



Texas Water Development Board  
Drinking Water State Revolving Fund  
(DWSRF) Lead Service Line Replacement  
(LSLR)

Program Guidance

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**Forms and Guidance:**

The Texas Water Development Board (TWDB) forms and guidance documents noted in this instruction document may be accessed through the TWDB Financial Assistance website at:

[www.twdb.texas.gov/financial/instructions/](http://www.twdb.texas.gov/financial/instructions/)

Search by either the document number (TWDB-0558) or name.

## Acronyms

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AMHI	Annual Median Household Income
BABA	Build America, Buy America Act
BAL	Board Action Letter
BIL	Bipartisan Infrastructure Law
BLOR	Blanket Issuer Letter of Representations
CE	Categorical Exclusion
COA	Certificate of Approval
DBE	Disadvantaged Business Enterprise
DWSRF	Drinking Water State Revolving Fund
EA	Environmental Assessment
EEO	Equal Employment Opportunity
EFR	Engineering Feasibility Report
EID	Environmental Information Document
EIS	Environmental Impact Statement
EPA	Environmental Protection Agency
FONSI	Finding of No Significant Impact
IIJA	Infrastructure Investment and Jobs Act
IUP	Intended Use Plan
LSLR	Lead Service Line Replacement Program
NTP	Notice to Proceed
NEPA	National Environment Policy Act
P&S	Plans and Specifications
PAD	Planning, Acquisition, and Design
PADC	Planning, Acquisition, Design, and Construction
P&S	Plans and Specifications
PDF	Portable Document Format
PEFR	Preliminary Engineering Feasibility Report
PIF	Project Information Form
PPL	Project Priority List
PWS	Public Water System
NTP	Notice to Proceed
ROD	Record of Decision
RWPD	Regional Water Project Development Team
SDWA	Safe Drinking Water Act
SFY	State Fiscal Year
SOF	Statement of Findings
SRF	State Revolving Fund
TAC	Texas Administrative Code
TCEQ	Texas Commission on Environmental Quality
TWDB	Texas Water Development Board
TXDOT	Texas Department of Transportation
WSC	Water Supply Corporation

## I. Introduction

[The Drinking Water State Revolving Fund \(DWSRF\)](#) Program was established by the 1996 amendments to the Safe Drinking Water Act (SDWA). The DWSRF financial assistance program assists communities by providing low-cost financing for a wide range of water projects that facilitate compliance with drinking water standards. Various levels of principal forgiveness are available for qualifying disadvantaged and small/rural disadvantaged communities, very small systems, disaster relief, urgent need, and projects with green components. Funding may be used for planning, acquisition, design, and construction project phases.

The Infrastructure Investment and Jobs Act (IIJA), also called Bipartisan Infrastructure Law (BIL), appropriated funds through the DWSRF for Lead Service Line Replacement (LSLR) projects and associated activities directly connected to the identification, planning, design, and replacement of lead service lines. The IIJA appropriated supplemental capitalization grant funds for Federal Fiscal Years 2022 to 2026 for lead service line replacement activities.

### 1. Document Summary

This program guidance manual provides information to applicants and their consultants to understand compliance with certain statutes and regulations which specifically relate to all DWSRF-LSLR projects. Provisions that are applicable to the project's funding source or dollar value of the contract are noted within these provisions.

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

- Project Information Form (PIF) Submittal (Section IV)
- Full Application (Section V)
- Loan Closing and Release of Funds (Section VI)
- Planning, Acquisition, Design, and Construction (PADC) Phases (Sections VII-X)
- Certificate of Approval (COA) and Project Close-Out (Section X)
- Financial Compliance (Final Accounting and Monitoring)

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



The Texas Water Development Board (TWDB) website contains other guidance manuals and LSLR-related resources, and can be found here:

<https://www.twdb.texas.gov/financial/programs/Lead-SLR>

**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

### 1. Eligible Applicants

Public water systems (PWS), including political subdivisions, nonprofit water supply corporations (WSC), and privately-owned community water systems are eligible to apply for assistance. Non-profit, non-community public water systems and state agencies may also apply for assistance.

#### Political subdivisions include:

- municipalities,
- intermunicipal agencies,
- interstate or state agencies,
- nonprofit water supply corporations created and operating under [Chapter 67 of the Texas Water Code](#),
- nonprofit community public water systems, and
- publicly and privately owned water systems.

Eligible applicants must meet the disadvantaged criteria to receive funding under this program. For the DWSRF-LSLR program, an entity is considered disadvantaged if 51 percent or more of the proposed project beneficiary area has an Annual Median Household Income (AMHI) level that does not exceed 150 percent of the state's AMHI, or as otherwise defined in the current Intended Use Plan (IUP).

### 2. Eligible Projects

Projects associated with activity directly related to identification, planning, design, and replacement of lead service lines are eligible. Funded projects must replace the entire lead service line (unless a portion of the line has already been replaced). See **Figure 1** illustrating the eligible portions of the service line.

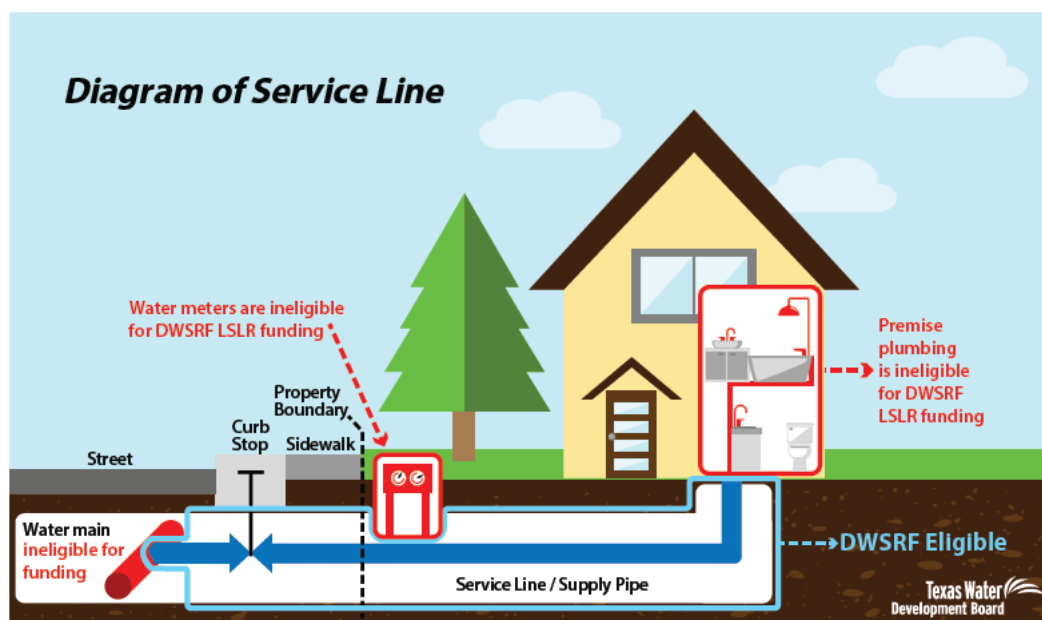


Figure 1: Diagram of Service Line.



