

ECONOMICALLY DISTRESSED AREAS PROGRAM (EDAP)



Water for Texas

**Program
Guidance –
December
2022**

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Acronyms

| | |
|-------|--|
| AMHI | Annual Median Household Income |
| BAL | Board Action Letter |
| CCFI | Construction Contract Final Inspection |
| CCN | Certificate of Convenience and Necessity |
| CE | Categorical Exclusion |
| COA | Certificate of Approval |
| DNE | Determination of No Effect |
| DSHS | Department of State Health Services |
| EA | Environmental Assessment |
| EDAP | Economically Distressed Areas Program |
| ED | Environmental Determination |
| EDF | Environmental Data Form |
| EID | Environmental Information Document |
| EPA | Environmental Protection Agency |
| FEP | Facility Engineering Plan |
| FONSI | Finding of No Significant Impact |
| GST | Ground Storage Tank |
| HUD | U.S. Department of Housing and Urban Development |
| IUP | Intended Use Plan |
| MSR | Model Subdivision Rules |
| MTF | Memorandum to File |
| O&M | Operations and Maintenance |
| OLA | Online Loan Application |
| OSSF | Onsite Sewage Facility |
| P&S | Plans and Specifications |
| PFEP | Preliminary Engineering Facility Plan |
| PDF | Portable Digital Format |
| ROD | Record of Decision |
| SOF | Statement of Finding |
| TAC | Texas Administrative Code |
| TCEQ | Texas Commission on Environmental Quality |
| TWDB | Texas Water Development Board |
| USI&S | United States Iron and Steel |
| WSC | Water Supply Corporation |
| WTP | Water Treatment Plant |
| WWTP | Wastewater Treatment Plant |

I. Introduction

In 1989, the 71st Legislature passed comprehensive legislation that established [The Economically Distressed Areas Program \(EDAP\)](#) and the Model Subdivision Rules (MSR) for the regulation of future residential subdivisions, helping to meet immediate health and safety concerns, and stopping the proliferation of sub-standard subdivisions through the enforcement of development standards.

The EDAP Program provides financial assistance in the form of grants and loans for residential water and wastewater projects in economically distressed areas where services are unavailable or inadequate to meet minimum state standards.

Document Summary

This guidance manual provides basic information for Applicants and their consultants to understand how the Texas Water Development Board (TWDB) EDAP Program works and how to comply with the program's rules and requirements as outlined in [31 Texas Administrative Code \(TAC\) Chapter 363, Subchapter E](#).

This document covers the following subjects and any applicable procedures, requirements, and resources:

- Abridged application and prioritization
- Full application
- Financing closing and release of funds
- Planning, acquisition, design, bid, and construction phases
- Certificate of Approval (COA) and Project close-out
- Financial Compliance (Final Accounting and Monitoring)
<https://www.twdb.texas.gov/financial/compliance/index.asp>



The main EDAP webpage contains other guidance manuals and EDAP-related resources, and can be found here:

<https://www.twdb.texas.gov/financial/programs/EDAP>

No provision in this guidance supersedes any applicable administrative rule governing the program nor the applicable Intended Use Plan for the program.

II. Program Eligibility

Eligible Applicants

Eligible EDAP applicants include political subdivisions and nonprofit water supply corporations (WSC). **The city or county where the project is located must adopt and enforce [Model Subdivision Rules \(MSR\)](#) for the regulation of subdivisions in the project area before submitting an EDAP abridged application.** MSRs must be consistent with the rules adopted by the TWDB and found in [31 TAC chapter 364](#). More information can be found on the TWDB [MSR webpage](#).

To qualify as economically distressed, an area must meet three criteria:

1. Criteria 1: Water supply or wastewater services are inadequate to meet the minimal needs of residential users.
 - **For water supply projects**, the criteria are met if water supply service
 - does not exist or is not provided,
 - is provided by a community water system that does not meet drinking water standards established by the TCEQ,
 - is provided by individual wells that, after treatment, do not meet the TCEQ drinking water standards, or
 - does not meet applicable drinking water standards of any other governmental unit with jurisdiction over the area.
 - **For wastewater projects**, the inadequacy criteria are met if wastewater service
 - does not exist or is not provided,
 - is provided by an organized wastewater collection and treatment facility that does not comply with the standards and requirements established by the TCEQ,
 - is provided by onsite wastewater facilities that do not comply with the standards and requirements established by the TCEQ, or
 - does not meet applicable wastewater standards of any other governmental unit with jurisdiction over the area.

2. Criteria 2: Financial resources are inadequate to provide water supply or wastewater services that will meet those needs. **This standard is met if** the weighted average Annual Median Household Income (AMHI) for Census geographic areas to be served by the proposed project **is not** greater than 75 percent of the statewide AMHI for the most recent year statistics are available.

Funding of first-time residential service connections through the EDAP must also meet additional income requirements.



Financial assistance is limited to residences that demonstrate an inability to pay for the improvements. Proof of household income that does not exceed the definition of a low-income family as defined by the U.S. Department of Housing and Urban Development (HUD) shall constitute a demonstrated inability to pay for the improvements provided for purposes of this section. This threshold is set at 80 percent of the area median family income and is compared against the **county median** for each family size, rather than the statewide household median. [See Appendix B: Guidelines for Documenting Income Eligibility](#)

3. Criteria 3: An existing residential subdivision was established on June 1, 2005. This standard may be met if
 - either a plat of the area is recorded in the county plat or deed records or a pattern of subdivision without a recorded plat is evidenced by the existence of multiple residential lots with roads, streets, utility easements, or other such incidents of common usage or origin and
 - at least one occupied residential dwelling existed within the platted or subdivided area on June 1, 2005.

Eligible Projects

An eligible project is one that addresses one or more of the inadequacies described in the first criteria above and is in an area that satisfies criteria 2 and 3.

- **First time water and wastewater service** projects may include planning, land acquisition, design, and construction for:
 - residential connections to a new public water supply system constructed with financial assistance;
 - yard line service connections;
 - indoor plumbing facilities and fixtures;
 - residential connections to a sanitary sewer system constructed with financial assistance; and
 - necessary connection and permit fees.
 - design of plumbing improvements

- **Water supply and/or treatment system improvements** projects may include planning, land acquisition, design, and construction for:
 - treatment plant improvements,
 - water transmission and distribution lines,
 - wells,
 - pump stations,
 - water system asset management planning, and
 - regionalization projects.

- **Wastewater collection system and/or treatment works improvements** projects may include planning, land acquisition, design, and construction for:
 - treatment plant improvements,
 - wastewater collection and transmission lines,
 - lift stations,
 - septic tank decommissioning,
 - wastewater system asset management planning, and
 - regionalization projects.

Special Requirements (depending on the project)

- The Applicant must apply for and maintain a designation by the TCEQ as an authorized agent for regulating onsite waste disposal facilities.
- The county must prepare a map that shows where different types of onsite sewage disposal systems are appropriate.
- The Applicant, or its designee, must be capable of maintaining and operating the completed system. **The Applicant is responsible for securing any necessary water permits or rights, wastewater discharge permits, and any other required licenses.**
- If the Applicant is required under [Chapter 13](#) of the Water Code to have a [Certificate of Convenience and Necessity \(CCN\)](#) to provide service to the proposed project area, **the Applicant must have or be applying for the CCN to be considered for EDAP funding.**
- Water supply projects must be consistent with the most recently adopted [state water plan](#) at the time abridged applications are due to the TWDB for consideration.
- [Water Conservation Plans](#) and [Drought Contingency Plans](#) are required for financial assistance greater than \$500,000, in accordance with [31 TAC § 363.15](#).
- Projects funded through the EDAP Program must comply with [U.S. Iron and Steel requirements](#).
- Water loss threshold limits must meet the guidelines in 31 TAC § 358.6(f).
 - Entity needs to be below its water loss thresholds as determined by TWDB. If

not, funds need to be included to mitigate the entity's water loss. If the entity is or has plans to mitigate its loss, it can submit a waiver for consideration by the board per [31 TAC §358.6\(e\)\(f\)](#).

- Entities that receive funding from EDAP may not use revenue received from fees collected from a water supply or wastewater service constructed in whole or in part for purposes other than utility purposes per Texas Water Code 16.356.



Applicants are encouraged to discuss the eligibility of prospective projects with their [Regional Water Project Development Team](#).

III. Financial Assistance Overview

An EDAP funding commitment includes both a grant and a loan. The ratio is determined as outlined in the Intended Use Plan (IUP) for the year in which an entity receives a commitment.

EDAP Funding

The TWDB may limit the amount of EDAP funds, including the amount of grant funds, provided to an entity or project. Additionally, the TWDB reserves the right to adjust eligible grant percentages as necessary to maintain the overall grant-to-loan ratio required by the [Texas Water Code Section 17.933](#).

