from one category to another by requesting a budget amendment from your TWDB Project Engineer/Reviewer prior to submission of an outlay for such costs.
- Outlay reports should be submitted electronically to: [outlays@twdb.texas.gov](mailto:outlays@twdb.texas.gov)

If you are unable to submit your outlay report electronically, then contact the Outlays and Escrows team for alternate submission instructions at (512) 463-5070.

## VI. Planning Phase

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.

### Planning Phase Submittals

The following items must be submitted to and approved by the TWDB project engineer/reviewer during the planning phase:

1. Sufficiency of Funds Statement.
2. Environmental Review complete.
3. Engineering Feasibility Report complete.
4. Executed engineering contract for design phase services, including DBE procurement related documents (for Equivalency projects).

### Environmental Review Process, Documents and Findings

Environmental review of CWSRF projects is a condition of the use of CWSRF financial assistance and is subject to annual audits by the Environmental Protection Agency. The environmental review must be completed prior to the approval of the engineering feasibility report and release of funds for design and/or construction. If an existing environmental finding for the project meets CWSRF Program requirements, it can be adopted by the TWDB. At all times throughout the design, construction 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. A full explanation of TWDB environmental requirements for the CWSRF Program is provided in 31 Texas Administrative Code (TAC) [§375, Subchapter E, Division 2](#).

At the culmination of the environmental review process, the Board 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 §375.62](#); and,
  - Review of information submitted by the Applicant in the application and the CE Request Form.

Process: If a project is potentially eligible for a CE, the TWDB Environmental Reviewer will provide the Applicant with a CE Request Form which is catered to the Applicant's project and includes a request for any additional information required to make a determination. 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
- 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 Board to correct, clarify, modify, or adopt a previous environmental finding, issued by the Board or other 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 Engineering Feasibility Reports ([TWDB-0556](#)) for details on information required in the EFR. The EFR sent to the TWDB Project Engineer/Reviewer must be a hard-copy (bound) and must be signed, sealed, and dated by a professional engineer registered in Texas.

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

- **American Iron and Steel (AIS) requirements ([TWDB-1106](#)):** CWSRF assistance recipients are required to use iron and steel products that are produced in the United States for the construction, alteration, maintenance, or repair of a treatment works. 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**
- Revised **project budget**
- Description of any **force account** work planned for design work

## **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. For wastewater treatment projects, plans and specification approval will not be granted until the Texas Commission on Environmental Quality (TCEQ) has issued a discharge permit.

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

Land acquisition, buffer zones, rights-of-way, and easements needs should be discussed in the Engineering Feasibility Report (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.

## **Davis-Bacon Wage Rate Requirements**

The Davis-Bacon Wage Rate Requirements apply to contractors and subcontractors performing on federally funded or assisted contracts in excess of \$2,000 for the construction, alteration, or repair (including painting and decorating) of public buildings or public works. See TWDB's Davis-Bacon Wage Rate Requirements Guidance for State Revolving Fund Projects ([DB-0156](#)).

## **\*Disadvantaged Business Enterprise**

DBE procurement of services is required for **Equivalency Programs**. In the procurement process for all prime contracts for services, equipment, supplies, and construction, the Applicant is required to demonstrate a "good faith effort" towards affording opportunity for Small Business Enterprises, Minority Business Enterprise, Women Business Enterprise, and Small Business in Rural Area participation. The Applicant should procure in accordance with TWDB's Disadvantaged Business Enterprise (DBE) Guidance, [TWDB-0210](#).

**Non-Equivalency Projects** are not required to procure in accordance with TWDB's DBE Guidance.

## VII. Design Phase

Detailed plans and specifications will be developed during the design phase. Acquisition of the sites and easements and issuance of all permits should be completed by the end of the design phase.

### Design Phase Submittals

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

- Complete Plans and Specifications.
- Engineering Report meeting the requirements of §217.10.
- Executed engineering contract for construction phase services, including DBE procurement related documents (for Equivalency projects).
- Sufficiency of Funds Statement, if applicable.
- Site Certificate, [ED-101](#), signed by the Applicant's Representative.
- Geotechnical Report, if available.
- Site Map showing sanitary control easements, if applicable.
- Special board resolution or environmental finding conditions satisfied.
- Cost and Effectiveness Certification Form [TWDB-1107 and TWDB-1107-A](#).

After the above information is reviewed and approved by the Project Engineer/Reviewer, construction funds can be made available to the Applicant.

### Design Criteria

The 30 TAC Chapter 217, Design Criteria for Domestic Wastewater Systems design criteria must be followed in the design of all work affecting wastewater facilities. The Applicant's Consulting Engineer is required to prepare and submit plans and specifications for review. The TWDB has been delegated the responsibility of performing the design criteria review for wastewater plants and collection systems projects funded by TWDB. A TCEQ discharge permit for a new or expanded wastewater treatment plant must be issued prior to the approval of plans and specifications.