Proposed projects may request reimbursement for eligible initial service line inventory activities required to comply with the U.S. Environmental Protection Agency (EPA) Lead and Copper Rule Revisions regulation. However, these activities must have been performed in accordance with all DWSRF program requirements to be reimbursed.

### 3. Ineligible Projects

The following are examples of ineligible projects.

- A project that is not a lead service line replacement project.
- A project that does not replace the entire lead service line (unless the remaining portion has already been replaced or will be replaced with another funding source concurrently).
- Corrosion control studies.
- Corrosion control infrastructure.
- Water meters.

### 4. DWSRF-LSLR Program Requirements

The following are requirements of this program:

- Submittal of a Project Information Form (PIF) to the current IUP.
- Projects must be included in the current IUP.
- Loan origination fee.
- National Environmental Policy Act (NEPA)-level environmental review.
- A [Water Conservation](#) and [Drought Contingency Plan](#) are required for financial assistance greater than \$500,000, as required by [31 TAC § 363.15](#).
- Water loss threshold limits requirements. Entity needs to be below its water loss thresholds as determined by TWDB.
- Build America, Buy America (BABA) Act requirements (see [Attachment 1: Build America, Buy America](#))
- Compliance with the [Disadvantaged Business Enterprise \(DBE\) program](#) (see [Attachment 2: Disadvantaged Business Enterprise Program](#))
- Davis-Bacon wage rate requirements (see the TWDB's Davis-Bacon Wage Rate Requirements Guidance for State Revolving Fund Projects ([DB-0156](#)) for more information).
- Project signage during construction, see [TWDB-1109](#).

### III. Financial Assistance Overview

The DWSRF Program offers below-market interest rate loans, and additional subsidies are available in the form of principal forgiveness. All financing under the DWSRF-LSLR program is made in a ratio of principal forgiveness and loan or bond as defined in the IUP (the ratio may change in each IUP year to year). The loan portion of any project covering service line inventories is at 0% interest. Loans or bond financing for all other aspects of the project are at the DWSRF program interest rates. A loan origination fee of 2% of the loan amount must be included in the loan portion of the financing. Financial assistance is available for inventories, planning, acquisition, design, and construction. Projects must be listed in the current DWSRF-LSLR Intended Use Plan (IUP). Projects are included in the DWSRF-LSLR IUP only following submittal of a Project Information Form (PIF).

The IUP contains the state's Project Priority List (PPL) for the DWSRF-LSLR program.

An entity must meet the disadvantaged criteria to receive funding under the DWSRF-LSLR program.

- a. Entity may have lead service lines within the distribution system, and
- b. At least 51 percent of the proposed project beneficiary area based on household connections has an AMHI of 150 percent or less of state-wide AMHI (may be documented with census data or TWDB approved household survey).

The maximum amount of principal forgiveness per project/entity is outlined in the IUP for each state fiscal year (SFY). The funding options that are available and terms for each option are discussed in the IUP.

#### 1. Invitations to Apply

Entities with PIFs on the PPL will be informed of the opportunity to submit an application for the specific project phases listed, using the available funding options. After a period of time, additional PIFs listed on the PPL may be invited to submit an application should there be funds remaining during that program year.

#### Phases for Invited Projects

##### ➤ Inventory

A project that only requested inventory may receive an invitation to fund only the inventory or planning portion of the project.

##### ➤ Planning, Acquisition, Design, and/or Construction

A project that includes any of the phases above may receive an invitation to fund only the planning, acquisition, design and/or construction portion(s) of the project.

##### ➤ Construction-Ready Reserve

TWDB set aside a portion of overall funding for construction-ready projects.

Construction-ready means the entity has identified specific lead service lines to be replaced or is currently replacing lead service lines and seeking reimbursement.



**If seeking reimbursement for work completed**, all requirements described herein must be followed to be eligible for reimbursement. This includes environmental review, compliance with Disadvantaged Business Enterprise (DBE), compliance with Davis-Bacon, etc. Reimbursement requests will need to include proper documentation.



**Funding different phases of work** is possible and should be discussed at the pre-application meeting. If inventory funding is requested, design and construction funds will not be awarded in parallel, unless there are known locations of lead lines. At the end of the inventory, applicants can apply for design and construction costs, as required.

## 2. Funding Tiers and Options

The DWSRF-LSLR program is an Equivalency program. Equivalency projects are federally funded and must meet federal requirements, commonly known as “cross-cutters.” This includes the following:

- EPA’s Disadvantaged Business Enterprise (DBE)
- Build America, Buy America (BABA)
- Davis-Bacon Wage Requirements
- Equal Employment Opportunity (EEO) and Affirmative Action

### Funding Options Available

Entities listed on the PPL may be invited to apply to the funding options listed here. Note, entities can refer to the table in the DWSRF IUP that outlines all funding options under “Allocations and Terms Available Under Each Funding Option.”

### Below-Market Interest Rate Loans

Loans are required for all eligible projects at a ratio defined within the IUP and are offered with the following terms:

- Fixed-rate loans offered at below-market interest rates (basis points off borrower’s underlying credit rating)
- Loan terms available up to 15 years for inventory work
- Loan terms available up to 30 years for planning, acquisition, design, and/or construction phase work

For any additional information on subsidy, please refer to the DWSRF-LSLR Intended Use Plan (IUP) at:

<https://www.twdb.texas.gov/financial/programs/Lead-SLR/index.asp>

### Principal Forgiveness

Principal forgiveness is required for all eligible projects at a ratio defined within the IUP.

## IV. Project Solicitation and Intended Use Plan

The following figure illustrates the project solicitation process, which is further described in this section.

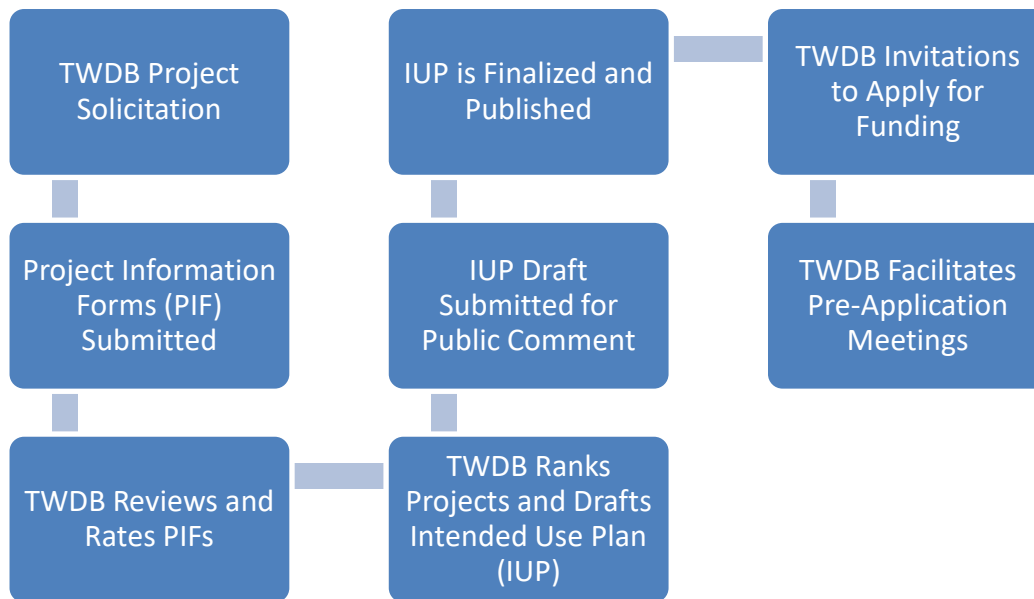


Figure 2: Pre-Application Process

### 1. Project Solicitation

The TWDB solicits information on proposed projects from eligible entities across the state using direct emails, a notice posted on the TWDB website, and financial assistance workshops held throughout the state.