- The total amount of grants may not exceed at any time 70 percent of EDAP's total amount of financial assistance provided.
- The portion not paid for by a grant must be provided as an EDAP loan.
- Maturities are up to 20 years.

Grant Calculation Methodology

- The **maximum** amount of grant available will be 70 percent per project.
- The grant percentage for a project cannot exceed 50 percent unless a public health nuisance exists, as determined by either the TWDB or the Department of State Health Services (DSHS).
- Public health nuisance determinations made by local sanitarians or public health officials may be submitted with an abridged application for potential consideration of prioritization and scoring. **Only nuisance determinations issued by the TWDB or the DSHS are accepted as documentation for grant allocation purposes. At this time, TWDB staff will review all new requests for issuance of Nuisance Determinations as is allowable by statute.** See [Appendix C: Nuisance Determinations](#) for more information on the process to request review for possible issuance of a Nuisance Determination by TWDB..
- If you believe a public health nuisance may exist but a nuisance determination has not been issued by the TWDB or the DSHS, please contact the TWDB at EDAP@twdb.texas.gov.
- You may also submit a request for review and possible issuance of a nuisance determination with your abridged application. See [Appendix C: Nuisance Determinations](#).

Funding Process and Intended Use Plan

Applicants must submit an abridged application with preliminary information on their proposed EDAP projects. These applications will be prioritized using the EDAP prioritization system as outlined in [31 TAC § 363.504](#).

See [Appendix A: EDAP Prioritization Criteria](#).

The EDAP Intended Use Plan (IUP) contains the initial project priority list (PPL) based on EDAP abridged applications and available funding capacity.

- A draft IUP and the TWDB recommendations regarding program funding capacity are presented for Board consideration. If approved, projects within funding availability are invited to submit full EDAP financial assistance applications.
- Invitations are sent to Applicants via email shortly after the Board meeting, and full applications are due by a date established by the Executive Administrator.
- Full applications include information needed to complete the standard financial, legal, engineering, and environmental reviews by the TWDB. Once the technical review process is complete, the project is presented to the Board for funding consideration.

IV. Abridged Application Process

EDAP abridged applications provide the TWDB with preliminary information necessary to prioritize projects and determine the capacity of the program for each funding cycle. The available financing amount for an IUP cycle will be contingent upon the amount of bonds to be sold for the program.

Abridged application solicitation will be announced on the TWDB webpage and through agency communications. The abridged applications **must** be received by the posted due date to be considered for prioritization and funding capacity.

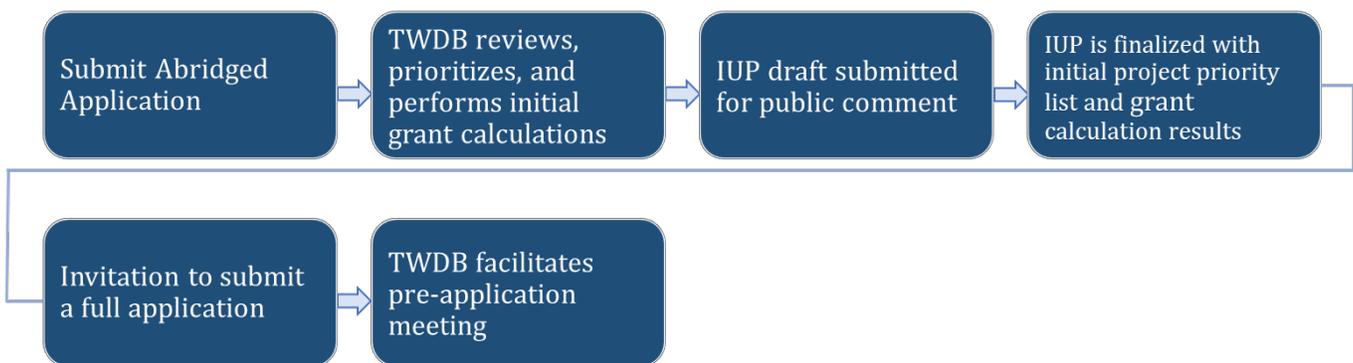


Figure 1: EDAP Abridged Application Milestones

Abridged Application Checklist

- List of census geographic areas (cities, counties, census tracts, and/or block groups) served by the proposed project and any weighted average calculations.
- Documentation that an established residential subdivision was in the project area on or before June 1, 2005.
- Public health nuisance determination (if applicable)
 - Local sanitarian and public health official determinations may be submitted for project prioritization.
 - A TWDB or DSHS nuisance determination is required for grant eligibility above 50 percent.
 - **To request a review for possible issuance of a nuisance determination by the TWDB or DSHS, please submit the following:**
- Contaminant violations supporting documentation (if applicable)

- Documentation showing current violation of requirements and resulting enforcement action by the TCEQ, Environmental Protection Agency (EPA), or the state, including final orders, judgements, or consent decrees
 - The Applicant must also include a signed statement, self-certifying that the entity did not cause or allow the violations [\(2 Texas Governmental Code C. § 17.9275 \(c\)\(2\)\(B\)\)](#).
- Non-contaminant violations supporting documentation (if applicable)
 - Documentation showing current violation of requirements and resulting enforcement action by the TCEQ, EPA, or the state, including final orders, judgements, or consent decrees
 - The Applicant must also include a signed statement self-certifying that the entity did not cause or allow the violations.
- Previous TWDB investment supporting documentation (if applicable).

Submitting an Abridged Application

Abridged applications may be submitted using the method posted with the TWDB's notice that it is accepting abridged applications.

Abridged Application Submittal Deadlines

Solicitations for new Abridged Applications may occur as funding is available. Refer to the [TWDB EDAP webpage](#) for updates on deadlines to submit PIFs.



Applicants must submit an Abridged Application for prioritization and receive an invitation from the TWDB before submitting a full application for financial assistance.

Project Evaluation and Rating

All Abridged Applications will be scored and ranked based on information provided in the EDAP Abridged Application, which only requests the preliminary information necessary to complete this step.

General rating criteria included in the 2022 EDAP Intended Use Plan are briefly described below.

- First-time service: 15 points. Applies to projects providing first-time service for residential customers.
- Project resolves public health nuisances and/or violations related to contaminants: 10 points. Applies to projects that:
 - will resolve the circumstances leading to a public health nuisance determination; or
 - will resolve a TCEQ or EPA violation related to contaminants that were not caused or allowed by the applicant (applicant must certify).

- Previous TWDB investment in the project: 8 points. Applies to projects that received TWDB financial assistance for earlier phases of the same project for which funds are being requested (for example a project that received planning and design funds).
- Projects addressing violations related to TCEQ minimum requirements for storage capacity or service pressure (non-contaminants): 3 points.
- Tiebreaker: AMHI of Proposed Project Service Area. Ties will be decided in favor of the project proposed by the project service area with the lowest service area AMHI.

Ranking and Creation of the PPL

Each Abridged Application submitted by the deadline, and determined to be eligible for EDAP funding, is rated and ranked using the established criteria and included on the PPL. In the event of a tie, priority is given to the project with the lowest service area AMHI.

Upon Board approval, entities with Abridged Applications on the PPL who rank within funding capacity will be informed of the opportunity to submit an application.

Intent to Apply

As part of the invitation process, the TWDB may require the applicant to submit an intent to apply form or request information by a specified deadline, showing the applicant's intent to request up to the eligible amount of funding in the IUP.

After the initial invitation period, if any funds remain unallocated, other projects on the PPL will be invited.



Failure to provide the requested intent to apply information or the full application by the established deadline will result in the TWDB bypassing the project on the IUP list.



Entities on the PPL may not submit an application until they have received an invitation from the TWDB and participated in a pre-application meeting.

V. Full Application Process

Applicants with abridged applications that rank within funding availability will be invited to submit full applications for financial assistance. Full applications are due by the established deadline and must be received by the posted due date for further consideration by the TWDB.

This section outlines the steps necessary for submission of a EDAP Application for funding, and recommendation to the Board for commitment. The TWDB conducts a technical review of the application by the legal, engineering, environmental, planning and water conservation disciplines, as outlined in the [financial assistance review process document](#). More resources can be found on the [application webpage](#).