### Plans and Specifications

Plans and specifications must conform with and contain all documents required in the Supplemental Contract Conditions and Instructions and mitigation measures identified in the environmental finding. The conditions for CWSRF Equivalency projects and Non-Equivalency projects are \*[TWDB-0550](#) and [TWDB-0551](#), respectively. The conditions must be incorporated into the General and Special Conditions section of the construction contract documents.

The Applicant should submit one (1) copy of the plans and specifications for initial review. Ultimately two (2) copies of the final plans and specifications will be needed for TWDB approval. The plans and specifications must be submitted as a hard-copy (bound) and must be sealed by a professional engineer registered in Texas. The Applicant should immediately notify the TWDB Project Engineer/Reviewer and Environmental Reviewer if modifications have been made to the engineering report(s) and/or the plans and specifications. Amendments to the EFR may require revisions to the environmental finding(s) and any significant changes to the project scope that occur after loan commitment may require Board approval.

A plans and specifications review checklist is available through the TWDB Financial Assistance website at:

<https://www.twdb.texas.gov/financial/instructions/index.asp>

Search y doument name: Engineer Checklist

## VIII. Bidding Phase

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 Subchapter B, Chapter 252 of the Local Government Code and other applicable statutes. Applicants should consult their legal counsel if there is any uncertainty regarding which specific bidding laws apply to a particular project.

In general, the Bid Phase includes the following steps:

- a. Advertising
- b. Pre-bid conference
- c. Bid opening and bid evaluation
- d. Bid documents and TWDB approval to award contract
- e. Contract Award and issuance of Notice to Proceed

### a. 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
- Acquisition of all property needed for the project certified on TWDB Site Certificate Form (ED-101)
- 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 \*[TWDB-0550](#) (for Equivalency projects) or [TWDB-0551](#) (for Non-Equivalency projects).

### Davis-Bacon Wage Rate Requirements

Davis-Bacon Wage Rate Requirements apply to contractors and subcontractors performing on federally funded or assisted contracts in excess of \$2,000 for construction, alteration, or repair (including painting and decorating) of public buildings or public works. See TWDB's Davis-Bacon Wage Rate Requirements Guidance for State Revolving Fund Projects ([DB-0156](#)).

### \*Disadvantaged Business Enterprise

For CWSRF Equivalency projects, the advertisement must clearly state EPA's "fair share policy" and "fair share goals" as discussed in TWDB's DBE Guidance ([TWDB-0210](#)).

## **Invitation to Bid**

The Invitation to Bid (or 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 addressed in the Supplemental Contract Conditions must be included for Equivalency Program ([\\*TWDB-0551](#)) or Non-Equivalency Program ([TWDB-0550](#)).

### **b. 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.

### **c. 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.

### **d. 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](#))
- \*For Equivalency projects, DBE Documentation
- \*For Equivalency projects, Certification Regarding Debarment, Suspension, and Other Responsibility Matters ([SRF-404](#))

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.

#### **e. 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)

## **IX. Construction Phase**

After approval of contingently executed contract documents, 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.

### **Preconstruction Conference**

A preconstruction conference should be scheduled prior to 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 applicable to your project (\*[TWDB-0550](#) for Equivalency projects, and [TWDB-0551](#) for Non-Equivalency projects).



## **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, and 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 loan contracts ([Texas Governmental Code 2252.032](#)). 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. Two (2) copies of the change order are 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
- 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 TCEQ

## 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 (O&M) Manuals

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 your project:

- Hire and train operating personnel who will run the 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 Closeout Submittals

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

- A copy of the contractor's final payment request.
- Two (2) copies of any outstanding change orders not approved by TWDB to date or a statement that there are no further change orders.
- An affidavit by the contractor that all bills have been paid.
- Consulting Engineer's certification that the contract has been completed and that the work was constructed in accordance with the approved plans and specifications.
- Acceptance of the work under this contract by the Applicant in the form of a written resolution or other formal action.
- 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.

## **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.
- The water conservation plan required by the loan should remain in effect for the life of the loan. Recipients of financial assistance of greater than \$500,000 are required to report annually on the implementation and status of the required water conservation program for a minimum of three years after the date of loan closing.
- TWDB staff will monitor compliance with any special environmental mitigation measures, as appropriate.

## **X. Monitoring Phase**

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.

For questions regarding Financial Compliance requirements, or to request assistance, contact Carleton Wilkes at (512) 463-4189 or [carleton.wilkes@twdb.texas.gov](mailto:carleton.wilkes@twdb.texas.gov).

### **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 annual financial reports (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. In addition, Financial Compliance reviews federal Single Audits to assure that relevant federal requirements associated with the funds are met as indicated by the required Single Audits.

In addition, Financial Compliance reviews federal Single Audits to assure that relevant federal requirements associated with the funds are met. Single Audits are required each fiscal year the debt is outstanding, leading up and including the year Final Accounting is completed.