Eligible entities interested in DWSRF-LSLR funding are required to submit proposed project information on a PIF. DWSRF-LSLR PIFs provide the information necessary to evaluate, rate, and rank proposed projects in an IUP.

#### Required information submitted on a PIF consists of:



- a detailed description of the proposed project;
- a map(s) detailing the location of the service area;
- the estimated total project cost, certified by a professional engineer registered in the State of Texas, if project costs are over \$100,000;
- the project area's AMHI to show disadvantaged community eligibility;
- the number of household connections currently served by the applicant;
- estimated number of lead service lines for replacement, as applicable;
- information regarding needs for inventory, land acquisition, design, and construction, as applicable;
- estimated costs for phases of funding;
- signature of the applicant's authorized representative; and
- any additional information detailed within the solicitation for projects, as needed to establish the priority rating.



Any socioeconomic survey being used for income determination, in lieu of Census/American Community Survey data, must be approved by TWDB and completed within five years prior to the date the TWDB receives the PIF.

## 2. Submitting a PIF

Entities will need to submit a [completed PIF](#) for inclusion in the draft IUP and the subsequent PPL.

A Microsoft Word version of the PIF is available for submittal via email. The Word document can be converted to a PDF for the submittal. **PIFs must be received by the posted due date to be included in the IUP.**

### ➤ Email Submittal (Word or PDF)

- Download the DWSRF-LSLR PIF Word document from the [LSLR webpage](#).
- Submit the completed PIF by email to [DWSRF@twdb.texas.gov](mailto:DWSRF@twdb.texas.gov) (file size must be less than 100 MB).

### PIF Submittal Deadline for the IUP

Solicitations for new PIFs, along with update requests to projects on the current IUP, will be posted on the [TWDB DWSRF-LSLR webpage](#).

### Updating Projects from the Prior Intended Use Plans

To ensure the TWDB has current information, all entities with a PIF submitted in a prior funding cycle must update and submit the form to be included in the upcoming IUP. Entities must update, at a minimum:

- the readiness to proceed information (if an entity previously received a commitment for planning, acquisition, and/or design (PAD) only and wants to be considered for the construction phase funding),
- the AMHI information, and
- the updated project budget (with engineer's signature for projects over \$100,000).

Update forms are available on the [Lead Service Line Replacement Program](#) webpage.



**Applicants must submit a PIF for inclusion in the IUP and receive an invitation from the TWDB before submitting a full application for financial assistance.**

## 3. Project Evaluation and Rating

All PIFs received are reviewed by the TWDB. General rating criteria for projects are briefly described below.

- Identification of lead service lines
- AMHI
- System size/number of connections

#### 4. Ranking and Creation of the PPL

Each PIF submitted by the initial deadline, and determined to be eligible, is rated and ranked using combined rating factors and included on the PPL. In the event of a tie, priority is given to the project serving the fewer connections.

Please note, project information submitted after the initial deadline will not be considered for rating until after adoption of the IUP and the PPL.

##### **Project Changes Following Approval of the IUP**

Following approval of the IUP, any changes to a ranked project that result in a project no longer addressing the issues for which it was rated will require re-rating and re-ranking.

- Project changes that do not trigger re-rating and re-ranking:
  - The Applicant for a proposed project changes, but the project does not change.
  - The fundable amount of a proposed project does not increase by more than 10 percent of the amount listed in the approved IUP. The Executive Administrator (EA) may waive the 10 percent limit to incorporate additional project elements.

#### 5. Intent to Apply

As part of the invitation process, the TWDB requires 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 in rank order.



Failure to provide the requested intent to apply information 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. Application and Commitment Process

This section outlines the steps necessary for submission of a DWSRF-LSLR Application for funding, and recommendation for commitment (see Figure 2). The TWDB conducts a technical review of the application by the legal, engineering, environmental, and planning and water conservation disciplines, as outlined in the [financial assistance review process document](#). More resources can be found on the [application webpage](#).

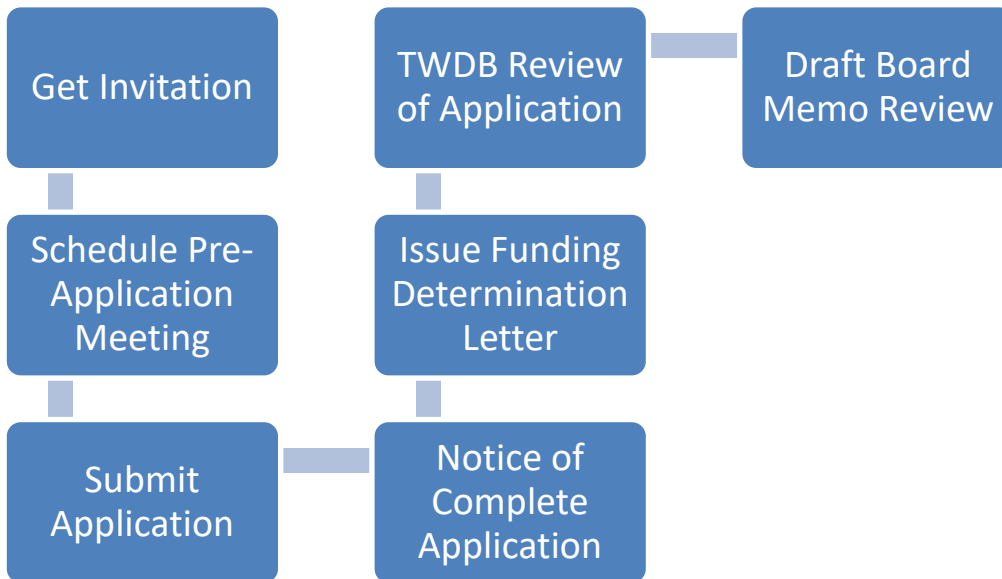


Figure 3: Full Application Process

### 1. Pre-Application Meeting



Entities **are required** to participate in a pre-application meeting with the Regional Water Project Development (RWPDP) team 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,
- Consulting engineer, and
- Financial advisor.



**NOTE:** Intended use of alternative delivery methods (e.g. design-build, Construction Manager at Risk, etc.) will not be allowed for the LSLR program.

### 2. Application Submittal

The Financial Assistance Application must be submitted by email to the TWDB. A Microsoft Word version is available for submittal by email. Applications must be received by the posted due date to be considered for funding.