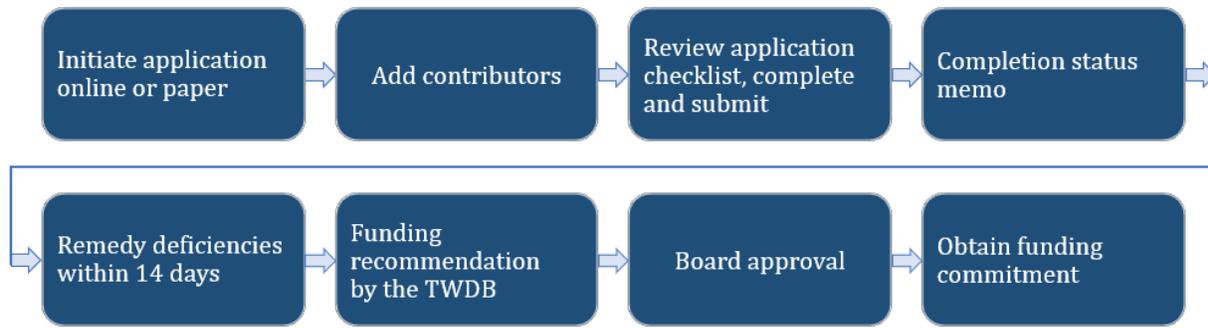


Figure 2: Full Application Process

Pre-Application Meeting



Entities **are required** to participate in a pre-application meeting with RWPD team members to discuss the application process and project requirements. Videoconferencing is available, and the following individuals should attend:

- A member of the governing body of the Applicant
- The consulting engineer
- The financial advisor



NOTE: Intended use of alternative delivery methods (e.g. design-build, Construction Manager at Risk, etc.) must be discussed with TWDB staff at the pre-application meeting, or earlier, if possible.

Application Submittal

The Financial Assistance Application can be submitted online using the OLA system. A Microsoft Word version is also available for submittal via email or mail. Whichever option is chosen, applications must be received by the posted due date to be considered for funding.

- **Online Submittal (OLA)**

- Using the OLA system, log in with the credentials created when submitting your PIF.
- Click the “Invited” button on the bottom of the dashboard to begin a new application.
- Most document uploads to the OLA system must be in portable document format (PDF). Clearly label all attachments with the corresponding document name and entity name.
- You may save your progress and return as needed until you have completed the application; incomplete applications will **not** be processed until all required information is provided.
- Additional contributors may be added to the application.
- Refer to the TWDB [Financial Assistance Application](#) webpage for further guidance.



It is imperative that all contributors use consistent language. Only one contributor at a time can work in the OLA system. **If multiple users are working on the application at the same time, the TWDB cannot guarantee your data will be saved.**

➤ **Email/Hardcopy Submittal (Word)***

- Download the [Financial Assistance Application \(TWDB-0148\) \(Word document\)](#) from the TWDB Financial Assistance Application webpage.
- Refer to the [TWDB Financial Assistance Application webpage](#) for further guidance.
- Email the completed application and applicable attachments to EDAP@twdb.texas.gov.
- For hard copy applications, you must submit one (1) double-sided physical copy and one (1) indexed electronic copy via electronic storage media (i.e., flash drive) using MS Word, Excel, or Adobe Acrobat.
- Hardcopies should be mailed to the following address:

Texas Water Development Board
 ATTN: EDAP Application
 P.O. Box 13231
 Austin, Texas 78711-3231

**Not applicable if using the Online Application*



If at any point you have questions, or need assistance with the application, please contact your [RWPD Team](#).

Notice of Complete Application



The Applicant will be notified in writing if their application is administratively complete or incomplete generally **within 48 hours** of its due date. **If the application is incomplete, any deficiencies must be remedied by the deadline provided in the notice.**

Engineering

A Preliminary Facility Engineering Plan, signed and sealed by a professional engineer registered in the State of Texas, as outlined in the application, is required. During the planning phase of the project, the Applicant must provide a final Facility Engineering Plan (FEP) in accordance with the relevant EDAP FEP guidance ([WRD-023A](#)) and scope of facility plan [31 TAC §355.73](#).

Environmental

During the application phase, the TWDB Environmental Reviewer will determine the level of environmental review 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 the TWDB, a request for supplemental information will be sent to the Applicant or their consultant.**



For additional information on environmental review requirements for EDAP, please see the [Planning Phase](#) section of this guidance, (under *Environmental Review Process*).

TWDB Forms Applicable to EDAP

Forms and guidance materials referenced below can be accessed online through the TWDB [Program Guidance & Manuals \(Guidance and Forms Library\)](#) by using the Search box and typing in the form name or guidance number needed.

- Resolution – mandatory hookup policy *
- Inadequacy Documentation – water and/or wastewater services
- Financial Resources Documentation
- Documentation of Established Residential Subdivision
- Public Health Nuisance Determination (if applicable)
- Plats for First-Time Service (if applicable)
- EDAP FEP ([WRD-023A](#))

TWDB Forms applicable to EDAP

- Resolution from governing body requesting financial assistance ([TWDB-0201A](#)) *
- Application Affidavit ([TWDB-0201](#)) or Application Affidavit – Private Entities ([TWDB-0201P](#)) *

- Application Resolution - Certificate of Secretary ([TWDB-0201B](#)) *
- Planning Information Form for wastewater([WRD-253a](#)) or water([WRD-253d](#))
- Project Cost Estimate Budget ([TWDB-1201](#)), signed and sealed by a professional engineer registered in the State of Texas
- Water Use Survey
- Water Loss Audit - Water Conservation Plan

**Forms requiring the Applicant's signature*



A complete checklist of documents required to be submitted can be found on pages 3 and 4 of the application ([TWDB-0148](#)). Applicants should work with the TWDB to identify which documents are required for your specific project.

Draft Board Memo Review

The Applicant will be provided a draft Board memo and resolution for review. While most of the resolution uses standard language, the Applicant must verify language related to the pledge and any special conditions. TWDB must be notified of any issues with the draft Board memo and resolution within seven calendar days to ensure the commitment is not delayed.

Funding Approval and Financial Assistance Commitment

If the application is recommended for approval by the TWDB, the application is placed on the TWDB Board meeting agenda. If a Board commitment for financial assistance is made, it will expire on the date noted in the commitment.

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 TWDB Executive Administrator and approved by the Board.

To request an extension, submit a written request at least 45 days prior to the expiration date with the following and include the following basic project information:

- explanation of the need/necessity for the request
- benefits the extension would provide
- current project status
- updated project schedule
- a new proposed date for closing.

VI. 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 on the loan and release funds.

Please refer to the [Closing a TWDB Commitment](#) webpage for more information, including helpful pointers for navigating the closing process, lists of required documents, and closing timeline tools.

Further explanation of TWDB closing requirements is provided in, [31 TAC Subchapter A § 363.42](#) (Loan Closings) and [§ 363.43](#) (Release of Funds).

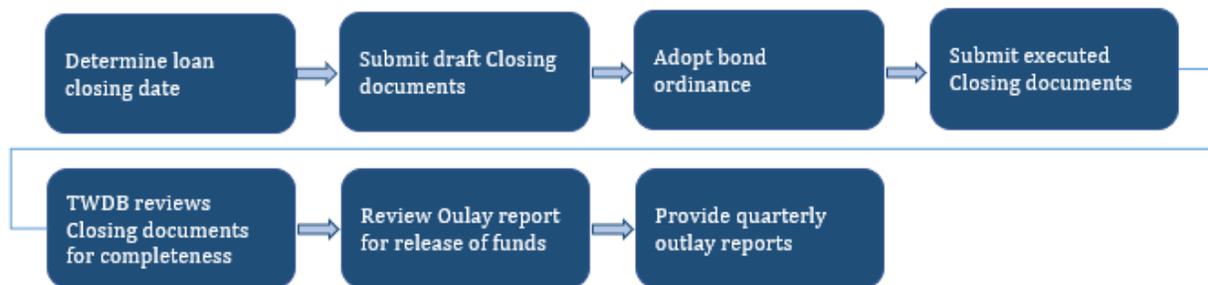


Figure 3: Closing Process

After TWDB Commitment – First Steps



The Applicant will receive a Board Action Letter (BAL) via email shortly after Board commitment. This letter summarizes all pertinent information needed to close on the loan.



Respond to the assigned TWDB financial analyst with a tentative closing schedule containing the preferred loan closing date. The BAL will include the appropriate TWDB contact information.



Be sure to communicate early and often with the TWDB team, consultants, and community contacts to ensure all parties are on the same page. Be sure to include the project engineer, financial advisor, and bond counsel.



Pay close attention to closing deadlines. Timely delivery of documents is critical for maintaining closing dates.

Key Closing Milestones



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 the [TWDB](#).