#### 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 [DWSRF@twdb.texas.gov](mailto:DWSRF@twdb.texas.gov) (strongly preferred option) **or**

Send one (1) indexed electronic copy by electronic storage media (i.e., flash drive), using Microsoft Word, Excel, or Adobe Acrobat, to the address below:

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

*NOTE: If an electronic copy cannot be sent by email or mailed, one (1) hard-copy of the final application is acceptable; however, this is not preferred and will result in longer review times.*



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



**CAUTION!** The DBE procurement process must be followed for reimbursement eligibility of any consultants and/or contractors utilized during the application process. See relevant forms TWDB-0215, TWDB-0216, TWDB-0217, and TWDB-0373 to document DBE compliance; links are provided in the following section. DBE Guidance (TWDB-0210), is located on the TWDB website under [Program Guidance & Manuals](#).

### 3. Notice of Complete Application



The Applicant will be notified in writing, by email, if their application is administratively complete or incomplete. **If the application is incomplete, any deficiencies must be remedied within 14 calendar days.**

#### Engineering

A Preliminary Engineering Feasibility Report (PEFR), signed and sealed by a professional engineer registered in the State of Texas, as outlined in the application, is required for Planning, Acquisition, and Design (PAD) and Planning, Acquisition, Design, and Construction (PADC) projects. During the planning phase of the project, the Applicant must provide a final Engineering Feasibility Report (EFR) in accordance with the relevant guidance for the preparation of EFRs for drinking water projects, [TWDB-0555](#).



**REMINDER:** A PEFR or an EFR are not required for Inventory-ONLY projects. An environmental impact assessment or finding is not required for Inventory-ONLY projects *as long as* inventory does not result in vegetation clearing, excavation, or ground disturbance.



## 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, a request for supplemental information will be sent to the Applicant or their consultant.

## TWDB Forms Applicable to DWSRF-LSLR

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 from governing body requesting financial assistance ([TWDB-0201A](#)) \*
- Applicant Affidavit for Public Entities ([TWDB-0201](#)), or for Private Entities ([TWDB-0201P](#)) \*
- Application Resolution - Certificate of Secretary ([TWDB-0201B](#)) \*
- Planning Information Form ([WRD-253d](#))
- Project Cost Estimate Budget ([TWDB-1201](#))
- Certificate of Debarment, Suspension, and Other Responsibility Requirements ([SRF-404](#))
- Assurances – Construction Programs ([EPA-424D](#))
- Applicant 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](#)) \*

### \* Forms Requiring the Applicant's Signature



A complete checklist of documents required to be submitted can be found in the application ([TWDB-0148](#) for Public Entities/Political Subdivisions and [TWDB-0150](#) for Private Entities). Applicants should work with the TWDB to identify which documents are required for your specific project.

## 4. Draft Board Memo Review

A funding determination letter will be created, outlining what principal forgiveness and/or financing the Applicant is eligible for based on the final project costs. This letter becomes the basis for the draft Board memo and resolution.

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 of receipt to ensure the commitment is not delayed.

## 5. Funding Approval and Financial Assistance Commitment

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

- 12 months for inventory only projects.
- 24 months for combination inventory activities, planning, acquisition (if needed), design, and/or construction.

If you are unable to close your commitment prior to its expiration, you may request an extension of the expiration period as specified in Title 31 Texas Administrative Code (TAC) Subchapter 371 ([31 TAC Subchapter D § 371.35](#)).

- To request an extension, submit a written request at least 45 days prior to the expiration date 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; and
  - a new proposed date for closing.

## VI. Closing and Release of Funds

This section will discuss the process for closing and release of funds.

### 1. 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. At the time of closing, closing related costs will be the only items eligible for release.

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 for the DWSRF Program (including the DWSRF-LSLR Program) is provided in, [31 TAC Subchapter A § 371.71](#) (Loan Closings for public entities), [31 TAC Subchapter A § 371.72](#) (Loan Closings for water supply corporations or eligible private applicants), and [§371.73](#) (Release of Funds).

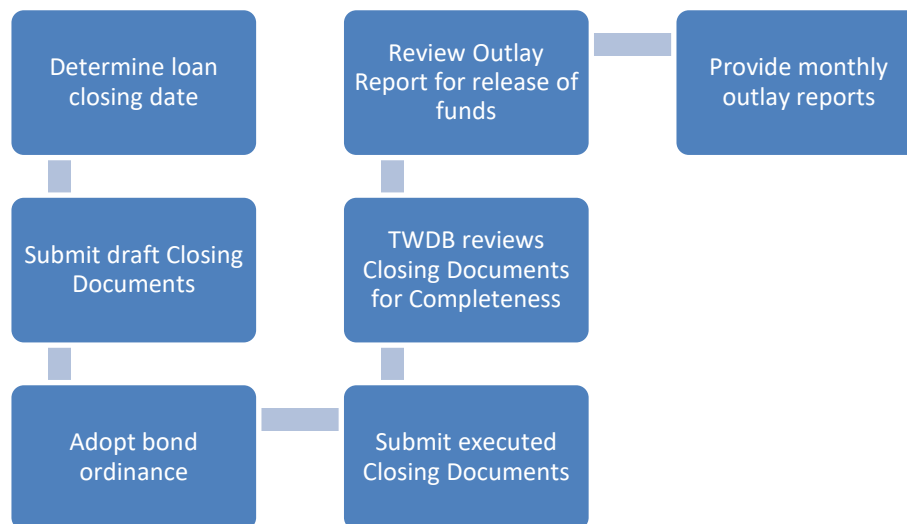


Figure 4: Closing Process

### 2. After TWDB Commitment – First Steps



**The Applicant will receive** a Board Action Letter (BAL) by 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 Applicant's project engineer, financial advisor, and bond counsel on all communications.



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

### 3. 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 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;
- Proposed bond ordinance or resolution, draft; and
- Paying Agent Agreement and Escrow Agreement, draft.

For loan agreements (e.g., inventory-only projects), the following items must be submitted by the Applicant's governing body:

- No-Arbitrage (Federal Tax) Certificate, draft;
- No-Litigation Certificate, draft;
- Paying Agent Agreement and Escrow Agreement, draft.

2. Submit the following items to the TWDB Project Engineer/Reviewer **25 days prior to closing**:

- Copies of executed engineering services agreements and other executed professional services agreements.
- Any permits the TWDB determines are required prior to closing.
- Updated project schedule.
- Engineer's Useful Life Certification.
- An [updated TWDB – 1201](#) budget form with the funds identified to be released at closing for the eligible fiscal services.
- All fiscal services invoices to be reimbursed 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.