1. Submit the following items to the to the TWDB Financial Analyst and Attorney 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
- Escrow Agreement, draft
- Paying Agent Agreement, draft
- Private Placement Memorandum, draft
- Proposed bond ordinance or resolution, draft

2. Submit the following items to the TWDB Project Engineer/Reviewer **18 days prior to closing**:

- Copies of executed engineering contracts and other draft contracts
- Any permits the TWDB determines are required prior to closing
- An [updated TWDB - 1201](#) budget form with funds identified to be released at closing.
- Sufficiency of Funds Statement and Release of Funds request:
 - **Option A:** If the project is funded **100 percent with TWDB funds**, submit a statement that identifies the amount of 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 amount of TWDB funds to be released at closing. Include a current budget of costs and sources of funds.
- If the funding request is greater than \$500,000, an approved Water Conservation Plan is required for closing.

3. The Applicant will need to adopt a bond ordinance to approve the conditions of the TWDB financial commitment approximately **15 business days prior to the applicant's closing date**.

4. Submit a completed Outlay on the template provided by the Outlays and Escrows team to outlays@twdb.texas.gov **at least 15 days prior to the closing**. For more information on the Outlay process, please see the [Outlay Reports](#) webpage.

5. **After the Applicant has adopted a bond ordinance to approve the conditions of the TWDB financial commitment**, they will submit the final closing documents to the TWDB to close the commitment:

- Bond Ordinance or Resolution adopting the issuance
- Attorney General Opinion (5 business days prior)

- Comptroller's Certificate (5 business days prior)
- Debt Service Schedule
- Executed Escrow Agreement and Executed Ordinance or Resolution
- Financial Advisor's Closing Instructions
- Executed Paying Agent Agreement
- Private Placement Memorandum – with all attachments
- Sufficiency of Funds Statement (if the project is funded by a combination of TWDB funds and other funds)
- The TWDB Vendor Set-Up of Direct Deposit Form
- Blanket Issuer Letter of Representations
- Bond Counsel Opinion
- Wire Transfer Letter
- No Litigation Certificate
- No Arbitrage/Federal Tax Certificate

Outlay Reports and Release of Funds

The EDAP Program releases funds on a reimbursement basis upon the receipt of an outlay report supported by detailed invoices of 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.

Outlay reports must be submitted to request the release of funds for reimbursement of eligible project costs. Outlay reports, supported by detailed invoices for incurred costs as the project progresses in accordance with the project schedule, are required on a quarterly basis from the time of closing until construction begins. Monthly reports are required once construction begins until project close-out. Reports must be submitted even if no expenses have been incurred. Further information on outlays is available on the TWDB [Outlay Reports](#) webpage.

Key Policies and Procedures

- Outlay reports require invoices as supporting documentation for all reimbursable costs, except the loan origination fee. If an invoice includes costs associated with a different project, the EDAP costs included in the invoice must be clearly distinguished.
- Within each budget category (engineering, planning, environmental, permits, construction contract, etc.), the TWDB can *only* reimburse up to the amount approved in the commitment for that category. However, you can reallocate funds from one budget category to another, after commitment, by requesting a budget amendment from your TWDB Project Engineer/Reviewer. Budget amendments should be requested prior to the submission of an outlay requesting the funds in question.

- Project Budget Ceiling: the budget line-item ceiling is set by the PE/PR to represent the maximum amount of funds that can be released for a budget category. The ceilings are adjusted as the project progresses and milestones are achieved.
- All monthly outlay submittals for construction contract expenses in the EDAP Program must be accompanied by the following certifications:
 - Monthly United States Iron and Steel Certificate, Compliance Submittal by Owner ([TWDB-1105-A](#))

The forms must cover the entire period of the construction contract invoices.

- Outlay reports should be submitted electronically to outlays@twdb.texas.gov.



If you are unable to submit your outlay report electronically, please contact the Outlays and Escrows team for alternate submission instructions at (512) 463-5070 or outlays@twdb.texas.gov

Key Project Milestones

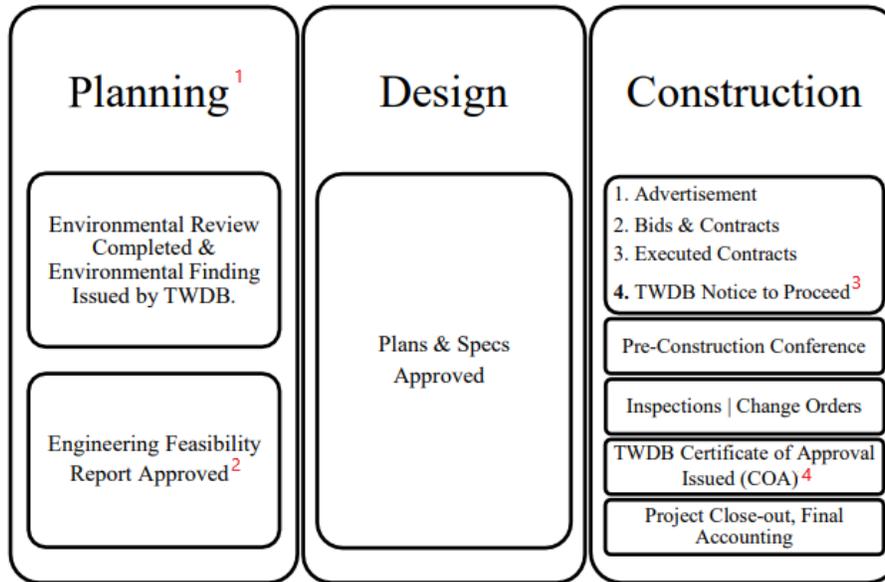


Figure 4: Release of Funds Milestones

- 1. Planning:** Funds for planning and permitting costs can be released once all financing closing documents have been submitted and approved, any special conditions from the TWDB resolution have been met, and the closing has occurred. Executed professional services agreements for the phases that the TWDB is funding and any water supply contracts needed for the project must also be received.
- 2. Design:** Funds for design can be released once an environmental review has been completed by the TWDB and an FEP has been completed and approved. Executed engineering contracts for the design phase are also required before release of design funds (if not previously submitted).
- 3. Construction:** Construction funds for a contract can be released **after** the issuance of any applicable permits, and after contract documents are approved (including Plans and Specifications) and executed construction documents are contingently awarded and a Notice to Proceed (NTP) has been issued. Executed engineering contracts for the construction phase are also required before release of construction funds for engineering tasks (if not previously submitted).
- 4. Contract closeout:** The retainage and its interest earnings, if any, shall not be paid to the Contractor until the TWDB has authorized a reduction in, or release of, retainage on the contract work. Retainage on a construction contract can be released once the TWDB issues a Certificate of Approval.

VII. 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 acquisition, design, and construction phases.

The planning phase includes TWDB's issuance of the environmental finding, and approval of the EFR.

Environmental Review

Environmental review of EDAP projects is a requirement for the use of EDAP financial assistance, as detailed in [31 TAC § 363.14](#) (Environmental Assessment).

State Funding Only - Environmental Review

If EDAP financial assistance is used to fund a project without any additional federal funding component, then a state-level environmental finding will be issued. Projects will be subject to one of the following levels of environmental review depending on the complexity of the project and its environmental impacts:

1. **Determination of No Effect (DNE):** A DNE is an exclusion from a full environmental review, and is the state equivalent of a Categorical Exclusion (CE). It is issued by the TWDB when a project funded through EDAP meets the eligibility criteria under state funding requirements based on
 - a. the eligibility criteria described in [31 TAC § 363.14](#) and
 - b. review of information submitted in the application and the CE/DNE request form ([TWDB-0803](#)).

Process: A CE/DNE request form ([TWDB-0803](#)) may be submitted with the application or prepared during the planning phase of the project after a commitment has been secured. TWDB staff will review the form and may request additional information and/or additional agency coordination.

If the TWDB Environmental Reviewer determines that the proposed project is not eligible for a DNE, then an Environmental Data Form (EDF) is required. See the process for an Environmental Determination in step 2 below.

Once all requirements have been met, the TWDB's Executive Administrator will issue a DNE that will be posted on the TWDB website and emailed to the entity, consultants, and DNE mailing list.

2. **Environmental Determination (ED):** An ED is for projects that may have numerous environmental impacts that cannot be readily avoided, minimized, or mitigated without a full impact assessment. Coordination with regulatory agencies is required. Initial review for an ED is based on a review of the Applicant's EDF for state programs ([TWDB-0800](#)). An ED is also used to adopt an existing finding issued by another agency (e.g., U.S. Department of Agriculture – Rural Development, U.S.

Army Corps of Engineers).

Process: An EDF ([TWDB-0800](#)) may be submitted with the application or prepared during the planning phase of the project after a loan commitment has been secured.

The Applicant must conduct a comprehensive assessment of potential environmental impact and coordinate with regulatory agencies, then prepare and submit an EDF document that TWDB staff will review.

If an ED is being issued to adopt an existing finding from another agency, the Applicant must submit the other agency's environmental determination and associated supporting documents and permits (if any). The Environmental Reviewer will review the other agency's environmental determination and associated supporting documents to make sure the environmental finding is current and meets the basic requirements of the EDAP Program, and the project description matches the project for which the Applicant is requesting EDAP funding.

Once all requirements have been met, the TWDB Executive Administrator will issue an ED that will be posted on the TWDB website and mailed out to the entity, consultants, and ED mailing list.

3. **Memorandum to File (MTF):** An MTF is an environmental finding issued by the TWDB to correct or clarify a project, or to document minor project changes that are consistent with an existing environmental finding issued by the TWDB based on
 - a. a review of a previous environmental finding for the proposed project or
 - b. a review of proposed project modifications for consistency with a previous environmental finding.

Federal Funding Component Level Environmental Review

If the EDAP financial assistance is used to fund a project **in conjunction with a federal-level funding component**, then the TWDB will preferably adopt the federal funding agency's environmental finding. If the EDAP financial assistance will be combined with **federal funding from the TWDB**, then a NEPA-level environmental review will be required.

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:** A CE is an exclusion from a full environmental review based on
 - a. the eligibility criteria described in [31 TAC § 363.14](#) as supplemented by federal requirements and
 - b. 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 Applicant must fill out and submit the [CE request form \(TWDB-0803\)](#) and include any additional information required to make a determination. The Applicant must provide all requested information to the 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 in a local newspaper with general circulation in the project area.

The Environmental Reviewer will provide language as it must appear in the newspaper.

2. **Finding of No Significant Impact (FONSI):** A FONSI is a full federal environmental review based on
 - a. review of the Applicant's Environmental Information Document (EID) ([TWDB-0801](#)) ,
 - b. the Executive Administrator's Environmental Assessment (EA), and
 - c. other requested information.

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):** A ROD is an environmental determination issued for projects that have significant adverse environmental impacts, based on
 - a. 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 Findings (SOF):** An SOF is an environmental finding issued by the TWDB to correct, clarify, modify, or adopt a previous environmental finding or determination issued by the TWDB or another agency, based on
 - a. review of a previous environmental finding or determination for the proposed project, or
 - b. review of proposed project modifications for consistency with a previous environmental finding.

Key Policies and Procedures

- The environmental review must be completed prior to the approval of the EFR and release of funds for acquisition, design, and/or construction phase.
- If an existing environmental finding for the project meets EDAP Program requirements, it can be adopted by the TWDB. Discuss this with the TWDB environmental review staff as soon as possible.
- At all times throughout the design, construction, and operation of the project, the Applicant shall comply with the environmental special conditions and findings resulting from the environmental review.
- Environmental findings that are five years old or older must be reevaluated by the TWDB to determine whether to conduct a supplemental review, or to affirm the original finding, for any project element that has not yet been implemented.



NOTE: Any project changes after the issuance of an environmental finding may require more review. Notify the TWDB Environmental Reviewer **immediately** if changes are needed.

If construction begins before the environmental review is complete, the project may become ineligible for EDAP funding.

Facility Engineering Plan (FEP)

The Applicant must prepare an FEP for the project area in accordance with the requirements in 31 TAC § 355.73, and outlined in [WRD-023A](#), which is broken down into categories of tasks to be completed in their listed order.

Categories A through D are listed as follows, and each contains six or more tasks:

- Eligibility Assessment
- Existing Facilities and Problems
- Alternatives and Design Analysis
- Finalize Project



Each category and related tasks must be completed and approved by the TWDB before moving on to the next category work product.

The FEP should also include the following (as applicable):

- Update **project budget** ([TWDB-1201](#)) as needed
- Update **project schedule**
- Adopted or revised **Water Conservation and Drought Management**

Contingency Plan

- Approved TWDB **Final Environmental Finding**
- United States Iron and Steel requirements ([TWDB-1105](#))
- Completed **TWDB Financial, Managerial and Technical Self-Assessment Questionnaire** ([TWDB-0710](#))

The final FEP report sent to the TWDB Project Engineer/Reviewer must include all four Categories A through D. Submit one (1) physical copy (if requested) and one (1) high quality, searchable PDF copy of the report signed, sealed, and dated by a professional engineer registered in the State of Texas in accordance with [22 TAC 6 § 137.35](#).



An FEP will not be approved by the TWDB Project Engineer/Reviewer until the Environmental Review Process is complete.

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 (P&S) and advertising for construction bids.

If a floodplain development permit is required, P&S approval will not be granted until the Applicant has obtained a floodplain development permit from the local floodplain administrator. In addition, for wastewater treatment projects, P&S approval will not be granted until the TCEQ has issued a discharge permit.

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

Land acquisition, buffer zones, right-of-way, and easement needs should be discussed in the FEP 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.

VIII. Design Phase

Before starting design, Applicants and their consultants should take steps to verify all planning phase requirements have been met. Funds associated with design phase work will not be eligible for release until planning is complete and approved.

Detailed P&S will be developed during the design phase. The TWDB or, if applicable, the TCEQ will provide technical review and approval of the design.

Advertisement, bid, and draft contract documents **must also** be included in the bound P&S and submitted for review and approval by the TWDB during the design phase. The engineer must submit a [Plans and Specifications Submittal Form](#) (TWDB-0300) along with the bound P&S. The [form](#) is available through the TWDB's [Guidance and Forms Library](#) webpage.

TWDB will review the P&S:

1. to ensure consistency with the approved engineering feasibility report and with approved environmental planning documents;
2. to ensure the proposed construction drawings and specifications provide adequate information so that a contractor can bid and construct the project without additional details or directions;
3. to ensure compliance with Commission rules at Title 30 Texas Administrative Code Chapter 290 relating to Public Drinking Water, and other applicable state and federal laws and rules;
4. to ensure the contract documents notify the contractor about the Board's authority to audit project files and inspect during construction; and
5. to ensure compliance with other requirements as provided in guidance forms and documents, including any additional documentation required by EPA for equivalency projects.

Note: Other approvals. The Applicant must obtain the approval of the plans and specifications from any other local, state, and federal agencies having jurisdiction over the project. The executive administrator's approval is not an assumption of the Applicant's liability or responsibility to conform to all requirements of applicable laws relating to design, construction, operation, or performance of the project.

Any federal, state, or local permits must be obtained prior to approval of P&S, including:

1. Railroad crossing;
2. TxDOT permits;
3. Floodplain development permit;
4. Irrigation district permits and
5. TCEQ wastewater discharge permit;

If the project includes requests for exceptions or variances to the Design criteria, TCEQ's approval is required.



NOTE: The Applicant shall not proceed to advertising for bids on the project without express written approval of the solicitation documents by the executive administrator. If the applicant proceeds to advertising without approval, it may affect eligibility for funding.

Design Criteria

The [30 TAC Chapter 290](#) (for water projects) and [30 TAC chapter 217](#) (for wastewater projects) design criteria must be followed in the design of all work. The project's design engineer is required to prepare and submit P&S for review.

Plan and Specification Technical Review

TCEQ Review

For certain water projects funded by the TWDB, technical review of P&S is done by the TCEQ.

- New surface water treatment plants (WTP), including pilot and concentration-time studies
- Existing surface WTPs involving process related improvements or increase in capacity
- New well projects
- Existing well projects, including increase in capacity or process related improvements
- New raw water intakes, including pumping facilities at the intake location
- Any project involving treatment, such as membranes, ion exchange, UV disinfection, etc.
- New interconnections
- New construction or improvements to disinfection and other treatment projects
- New ground storage tanks (GSTs), or improvements to existing GSTs, when the source of water is surface water and GSTs are a clear well



Please coordinate with your TWDB Project Engineer/Reviewer and the TCEQ early to determine which agency has technical review authority for your specific project.



Where TCEQ review is required, **we highly encourage you** to coordinate with the TCEQ as early as possible during the project development process to ensure all required pilot testing, reports, permits, etc., are addressed with the TCEQ in a timely manner.

Memorandum of Understanding between TWDB and the TCEQ: [30 TAC chapter 354](#): for Water Supply Projects funded by the TWDB, review of P&S is covered under

Memorandum of Understanding (MOU) between the Texas Water Development Board and the Texas Commission on Environmental Quality executed as of July 1, 2015.



Any variances to the TCEQ rules must be submitted to and approved by the TCEQ regardless of whether the review of the P&S is done by the TCEQ or the TWDB.