- **DBE Documentation** for all professional services currently procured:
  - Affirmative Steps Solicitation Report ([TWDB-0216](#))
  - Prime Contractor Affirmative Steps Certification and Goals ([TWDB-0217](#))
  - Loan/Grant Participation Summary ([TWDB-0373](#))
- 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](mailto:outlays@twdb.texas.gov) **at least 15 days prior to the closing**. For more information on the Outlay process, please see the TWDB [Outlay Reports](#) webpage.
- 5. After the Applicant has adopted a **bond ordinance** to approve the conditions of the TWDB financial commitment, submit the final closing documents to the TWDB to close the commitment:
  - Attorney General Opinion (5 business days prior)
  - Comptroller's Certificate (5 business days prior)
  - Debt Service Schedule
  - Executed Escrow Agreement
  - Financial Advisor's Closing Instructions
  - Executed Paying Agent Agreement
  - Private Placement Memorandum – with all attachments, including:
    - Semiannual amortization schedule
    - Bond Ordinance or Resolution adopting the issuance
    - Draft Bond Counsel Opinion
  - TWDB Vendor Set-Up of Direct Deposit Form
  - Blanket Issuer Letter of Representations (BLOR)
  - Bond Counsel Opinion
  - No Litigation Certificate
  - No Arbitrage/Federal Tax Certificate
  - Executed Principal Forgiveness Agreement
  - Any other documents required by special condition in the resolution, such as:
    - Financing Agreement
    - Additional Bonds Test Certification

After the Applicant has adopted a **loan agreement** to approve the conditions of the TWDB financial commitment, submit the final closing documents to the TWDB to close the commitment:

- Debt Service Schedule
- Executed Escrow Agreement
- Financial Advisor's Closing Instructions
- Executed Paying Agent Agreement
- TWDB Vendor Set-Up of Direct Deposit Form
- No Litigation Certificate
- No Arbitrage/Federal Tax Certificate
- Executed Principal Forgiveness Agreement

- Any other documents required by special condition in the resolution, such as:
  - Financing Agreement

#### 4. Outlay Reports and Release of Funds

The DWSRF Program releases funds on a reimbursement basis upon the receipt of an outlay report or reimbursement request, supported by detailed invoices of expenditures. Funds not eligible for release at the time of closing will be held in an escrow account until the required project milestones have been completed and approved by TWDB.

For the LSLR projects, all financing is made at a ratio of principal forgiveness and loan/bond, including the financed loan origination fee, based upon the applicable IUP.

The TWDB must ensure that the principal forgiveness percentage of the total project costs is maintained upon project completion. The principal forgiveness percentage of the total project costs must be maintained even if any loan funds are prepaid.

Thus, the loan and principal forgiveness funds will be disbursed in an amount equal to the ratio established within the applicable IUP. At project close-out, the recipient would be required to provide evidence satisfactory to TWDB that the final project maintained the principal forgiveness to loan ratio in the commitment. Any remaining principal forgiveness and loan funds must be returned to TWDB as part of project close-out as prescribed by TWDB.

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 outlay 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 also includes costs associated with a different project, the DWSRF-LSLR costs included in the invoice must be clearly distinguished.
- Within each budget category (inventory, engineering, planning, environmental, permits, construction contract, etc.), the TWDB can *only* reimburse up to the amount approved in the commitment for that category. However, funds can be reallocated from one budget category to another, after commitment, by requesting a budget amendment from the 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 TWDB 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.

- Outlay submittals at the end of the Inventory phase (if applicable), must include proof of TCEQ Inventory Acceptance or Administratively Complete. TCEQ will provide either a letter or email accepting the Lead Service line inventory.
- Outlay submittals at the end of the Design phase must be accompanied by a Certification that an LSLR project design meets local plumbing requirements and codes, or a proof of design approval by governing entity (e.g., City, County). See Certification of Design ([TWDB-0558-A](#)).
- Outlay submittal at the beginning of the Construction phase must be accompanied by SRF Project Signage Certification, see Guidance on State Revolving Fund Project Public Awareness ([TWDB-1109](#))
- Outlay submittals at the end of the Construction phase must be accompanied by Project Certification.
- All monthly Outlay submittals for construction contract expenses in the DWSRF Program must be accompanied by the following certifications, properly signed and dated by the entity's representative:
  - Monthly Build America, Buy America (BABA) Act, Certificate of Compliance Submittal by Owner ([TWDB-1110-A](#))
  - Monthly Davis-Bacon Wage Rate Certificate of Compliance Submittal by Owner ([DB-0154](#))
  - During the Construction Phase, Monthly Program Certification including project locations, before and after photographs, and signature of the property owner ([TWDB-0558-B](#))
- The forms must cover the entire period of the construction contract invoices. Submit Outlay reports electronically to [outlays@twdb.texas.gov](mailto:outlays@twdb.texas.gov).



If outlay reports cannot be submitted electronically, please contact the TWDB Outlays and Escrows team for alternate submission instructions at (512) 463-5070 or [outlays@twdb.texas.gov](mailto:outlays@twdb.texas.gov).



## 5. Key Project Milestones

The diagram below illustrates key project milestones during the inventory, planning, design, and construction phases of a project that are tied to the release of funds.