Along with the P&S submitted for review, the project's Design Engineer shall submit the following documents:

- **All projects**
 - Completed [Plans and Specifications Submittal Form \(TWDB-0300\)](#) noting where in the plans, specifications, or contract documents the required language, document, or form is found. The design engineer may choose to bookmark the project's contract documents; however, the checklist must still be submitted with the P&S for the submittal to be considered complete.
- **Water projects for which the TCEQ retains review authority**
 - Copy of TCEQ P&S approval letter
 - Copy of any exception or conditional approval
 - Copy of any correspondence with the TCEQ, including review comments and approval letter(s)
- **Water projects for which the TWDB is the review authority**
 - Complete, signed, and sealed Engineering Design Report ([30 TAC § 290.39 \(e\)](#))
 - Complete [P&S checklists](#) in accordance with TCEQ requirements
 - If the project involves a GST and the tank also functions as a clear well at a surface WTP, provide confirmation that the TCEQ has reviewed and approved the facility for contact time.
- **For wastewater projects:**
 - If the entity has review delegation authority from the TCEQ, provide a copy of the delegation letter and certification from the entity's engineer that they have reviewed the P&S for conformance with [30 TAC chapter 217](#) and found them acceptable for construction.
 - Certification from the Design Engineer that the P&S have been designed in conformance with the TCEQ rules applicable to the project
 - If a variance to the rules was requested, provide a copy of the TCEQ variance approval.
 - For wastewater treatment plants (WWTP), provide a copy of the TCEQ discharge permit. **P&S for WWTPs will not be approved without a discharge permit from the TCEQ.**

- Provide a [Summary Transmittal Letter, addressed to your TWDB Project Engineer/Reviewer](#), in accordance with [30 TAC § 217.6\(d\)](#).
- A complete FEP report ([§355.73 Subchapter B](#)), and ([WRD-023A](#))

All P&S submitted to the TWDB for review must be sealed and signed by a professional engineer registered in the State of Texas. ([22 TAC § 137](#))

- For initial review, please submit
 - one (1) high-resolution, searchable PDF electronic set of P&S documents, and
 - one (1) or more hard copies, *only if requested by the TWDB Project Engineer/Reviewer*.
- After initial review comments are provided from the TWDB and addressed by the design engineer, please submit revised P&S for approval, including
 - a transmittal letter addressing each comment, including explanations, the location of the revisions (if any), and/or an explanation of why the revision is not necessary, and
 - one (1) high resolution, searchable PDF copy of the revised P&S for approval.

Design Phase Submittals



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

- Plans and Specifications Submittal Form ([TWDB-0300](#))
- Complete P&S (advertisement, bid, and draft contract documents)
 - P&S must be signed by and sealed by a Professional engineer, registered in the State of Texas (Texas Board of Engineers Rules 137.33 and 137.77).
- 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 for design phase

Important Plans and Specification Reminders



- **The TWDB supplemental contract conditions for state loan projects ([TWDB-0552](#)) contains three sections:**
 - Section I includes instructions to Applicants.
 - Section II includes language required in the “Instructions to Bidders” section of the construction contract documents.
 - Section III includes all special conditions, which **must be included in its**

entirety in the contract documents.

➤ **P&S must include**

- all documents required in the supplemental contract conditions,
- mitigation measures and special conditions identified in the environmental review, and
- conditions identified in the required permits.



IMMEDIATELY notify the TWDB Project Engineer/Reviewer and Environmental Reviewer if modifications have been made to the project scope, FEP(s), or the P&S.

Amendments to the FEP(s) may require revisions to the environmental finding(s). Any significant changes to the project scope occurring after loan commitment may require Board approval.

IX. 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 their 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:

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

Alternative Delivery for Construction Projects



Intended use of alternative delivery methods **must 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](#)).

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.



Authorization from the TWDB's Project Engineer/Reviewer should be obtained prior to advertising bids.

Advertising

Authorization to bid is based on the TWDB review of the following documentation:

- TWDB approval of the P&S
- Acquisition of all property needed for the project certified on the TWDB Site Certificate Form ([ED-101](#))
- All permits, licenses, and other legal authorizations required by federal, state, and local agencies

Instruction to Bidders

The Instructions to Bidders (or Invitation to Bid) 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.

For detailed information on language to be used in the Invitation to Bid, see the TWDB supplemental contract conditions for projects funded through state programs ([TWDB-0552](#)).

Pre-Bid Conference

Pre-bid conferences help to familiarize prospective bidders with the project site and scope of the work.



The TWDB Project Engineer/Reviewer **should be notified concurrent 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 Instructions to Bidders document holders of record. The addenda should be submitted to the TWDB at the same time as issuance to bidders.

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 date, time, and location 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:



- Construction Award Submittal Form ([TWDB-0400](#))*
- 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](#))
- Any addenda not previously submitted

**Alternative delivery projects should submit Alternative Delivery Work Package Award Submittal Form ([TWDB-0400A](#))*

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.



Prior to the award of a contract, all required bid documents must have TWDB approval.

Contract Award Document Submittals

The Applicant or 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 submitted electronically to the TWDB for review must include the following submittals:

- Executed Construction Submittal Form ([TWDB-0500](#))
- Executed contract agreement signed by all appropriate parties and notarized, if applicable
- Specifications **as approved by TWDB** with executed bid proposal
- Payment, performance, and other bonds with power of attorney
- Contractor's proof of insurance certificate

- Executed Contractor's Act of Assurance, ([ED-103](#))
- Executed Contractor's Resolution on Authorized Representative, ([ED-104](#))
- Sufficiency of funds statement, if applicable, and not previously submitted
- A schedule with anticipated construction start and end dates for contracts
- Water Rights Certification issued by the TWDB Deputy EA, if required



The Applicant should double check that all blanks in the executed contract agreement are filled, and the dollar amounts match the dollar amount of the approved bid documents.

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. At this time, construction phase funds associated with the approved construction contract are eligible for release.

X. Construction Phase

Prior to issuing a Notice to Proceed to the Contractor 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 construction-phase topics are discussed in detail in the TWDB supplemental contract conditions for state-funded project ([TWDB-0552](#)) 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 the 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 shall provide adequate inspection of the project under the supervision of a licensed registered professional engineer. The engineer must provide assurance that the work is being performed in a satisfactory manner; in accordance with the approved P&S, other engineering design, and permits (including approved alterations and provisions for environmental mitigative measures); and in accordance with sound construction principles and practices.

- Please review the Guidelines for Inspector Qualifications ([ED-005](#)) for more information.
- 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. Board funding may not be eligible for increased costs due to claims.

TWDB Construction Site Visits

The TWDB may conduct site visits regarding construction and audit activities of any EDAP project, at any time, and shall be provided access to the project site and any project materials, records, or reports.

- The TWDB Project Engineer/Reviewer will schedule periodic project site visits, issue inspection reports, and make them available to the Applicant and Consulting engineer.
- Inspection reports and observation visits do not relieve the Applicant of the responsibility to provide qualified onsite inspections and engineering reviews to determine the acceptability of work in progress.
- The Applicant is responsible for corrective actions regarding any items found to be noncompliant with EDAP funding agreements during site visits or record review.

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. One (1) electronic copy of the fully executed change order should be sent to the TWDB's Project Engineer/Reviewer for review and approval.

TWDB Staff reviews and approves change orders for

- eligibility of funding,
- conformance with design criteria,
- avoidance of environmental impacts and consistency with the environmental finding,
- a change of scope of the project that may require action by the TWDB, and
- a change order that may require action by the TCEQ.



Update all project stakeholders of any changes, concerns, or delays promptly. To ensure eligibility, please send change orders **immediately** to the TWDB for review and approval. **Substantial changes to the project scope or increases to the initial TWDB commitment amount will require Board authorization.**

Retainage

Generally, a minimum of 5 percent retainage is required by law on all public loan contracts ([Texas Governmental Code F § 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 percent without the consent of the TWDB.
- A COA will be issued by the TWDB after each contract is finalized and closeout

documentation has been provided to the TWDB Project Engineer/Reviewer.

- The COA authorizes the Applicant to release retainage to the Contractor.

TWDB Closeout Submittals



To closeout the contract and authorize release of final retainage, the TWDB must conduct a construction contract final inspection (CCFI). The following information and documents must also be submitted to the TWDB Project Engineer/Reviewer for review:

- A copy of the Contractor's final payment request
- Any outstanding change orders not approved by the TWDB to date, adjustment of quantities, or a statement that there are no further change orders
- An affidavit by the Contractor that all bills have been paid
- Certification by the consulting engineer that the contract has been completed and the work was constructed in accordance with the approved P&S
- Acceptance of the work under this contract by the owner in the form of a letter signed by the owner's representative
- Notification of the beginning date of the warranty period for the contract
- Confirmation that the owner has received as-built drawings from the contractor
- Certificate of Compliance with U.S. Iron and Steel Requirements ([TWDB-1105-A](#))



Once a CCFI has been conducted and approved and all the documents listed above have been submitted to the TWDB Project Engineer/Reviewer, the TWDB will issue a COA, allowing the release of retainage to the contractor. **Retainage must not be released or reduced below 5 percent without the consent of the TWDB.**

Project Closeout Requirements



- COAs for all contracts issued.
- Final payment released.
- If Planning, Acquisition, and Design only (PAD) project, all portions of PAD phases have been completed and deliverables have been submitted.

Note: A Certificate of Approval (COA) is for a Construction Contract. There could be multiple COA's issued in a project. The Project Close-out is for the entire project.

Project Records

The Applicant should 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 the final O&M manual be submitted to the Applicant before construction is 85 percent 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 the acceptance of the facility that includes review of the O&M manual and, if possible, on-site training by suppliers' representatives during start-up.
- Staffing should be in accordance with the O&M manual.

TWDB Reporting

- **Status Reports:** The Applicant may be required to provide a status report as specified in the commitment resolution or as requested by the TWDB project engineer/reviewer.

Post Construction

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

Applicants should be aware that 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 ([31 TAC 363.15](#)) for a minimum of three years after the date of loan closing.

Water Conservation/Water Loss Audit

Water Conservation Plan

For projects requesting financial assistance greater than \$500,000, a water conservation plan is required to be submitted with its application. The water conservation plan must include five-year and ten-year targets for Total GPCD, Residential GPCD and for water loss expressed in GPCD. The water conservation plan must be less than five years old. The water conservation plan shall include an evaluation of the applicant's water and wastewater system and customer water use characteristics to identify water conservation opportunities and shall set goals to be accomplished by water conservation measures. The water conservation plan shall provide information in response to minimum requirements as per TAC §363.15. If the plan does not provide information for each minimum requirement, the applicant shall include in the plan an explanation of why the requirement is not applicable.

Recipients of financial assistance from TWDB will maintain an approved water conservation plan and program until all financial obligations to the state have been discharged and shall file an annual report on the entities progress in implementing each of the minimum requirements in its water conservation plan until all financial obligations to the state have been discharged.

Water Loss Audit

A retail public utility coming in for financial assistance needs to have submitted its most recently required water loss audit. If the utility fails to submit a water loss audit or that fails to correct a water loss audit that is not administratively complete within the timeframe provided it is ineligible for financial assistance.

A retail public utility coming in for financial assistance for a water supply project, and water loss meets or exceeds the threshold for that utility as established by TWDB, the utility must use a portion of that financial assistance from the board to mitigate the utility's water loss. On the request of the utility, the board may waive the requirements of this subsection if the board finds that the utility is satisfactorily mitigating the utility's system water loss. The request for waiver should be addressed to the executive administrator and include information about the utility's current or planned activities to mitigate their water loss and their source of funding for that mitigation.

Monitoring

For loans under the EDAP Program, the Financial Compliance staff of the TWDB 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 and can arrange a visit to the Applicant's location to assist in financial compliance matters.

Financial Compliance's goal is to provide the TWDB with reasonable assurance that all loan recipients continue with agreed-upon terms of any debt agreement, and 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 summary of the sources and uses of funds usually provided at the completion of a project.

Appendix A: 2022 EDAP Prioritization Criteria

1. **First-time service: 15 points.** Applies to projects providing first-time service for residential customers.
2. **Project resolves public health nuisances and/or violations related to contaminants: 10 points.** Applies to projects that:
 - will resolve the circumstances leading to a public health nuisance determination;
or
 - will resolve a TCEQ or EPA violation related to contaminants that were not caused or allowed by the applicant (applicant must certify).
3. **Previous TWDB investment in the project: 8 points.** Applies to projects that received TWDB financial assistance for earlier phases of the same project for which funds are being requested (for example a project that received planning and design funds).
4. **Projects addressing violations related to TCEQ minimum requirements for storage capacity or service pressure (non-contaminants): 3 points.**
5. **Tiebreaker: AMHI of Proposed Project Service Area.** Ties will be decided in favor of the project proposed by the project service area with the lowest service area AMHI.

Appendix B: Guidelines for Documenting Income Eligibility

Establishing EDAP Eligibility

Projects are eligible for EDAP assistance only if the weighted average AMHI for census geographic areas to be served by the proposed project is not greater than 75 percent of the statewide AMHI. Applicants are asked to document their eligibility by providing census data appropriate to the project area. For projects with borders that do not coincide neatly with county or city boundaries, this may mean using several census tracts or block groups to document the area.

Census Data Resources

The following resources may be helpful in identifying census geography:

- [Directory of Census Tract Maps for Texas Counties](#). The folder for each county includes several maps. The first map shows the entire county with a numbered grid, and each subsequent numbered map shows one of the grid squares.
- [Texas Block Group Map](#). Find Census block groups using an ArcGIS map that labels each block group with a numeric code: a four-digit prefix followed by the four-digit census tract number and the three-digit block group.
- [Census Bureau Interactive Map](#). Use the geography filter to identify census tracts within a specific county or block groups within a specific Census tract.

Weighted Average Methodology

After identifying the benefiting geographic areas, find the AMHI and households for each area using the [American Community Survey \(ACS\) 5-Year Estimates available on the TWDB website](#). Households are calculated as population divided by household size (e.g., 5,000 population divided by 3.34 persons per household = 1,497 households).

The weighted average AMHI is calculated by the following method:

Weighted Average

$$= \frac{((AMHI\ 1 \times Households\ 1) + (AMHI\ 2 \times Households\ 2) + (AMHI\ 3 \times Households\ 3) \dots)}{Total\ Households}$$

Socioeconomic Surveys

The TWDB offers socioeconomic surveys as an alternative in areas where Census data is not believed to give an accurate depiction of income characteristics. Please review [Socioeconomic Survey Guidelines \(WRD-285?\) \(WRD-258\)](#) for details on the requirements associated with these surveys. Survey results must be submitted before the abridged application deadline.

Household Eligibility for First-Time Service Projects

First-time service projects must meet the overall income eligibility threshold described above, but households in the benefit area must meet an additional threshold based on U.S. Department of Housing and Urban Development (HUD) income limits to be eligible for the cost of their connection to be paid with EDAP funds. This threshold is set at 80 percent of the median family income for a given area and is compared against the county median for each family size rather than the statewide household median.

A list of the most current HUD income limits is available here: <http://www.huduser.org/portal/datasets/il.html>

Eligibility for first-time service households utilizing funding for connections is documented on a household-by-household basis using the survey process described in [TWDB 0401 – Survey Guidelines for EDAP Connection Assistance](#).



NOTE: A written request must be submitted to the TWDB before a survey is performed. The TWDB will notify the entity in writing whether to proceed with the survey. Surveys conducted prior to TWDB approval may be considered on a case-by-case basis.

Appendix C: Nuisance Determinations

Nuisance Determinations for Grant Eligibility

The eligible grant percentage for an applicant cannot exceed 50 percent unless a public health nuisance exists, as determined by either the TWDB or DSHS. Public health nuisance determinations made by local sanitarians or public health officials *may* be submitted with an Abridged Application for potential consideration in prioritization and scoring; however **only Nuisance Determinations issued by the TWDB or DSHS are accepted as documentation for grant allocation purposes.**

At this time, TWDB staff will review all requests for issuance of Nuisance Determinations as is allowable by statute..

During application submittal and review period, the Applicant will provide all documentation requested by the TWDB, including:

1. a public health nuisance determination made by a local sanitarian or public health official;
2. statement from a county official attesting to the presence and determination of a nuisance in the proposed project area;
3. any previous DSHS or local sanitarian or public health official field survey results, or public concern complaints, if available;
4. detailed description of the nuisance area(s) including prevailing conditions, population, lots, and any designated colonias;
5. **current**, detailed, map(s) delineating the project area and including sufficient information to clearly identify parcels and addresses, appropriate property lines, water or wastewater lines, water well (private and public), water storage tanks, septic tanks, disposal areas, and other treatment or disposal facilities; and
6. additional supporting documentation, including photographs, records of violations, enforcement orders, or water/wastewater quality reports

TWDB will review the documentation provided, and if determined to meet the criteria of a Public Health Nuisance as established in the Health and Safety Code (see criteria, below), a Nuisance Determination will be issued prior to the project receiving a commitment by the Board.

Nuisance determinations for grant allocation purposes must be issued by the TWDB prior to a project funding commitment.