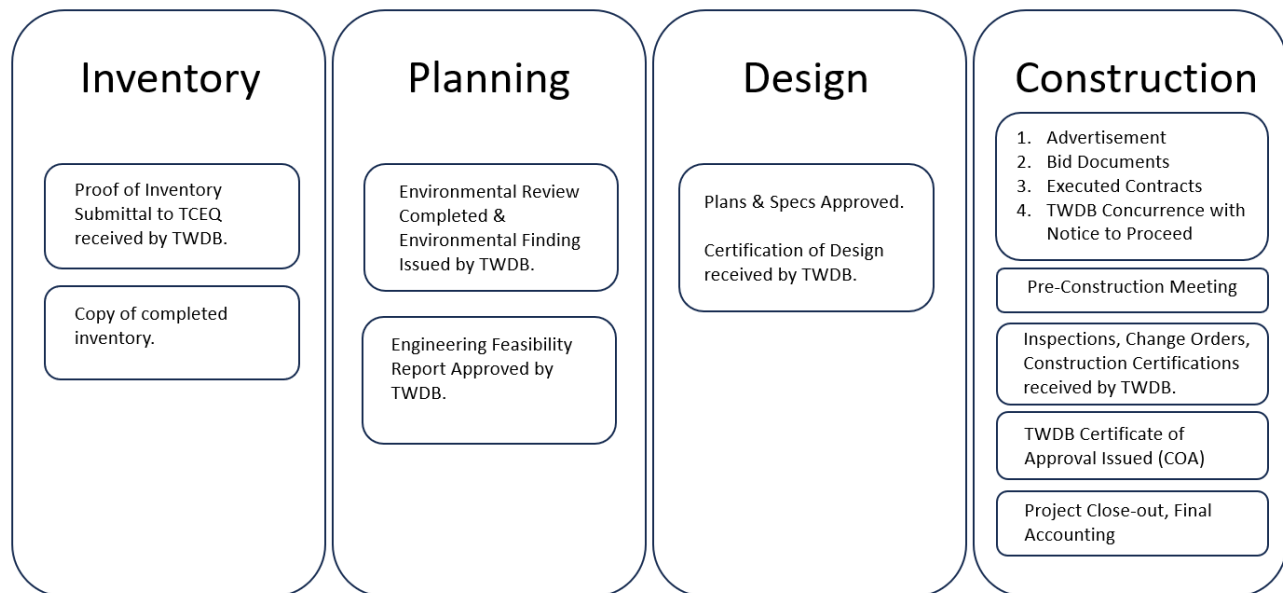


Figure 5: Release of Funds Milestones

- 1. Inventory:** Funds for inventory are eligible for release once (A) all financing closing documents have been submitted and approved, (B) any special conditions from the TWDB resolution have been met, (C) the closing has occurred, and (D) the Applicant submits a progress report for partial release of funds. In order to receive the full amount for inventory, proof of inventory completion/acceptance from the Texas Commission on Environmental Quality (TCEQ) and a copy of the inventory is required. Prior to the TWDB releasing funds, the Applicant shall submit executed professional services agreements, including DBE procurement-related documents and submit proof of fulfillment of any Special Conditions in the Resolution, and any executed construction easements needed for inventory.
- 2. Planning:** Funds for planning and permitting costs are eligible for release once (A) all financing closing documents have been submitted and approved, (B) any special conditions from the TWDB resolution have been met, and (C) the closing has occurred. Prior to the TWDB releasing planning phase funds, the Applicant shall submit executed professional services agreements, including DBE procurement-related documents and submit proof of fulfillment of any Special Conditions in the Resolution.
- 3. Design:** Funds for design are eligible for release after the TWDB has completed the environmental review, issued the environmental finding, and approved the EFR. Executed engineering services agreements for the design phase are also required prior to release of design funds. At the end of the design phase, the Certification of Design ([TWDB-0558-A](#)), signed/dated/sealed by the design engineer must be submitted. This form certifies that the design documents meet all applicable local plumbing requirements and codes.



4. **Construction:** Construction funds for a contract can be requested after the issuance of any applicable permits, after contract documents have been approved (including Plans and Specifications), the construction contract has been contingently awarded, and a formal Notice to Proceed (NTP) has been issued. Executed engineering services agreements for the construction phase are also required before release of funds for construction phase engineering tasks (if not previously submitted).
5. **Contract closeout:** The retainage shall not be paid to the Contractor until TWDB has authorized a reduction in, or release of, retainage on the contract work. Interest earnings, if any, shall not be paid to the applicant until TWDB has authorized its release. Contract retainage and interest earnings can be released once the TWDB issues a Certificate of Approval (COA).

## VII. Inventory Phase

The inventory phase develops the overall inventory list of lead service lines in order to plan for replacement. In this phase, the Applicant completes an inventory of every service line in the distribution system. This includes both the utility-owned and customer-owned service lines. Each service line must be categorized as lead, non-lead, galvanized requiring replacement, or lead status unknown. For more information regarding the inventory process and the required submittal to the Texas Commission on Environmental Quality (TCEQ), see the TCEQ [Lead Service Line Inventory Under Lead and Copper Rule Revisions](#) website.



**REMINDER:** A PEFR or an EFR are not required for Inventory-ONLY projects. An environmental impact assessment or finding is not required for Inventory-ONLY projects *as long as* inventory does not result in vegetation clearing, excavation, or ground disturbance.

## VIII. 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: completion of an environmental impact assessment and submission of appropriate documentation by the Applicant; TWDB's issuance of the environmental finding based on that documentation; and approval of the EFR.

### 1. Environmental Review

Environmental review of DWSRF projects is a requirement for the use of DWSRF financial assistance, as detailed in [31 TAC 10 Chapter 371, Subchapter E](#), (Environmental Reviews and Determinations).

**NOTE:** An environmental impact assessment or finding is not required for Inventory-ONLY projects if the inventory does not result in vegetation clearing, excavation, or other ground disturbance. A PEFR and an EFR are not required for Inventory-ONLY projects.

#### Federal Funding Level Environmental Review

With the use of federal funds, a National Environmental Policy Act (NEPA)-level environmental review will be required. The Applicant must conduct an environmental impact assessment and provide a document of appropriate type, based on the probable level of impact. At the culmination of the environmental impact assessment, TWDB will issue one of the following environmental findings:

1. **Categorical Exclusion (CE):** A CE is an exclusion from a full environmental review, based on
  - a. the eligibility criteria described in [31 TAC § 371.43](#) 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 may be issued if a comprehensive assessment of the potential environmental impact of the proposed project has been conducted and the TWDB determines the project will not have a significant effect on the human environment if all required mitigation measures are implemented.

3. The FONSI must be supported by an Environmental Assessment (EA), prepared by TWDB, and meet the requirements of a full federal environmental review, based on the Applicant's Environmental Information Document (EID) ([TWDB-0801](#)), and other requested information.

**Process:** The Environmental Assessment is prepared by the TWDB, which 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. If comments are received during the 30-day comment period, they must be addressed before the environmental review can be considered complete.

4. **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.**

*Note: It is unlikely any LSLR project involving line inventory and/or line replacement will require an EIS and ROD.*

5. **Statement of Findings (SOF):** A 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 and the environmental finding issued prior to the approval of the EFR and release of funds for the subsequent design phase, which can include land/easement acquisition activities (if applicable).
- If an existing environmental finding for the project meets DWSRF Program requirements, it may be adopted by the TWDB. Discuss this with the TWDB environmental review staff as soon as possible.
- 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.

- At all times throughout the design and construction of the project, the Applicant shall comply with the environmental special conditions and findings resulting from the environmental review.



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

If construction begins before the environmental review is complete, **your project may become ineligible for DWSRF-LSLR funding.**

## 2. Engineering Feasibility Report (EFR)

Refer to the guidance for the preparation of EFRs (drinking water projects, [TWDB-0555](#)) for details on the information required in this report ([31 TAC § 371.61](#)). The EFR sent to the TWDB RWPD Submittal System must be submitted as a single PDF, with searchable text, and must be signed, sealed, and dated by a professional engineer registered in the State of Texas as per [31 TAC § 363.13](#). The EFR should also include the following (as applicable):

- **BABA requirements** ([TWDB-0559](#)) 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 Build America, Buy America requirements. In addition, include a discussion of any potential waivers that are being considered.
- Updated **project schedule**.
- Updated **project budget** ([TWDB-1201](#)).
- List the status of any **anticipated permits** and the permitting agency.

An EFR approval letter cannot be issued by the TWDB Project Engineer/Reviewer until the Environmental Review Process is complete and the TWDB Environmental Finding has



been issued. **Note: Amendment(s) to the EFR(s) must be consistent with the environmental finding or may require revisions to the environmental finding(s). Immediately notify TWDB Project Engineer/Reviewer and Environmental Reviewer if modifications are made to the project scope.**

## 3. 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 the plans and specifications (P&S) and advertising for construction bids. If a floodplain permit is required, P&S approval will not be granted until the Applicant has obtained a floodplain development permit from the local floodplain administrator. P&S approval cannot be granted until all permits required for the project are obtained.

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

Land acquisition, buffer zones, rights-of-way, and easements need to be discussed in the EFR (if applicable) and addressed early in the planning phase to avoid unnecessary redesign of the project. Purchase of an easement or land parcel is eligible under Design-phase activities. The Applicant should perform an initial site assessment to verify that hazardous waste contamination of the site has not occurred.

## IX. 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 the Planning Phase has been completed. Detailed P&S will be developed during the design phase. P&S must be reviewed and approved by TWDB as per [31 TAC 371.62](#).

Advertisement, bid, and draft contract documents must also be included in the bound P&S (Project Manual) 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 documents.

TWDB will review the P&S documents for the following:

- (1) to ensure consistency with the approved engineering feasibility report and with approved environmental planning documents and environmental finding;
- (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 receipt of the engineer's certification that the project's design meets local plumbing requirements and codes (TWDB-0558-A) or receipt of proof that the design has been approved by the local governing entity.
- (4) to ensure the contract documents notify the contractor about the Board's authority to audit project files and conduct site visits 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 does not relieve the Applicant of the 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 crossings;
2. Texas Department of Transportation (TxDOT) permits; and/or
3. Irrigation district permits.

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 Plans and Specifications documents by the executive administrator. If the applicant proceeds to advertising without approval, it may affect eligibility for funding.

## 1. Design Criteria

The project's design engineer must certify that the project meets [30 TAC Chapter 290](#) requirements and any other local plumbing requirements and codes.

## 2. Plans and Specifications Review and Design Phase Submittals

TWDB will complete a review of the submitted design information. An executed Certification of Design ([TWDB-0558-A](#)) must be submitted.

**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, and/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 bound P&S documents for the submittal to be considered complete. Bound P&S documents must include advertisement, bid, and draft contract documents.
  - Executed Certification of Design ([TWDB-0558-A](#))
  - TWDB supplement contract conditions, including construction inspection requirements ([TWDB-0550](#)).

**All P&S submitted to the TWDB for review must be sealed, signed, and dated 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 a complete set of revised P&S documents 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 set of P&S documents for approval.
- **Once the P&S documents meet all programmatic requirements, the TWDB Project Engineer/Reviewer will issue a P&S approval letter. This letter is the entity's authorization to advertise the project for bids.**

### 3. Important Plans and Specifications Reminders



➤ **The TWDB supplemental contract conditions for projects funded through the DWSRF Program ([TWDB-0550](#))**, 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 supplemental contract conditions, and
- TWDB-0550 **must be included in its entirety in the bound P&S (Project Manual) documents.**

➤ **The set of P&S documents must include:**

- all documents required in the supplemental contract conditions (TWDB-0550),
- 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, EFR(s), and/or the set of P&S documents.

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



## X. Bidding Process

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 bidding process includes the following steps:

- Advertising
- Pre-bid conference
- Bid opening and bid evaluation
- TWDB review of bid documents
- TWDB concurrence with the Applicant's recommended contractor award
- and TWDB authorization to contingently execute the awarded construction contract



**Authorization from the TWDB's Project Engineer/Reviewer should be obtained prior to advertising bids. The P&S approval letter is the entity's authorization to advertise the project for bids.**

### 1. Advertising

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

- TWDB programmatic acceptance and 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

For detailed information on language to be used in the advertisement for bids, see the TWDB supplemental contract conditions for projects funded through the DWSRF Program ([TWDB-0550](#)).



Advertisements for DWSRF Equivalency projects **must** clearly state the EPA's "Fair Share Objective" and "Good Faith Effort," as discussed in the TWDB's DBE guidance ([TWDB-0210](#)).

### 2. Instructions 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 the DWSRF Program ([TWDB-0550](#)).

### 3. Pre-Bid Conference

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



The TWDB's Project Engineer/Reviewer **should be notified, concurrent with bidders**, of 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.

### 4. 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. The addenda should be submitted to the TWDB concurrent with issuance to bidders.

### 5. 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.

### 6. Bidding Documents and TWDB Review and Concurrence with the Applicant's Contract Award



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 (submit to the RWPD Submittal System):

- 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
- Any addenda not previously submitted
- Debarment/Suspension Certification ([SRF-404](#))
- **DBE Documentation**
  - Affirmative Steps Solicitation Report ([TWDB-0216](#))
  - Prime Contractor's Affirmative Steps Certification and Goals ([TWDB-0217](#))
  - Loan/Grant Participation Summary ([TWDB-0373](#)) for Procurements (*one each for the Applicant and the Prime Contractor to complete*)

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 been reviewed by TWDB and a concurrence of award issued.**

## 7. Executed Contract Documents Submittal



The Applicant/consulting engineer should submit as soon as possible after receiving the TWDB concurrence with Applicant's recommended contract award and **prior to issuance of a Notice to Proceed to the contractor**, the contingently executed contract documents. These documents must be a **single, high quality and searchable PDF file**, that includes the entire 'bound' executed Project Manual (including any approved addenda issued during the bidding process); as well as any plan sheets that were added new or revised since the TWDB issued the P&S approval letter. Below are highlights of some of the included documents that specifically need to be signed and notarized (if applicable).

- Executed contract agreement signed by all appropriate parties and notarized, if applicable
- Specifications **as approved by TWDB**
- Executed bid proposal, including the contractor's Schedule of Values and the contractor's DOL Wage Rate(s)
- Bidder's Certification Form (WRD-255)
- 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](#))

The following documents must also be submitted to the TWDB RWPD Submittal System for the Project Engineer/Reviewer along with the executed contract documents:

- Completed Executed Construction Contract Submittal Form (TWDB-0500)
- Sufficiency of funds statement on entity letterhead (signed), if applicable, and not previously submitted
- Updated schedule with anticipated construction start and end dates for contracts
- Updated TWDB-1201 Project Budget
- Completed/signed Cost and Effectiveness Certification Form (TWDB-1107)
- Completed SRF Project Public Awareness form ([TWDB-1109-A](#)), along with backup documentation for proof of method used.



The Applicant should double check that all blanks in the executed contract agreement are filled, and the dollar amounts match the dollar amounts associated with the bid documents concurrence.

After review of contingently executed contract documents, the TWDB Project Engineer/Reviewer will issue a letter concurring with the Applicant's official issuance of a Notice to Proceed (NTP) with construction and approval of addenda (if applicable). At this time, construction phase funds associated with the approved construction contract become eligible for release.

The Applicant must submit to TWDB a copy of their official NTP issued to the contractor as soon as possible.

## XI. 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 fully executed contract documents.

The following construction-phase topics are discussed in detail in the TWDB supplemental contract conditions for DWSRF projects ([TWDB-0550](#)) to help with this goal.

### 1. Pre-Construction 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.

### 2. Notice to Residents

For construction projects where lead lines are being replaced, the Applicant shall, at a minimum, follow these guidelines:

- Provide documentation of, “customer refusals including a refusal signed by the customer, documentation of a verbal statement made by the customer refusing replacement, or documentation of no response from the customer after the water system made a minimum of two good faith attempts to reach the customer regarding full lead service line replacement” as noted in [40 CFR 141.84\(g\)\(7\)](#). Customer contact efforts should be provided to the resident(s) in the appropriate language(s) to meet the needs of the residents.
- EPA has defined best practices for obtaining property owner consent include at least four attempts to engage with the customer using at least two different communication methods. Communication methods include in-person conversation, email, written letter, or information left at the door (e.g., door hanger).
- Once replaced, the property owner (and non-owner resident, as applicable) must be notified within 24-hours of completion ([40 CFR 141.84\(e\)](#)). Information about flushing the line before returned to service should be provided to the resident(s) in the appropriate language(s) to meet the needs of the residents.

### 3. 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.

- 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.
- The Applicant is responsible for completing the Certification of Construction and Photographs ([TWDB-0558-B](#)) for each project location.