Public Health Nuisance

Public health nuisances are defined in [Section 341.011 of the Health and Safety Code](#). The following provisions are applicable to EDAP:

1. A condition or place that is a breeding place for flies, that is in a populous area, and that results from the presence of human wastewater or excreta

2. Sewage, human excreta, wastewater, garbage, or other organic wastes deposited, stored, discharged, or exposed in such a way as to be a potential instrument or medium in disease transmission to a person or between persons
3. A place or condition harboring rats in a populous area; rat infestations resulting from improper disposal of kitchen or human waste as a direct result from the lack of a proper septic system or a failing septic system
4. The maintenance of an open surface privy or an overflowing septic tank so that the contents may be accessible to flies
5. An object, place, or condition that is a possible and probable medium of disease transmission to or between humans

The above provisions may apply to drinking water and/or wastewater nuisances. Based on a review of submitted documentation and (in certain cases) an onsite survey, the TWDB or DSHS may issue a public health nuisance determination for the following conditions:

Drinking Water

1. Absence of potable water for human consumption (drinking, cooking, and washing)
2. A public water system that provides drinking water that does not meet the federal and state drinking water standards of [30 TAC Chapter 290](#)
3. A public water system well or a private water well that has become unusable or has the potential to become unusable because of conditions such as private water well(s) located within 100 feet of onsite sewage facility (OSSF) disposal areas or located within 50 feet of a septic tank. If a private well is pressure cemented or grouted down to 100 feet, or to the water table if the water table is less than 100 feet, then such private well(s) located within 100 feet of an OSSF disposal area or within 50 feet of a septic tank will not be considered to be a nuisance ([30 TAC Chapter 285](#)).
4. One or more public water supply well(s) located within 150 feet of an OSSF disposal area or located within 50 feet of a septic tank (unless other adequate public water supply wells are in use and capable of meeting minimum capacity requirements and maximum daily demand)
5. Detection of fecal indicator organisms in a well
6. Deterioration of a public water system due to factors other than operator error or neglect, such that the structural integrity of major components is compromised resulting in an inability to consistently provide an adequate supply of water for human consumption (See 30 TAC Chapter 290, Subchapter D, Rules and Regulations for Public Water Systems*)
7. Any other condition relating to inadequate water supply that results in a quantifiable and documented adverse effect on human health
8. The presence of an imminent health hazard

**Nuisance determinations under the provisions of paragraph 6 will be referred to the TCEQ Colonia's Coordinator.*

Wastewater

1. Malfunctioning or failing individual sewage disposal systems that cannot be remedied under [Chapter 366 of the Health and Safety Code](#) due to lot sizes smaller than ½ acre, as evidenced by surfacing effluent
2. OSSFs not meeting the requirements outlined in [Chapter 366 of the Health and Safety Code](#)
 - a. cesspools;
 - b. pit privies or outhouses;
 - c. improperly sized systems;
 - d. drain field and/or septic waste pipes leading to an open drainage ditch, open storm sewer, or drained directly onto the ground; or
 - e. improper diversion of graywater from the OSSF resulting in the presence of organic matter on the ground or ponding water.
3. Nuisance conditions propagating rodent harborage, fly breeding, and other unsanitary conditions because of unsanitary sewage disposal systems
4. Deterioration – due to factors other than operator error or neglect – of a public waste treatment system resulting in an inability to consistently furnish, operate, and maintain any collection, treatment, or disposal facilities which collect, treat, and dispose of waterborne human waste and waste from domestic activities such as washing, bathing, and food preparation. See [30 Texas Administrative Code Chapter 217 with regard to Domestic Wastewater Treatment Systems](#).
5. Any other effluent violation or unauthorized discharge that results in a quantifiable and documented adverse effect on human health
6. The presence of an imminent health hazard



NOTE: A temporary condition caused by a hurricane, flood, tornado, or other act of nature may not be a nuisance for EDAP purposes.

Requesting a Nuisance Determination

If the Applicant believes a public health nuisance may exist based on the above definitions and categories, but a nuisance determination has not been issued by the TWDB or DSHS, the Applicant should first contact the TWDB at EDAP@twdb.texas.gov.

1. The TWDB will request further information from the Applicant, including
 - a. a clear statement of the problem (e.g., potable water supply, malfunctioning sewage disposal, or lack of sewage disposal or treatment);
 - b. project scope and executive summary of the project;
 - c. current, detailed map(s) delineating the project area and including sufficient information to clearly identify parcels and addresses, appropriate property lines, water or wastewater lines, water well (private and public), water storage tanks, septic tanks, disposal areas, and other treatment or disposal facilities;
 - d. any additional supporting documentation, including photographs, enforcement orders, and water/wastewater quality reports.
2. Dependent upon the scope of the potential public health nuisance, the TWDB may either
 - a. provide a written determination of the existence or non-existence of any public health nuisance in the form of a nuisance determination based on submitted information,
 - b. request the DSHS conduct a survey to confirm a public health nuisance exists, or
 - c. refer all further review to the DSHS.

If the TWDB refers any portion of a public health nuisance determination review to the DSHS,

1. the DSHS will review all documents provided by the TWDB and Applicant and complete any additional research, including consultation with state and local agencies, to supplement the information as appropriate prior to commencing any field survey;
2. the DSHS will conduct site visits to the area(s) under review and document observations in writing and by photograph when appropriate; and
3. the DSHS will provide a written determination of the existence or non-existence of any public health nuisance(s) to the TWDB.

Public health nuisances which, in the opinion of TWDB or DSHS, can and should be correctable outside the project scope as proposed by the applicant, will be identified during review and included in any written determination issued.

Appendix D: Forms and Guidance Manuals

- Affidavit of Training, EDAP MSR ([TWDB-0404](#))
- Alternative Delivery Work Package Award Submittal Form ([TWDB-0400A](#))
- Application Affidavit ([TWDB-0201](#))
- Contractor's Act of Assurance ([ED-103](#))
- Contractor's Act of Assurance Resolution ([ED-104](#))
- EDAP OSSF Authorized Agent Designation Requirement Guidance ([TWDB-1101](#))
- Engineering Facility Plan/Scope of Services ([WRD-023A](#))
- Executed Construction Submittal Form ([TWDB-0500](#))
- Financial, Managerial and Technical Self-Assessment Questionnaire ([TWDB-0710](#))
- Financial Assistance Application Checklist for Public Entities/Political Subdivisions ([TWDB-0148](#))
- Ground Water Affidavit Form ([TWDB-208B](#))
- Guidelines for Inspector Qualifications ([ED-005](#))
- Plans and Specifications Submittal Form ([TWDB-0300](#))
- Planning Information Form
 - wastewater ([WRD-253A](#))
 - water ([WRD-253D](#))
- Project Budget Form ([TWDB-1201](#))
- Project Map Example ([TWDB-1800](#))
- Site Certificate Form ([ED-101](#))
- Surface Water Affidavit Form ([WRD-208A](#))
- Survey Guidelines for EDAP Connection Assistance ([TWDB-0401](#))
- Texas Water Development Board Supplemental Contract Conditions and Instructions for Construction Services for Projects Funded through State Programs ([TWDB-0552](#))
- United States Iron and Steel Certificate of Compliance Form ([TWDB-1105-A](#))
- United States Iron and Steel Guidance for Projects Funded Through State Programs ([TWDB-1105](#))
- Vendor Compliance with Reciprocity of Non-resident Bidders Form ([TWDB-0459](#))
- Water Conservation Plan Goals Table Form ([TWDB-1964](#))
- Water Conservation Plan Guidance Checklist ([TWDB-1968](#))
- Water Conservation Utility Profile Form (Retail) ([TWDB-1965-R](#))
- Water Conservation Utility Profile Form (Wholesale) ([TWDB-1965W](#))

Appendix E: Links and Resources

TWDB Economically Distressed Area Program (EDAP) Resources

The following links provide information on the EDAP Program, additional guidance manuals, and EDAP-related resources:

- [EDAP Facility Engineering Planning TAC](#)
- [EDAP TAC](#)
- [MSR Resource and Training Webpage](#)
- [Outlay Reports and Resources](#)
- [Program Guidance and Manuals/Forms](#)
- [Regional Water Project Development Teams](#)
- [The TWDB Administrative Rules \(adopted per TAC\)](#)
- [The TWDB EDAP Webpage](#)
- [United States Iron and Steel](#)

Application Resources

- **Instructions on how to apply, and Application for Financial Assistance**
<https://www.twdb.texas.gov/financial/applications/index.asp>
- [Frequently Asked Questions on General Application Submittals](#)
- [TWDB Online Loan Application \(OLA\) Login](#)

Water Planning Resources

- [State Water Plan](#)
- [Regional Water Planning Rules & Statutes](#)
- [Data, Apps, and Maps/GIS](#)
- [Regional Water Planning](#)
- [Water Use Survey](#)
- [TWDB Water Supply and Infrastructure Staff](#)

Water Conservation Resources

- [Water Conservation Plan and Reports TAC §363.15](#)
- [Water Loss Audits TAC §358.6](#)

Financial Resources

- [TWDB Interest Rates](#)
- [Closing a TWDB Commitment](#)