### 4. 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.

### 5. TWDB Construction Site Visits

The TWDB may conduct site visits regarding construction and audit activities of any DWSRF-LSLR 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 site visit reports, and make them available to the Applicant and their consulting engineer.
- Site visits and the resulting observational site visit reports do not relieve the Applicant of the responsibility to provide qualified on-site 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 DWSRF-LSLR funding agreements during site visits or records reviews.

## 6. 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 RWPD Submittal System for review and approval.

### **TWDB Staff reviews and approves change orders for**

- eligibility of funding,
- a change in construction contract cost and/or completion time
- 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.**

## 7. Retainage

Generally, a minimum of five 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 five percent during the construction project 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.

## 8. TWDB Closeout Submittals



To close out the construction contract and authorize release of final retainage, the TWDB must conduct a construction contract final site visit. The following information and documents must also be submitted to the TWDB RWPD Submittal System 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 and sound engineering principals and construction practices.
- Acceptance of the work under this contract by the owner in the form of a written resolution or other formal action, signed by the owner's representative. Note that Construction Certification and Photographs (TWDB-0558-B) is considered supporting documentation for this requirement.
- Copies of executed construction easements for each location, if required.
- Notification of the beginning date of the warranty period for the contract
- Confirmation that the owner has received as-built (record) drawings from the contractor.
- Final BABA Certificate ([TWDB-1110-B](#)).



Once a Final Site Visit has been conducted and all the documents listed above have been submitted to the TWDB RWPD Submittal System, the TWDB will issue a COA, allowing the release of retainage to the contractor.

**Retainage must not be released or reduced below five percent during the construction project without the consent of the TWDB.**

## 9. Project Closeout Requirements



- COAs for all contracts have been issued.
- Final project payment has been released to the Applicant.
- If Inventory only project, proof of TCEQ receipt and deemed administratively complete by TCEQ. If Planning, Acquisition, and Design only (PAD) project, all portions of PAD phases have been completed and deliverables have been submitted and approved by the TWDB.

*Note: A COA is issued for a single construction contract. There could be multiple COA's issued in a project that has multiple construction contracts. The **Project** Close-out is for the entire project.*



## 10. Project Records

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

## 11. TWDB Reporting

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

For the Inventory phase, if the Applicant desires progress payments, progress reports shall be submitted for partial release of funds. To receive the full amount for the inventory, proof of inventory completion/acceptance from the Texas Commission on Environmental Quality (TCEQ) and a copy of the completed inventory is required.

## 12. Post-Construction

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

## 13. Final Accounting/Monitoring

For loans under the DWSRF Program, the Financial Compliance Staff of the TWDB 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 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 recipients continue with agreed upon terms of any debt agreement and that loan recipients continue to have the ability to repay debt in a timely and agreed upon manner.

### Loan Monitoring

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

### Project Monitoring

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

## **Attachment 1 – Build America, Buy America (BABA) Act**

DWSRF-LSLR assistance recipients are required to use iron, steel, manufactured products, and construction materials that are produced in the United States for the construction, alteration, maintenance, or repair of all public water system projects. The Applicant may not use funds from other funding sources, including the Applicant's own funds, to pay for a non-compliant products used in the project.

Information on BABA requirements, including compliance and waiver instructions, certification process, and necessary forms, can be found in the Build America, Buy America (BABA) Act Guidance for Clean Water & Drinking Water State Revolving Fund Projects ([TWDB-0559](#)).

Complete details of the federal requirements are available on the [EPA SRF website](#).

## **Attachment 2 – Disadvantaged Business Enterprise (DBE)**

The TWDB's DWSRF-LSLR Program received federal funds from the EPA to provide financial assistance for identification, planning, design, and replacement of lead service lines. Recipients of DWSRF-LSLR assistance, and their sub-recipients, are required to meet the EPA's Disadvantaged Business Enterprise (DBE) Program requirements.

Information on DBE requirements can be found on the [Disadvantaged Business Enterprise \(DBE\) Program](#) webpage or the Disadvantaged Business Enterprises for State Revolving Funds Project guidance ([TWDB-0210](#)).

## Appendix A – Forms and Guidance Manuals

- Affirmative Steps Certification and Goals ([TWDB-0215](#))
- Affirmative Steps Solicitation Report ([TWDB-0216](#))
- Application Affidavit ([TWDB-0201](#))
- Application Filing and Authorized Representative Resolution ([TWDB-0201A](#))
- Application Resolution - Certificate of Secretary ([TWDB-0201B](#))
- Build America, Buy America (BABA) Act Guidance for Clean Water & Drinking Water State Revolving Fund Projects ([TWDB-0559](#))
- Construction Award Submittal Form ([TWDB-0400](#))
- Contractor's Act of Assurance ([ED-103](#))
- Contractor's Act of Assurance Resolution ([ED-104](#))
- Certification of Design ([TWDB-0558-A](#))
- Construction Certification and Photographs ([TWDB-0558-B](#))
- Disadvantaged Business Enterprises for State Revolving Fund Projects ([TWDB-0210](#))
- Engineering Feasibility Report Guidance for Drinking Water Projects ([TWDB-0555](#))
- Executed Construction Submittal Form ([TWDB-0500](#))
- Financial Assistance Application Checklist for Public Entities/Political Subdivisions ([TWDB-0148](#))
- Guidance on Davis-Bacon Wage Rate Requirements for State Revolving Fund Projects ([DB-0156](#))
- DBE Loan/Grant Participation Summary ([TWDB-0373](#))
- [Plans and Specifications Submittal Form \(TWDB-0300\)](#)
- [Plans and Specifications Review Checklist \(Engineer Checklist\)](#)
- Project Files & Construction Records ([WRD-017](#))
- Prime Contractor Affirmative Steps Certification and Goals ([TWDB-0217](#))
- Planning Information Form for Drinking Water Projects ([WRD-253D](#))
- Project Budget Form ([TWDB-1201](#))
- Project Map Example ([TWDB-1800](#))
- Texas Water Development Board Supplemental Contract Conditions and Instructions for Construction Services for Projects Funded through the DWSRF Program ([TWDB-0550](#))
- Vendor Compliance with Reciprocity of Non-Resident Bidders form ([TWDB-0459](#))

## Appendix B – Links and Resources

### DWSRF Resources

The main DWSRF webpage, additional guidance manuals, and DWSRF-related resources can be found with the following links:

- [TWDB DWSRF Webpage](#)
- [TWDB DWSRF-LSLR Webpage](#)
- [DWSRF, 31 TAC 10 371](#)
- [TWDB Administrative Rules \(adopted per TAC\)](#)
- [Program Guidance and Manuals/Forms](#)
- [Disadvantaged Business Enterprise \(DBE\) Program](#)
- [Regional Water Project Development Teams](#)

### LSLR Resources

- [TCEQ Drinking Water Lead and Copper Program Webpage](#)
- [TCEQ Lead and Copper Rule Revisions Webpage](#)
- [40 CFR Part 141 Subpart I, Control of Lead and Copper Webpage](#)

### Application Resources

- [Financial Assistance Application](#)
- [Project Information Forms and Guidance](#)
- [Frequently Asked Questions on General Application Submittals](#)

### Financial Resources

- [Closing a TWDB Commitment](#)
- [Outlay Reports](#)