

Administrative Guidance¹ for Regional Flood Planning Group Sponsors

First Cycle of Regional Flood Planning

December 2020

Flood Planning Division

Regional Flood Planning

¹ This document augments existing statute and rules that govern regional flood planning. Provisions of Title 31 of TAC Chapters 361 and 362 serve as the foundation for much of the information in this document and are not superseded or abridged by anything contained within or excluded from this document.

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1 Introduction

The purpose of this guide is to provide an orientation to the responsibilities of acting as a Regional Flood Planning Group's (RFPG) designated Planning Group Sponsor. Included below are best administrative practices that may be used by a Planning Group Sponsor in the execution of their duties on behalf of the RFPG. These recommendations have been developed by the Texas Water Development Board (TWDB) based on many years of regional water planning experience. Though the technicalities of flood and water planning are different, the regional flood planning process will be administratively similar to that of regional water planning.

The overarching goal of each RFPG is to deliver its regional flood plan to the TWDB. RFPGs' first regional flood plans will be due to the TWDB on January 10, 2023, and every five years thereafter. RFPGs will direct their technical consultant(s), consider public input and technical information, and will meet regularly to make decisions required to develop their regional flood plan. The state flood plan, to be based on adopted regional plans, will be due from the TWDB on September 1, 2024, and every five years thereafter.

At the beginning of the regional flood planning process each RFPG will designate a political subdivision to serve as their Planning Group Sponsor to administer the planning process, solicit and manage a contract for grant funds from the TWDB, and to procure and manage a contract with technical consultant(s) to develop the regional flood plan on behalf of the planning group.

Key responsibilities of the RFPG's chosen Planning Group Sponsor include the following:

- Apply for and receive financial assistance from the TWDB for the development of a regional flood plan or a plan revision.
- Execute and administer the Regional Flood Planning Grant contract with the TWDB, including invoicing and payment for eligible activities.
- Procure the technical consultant(s) that will assist the RFPG with plan development.
- Execute and administer the subcontract(s) between the Planning Group Sponsor and the technical consultant(s).
- Organize the RFPG meeting locations, public notices, agendas, meeting presentations, handouts, meeting minutes, and new member solicitations.
- Maintain RFPG member contact information.
- Ensure all regular, committee, and subcommittee meetings of the RFPG are posted and held in accordance with the Texas Open Meetings Act, the Texas Public Information Act, statute, and rules.
- Deliver the first regional flood plan on behalf of the RFPG no later than January 10, 2023, and every five years thereafter.

2 TWDB Rule and Contract Requirements

RFPGs and their designated Planning Group Sponsors must adhere to the TWDB's rules on regional flood planning and Regional Flood Planning Grants, as well as requirements in the TWDB grant contracts. This section highlights the specific responsibilities within the TWDB's rules and notable grant contract requirements that are directly applicable to the Planning Group Sponsor.

2.1 Planning Group Sponsor responsibilities from TWDB rules (31 Texas Administrative Code Chapters 361 and 362) and TWDB contracts.

- A. Obtain designation by the RFPG as the Planning Group Sponsor in order to be eligible to apply for, receive, and administer TWDB funds on behalf of the region.**
 - i. This process must occur each new five-year planning cycle.
 - ii. The RFPG must ensure that the Planning Group Sponsor has the legal authority to conduct the procurement of professional services and enter into the contracts necessary for regional flood planning.
 - iii. The RFPG must provide a written designation to the TWDB Executive Administrator (EA) naming their authorized Planning Group Sponsor.
 - iv. The RFPG may, at its own discretion, choose a different Planning Group Sponsor at any time.

- B. Apply for planning grant funds through a formal Request for Application (RFA) process.**
 - i. The TWDB will notify RFPGs that funds are available and that applications will be accepted from Planning Group Sponsors for grants to develop or revise a regional flood plan. A formal Request for Applications will be posted on the TWDB website.
 - ii. The Planning Group sponsor is responsible for following all application instructions and submitting a complete application.
 - iii. Once the application is submitted, the EA may request clarification from the Planning Group Sponsor, if necessary, to evaluate the application. Incomplete applications may be rejected and returned to the applicant.
 - iv. The TWDB's Board may approve, deny, amend, or continue consideration of an application. If the Board approves an application for funding, the Planning Group Sponsor will be notified of the amount of funds available and the deadline for executing a contract with the Board. If the applicant does not enter into a contract by the specified deadline, then the Board's approval expires, and no funds will be provided. The Planning Group Sponsor may request an extension of time for good cause shown prior to the contract execution deadline.

- C. Procure the technical consultant(s) selected by the RFPG to assist the group in developing or revising a regional flood plan.**
 - i. The Planning Group Sponsor must follow its own local procurement requirements and state laws, including requirements in Texas Government Code Chapter 2254.

- D. Execute the following contracts:**
 - i. The Regional Flood Planning Grant contract with the TWDB, including invoicing and payment for eligible activities.
 - ii. The subcontract between the Planning Group Sponsor and the technical consultant(s).

- E. Adhere to the limitations of use of contractual funds that are identified in the contracts and submit either advance or reimbursement payment requests with all necessary backup documentation to the TWDB as required in the TWDB contract.**
- F. Develop and maintain a RFPG website or a RFPG-dedicated webpage on the Planning Group Sponsor's website for posting planning group meeting notices, agenda, materials, and plan information (§361.21(b)).**
- G. Ensure all meetings of the RFPG, committees, and subcommittees are posted and held in accordance with the Texas Open Meetings Act and additional public notice requirements in TWDB rules for specific RFPG activities (§361.21).**
 - i. The RFPG must hold regular RFPG meetings, at a minimum, annually (§361.12(a)(6)) or as required by the RFPG bylaws.
 - ii. All meeting notices must be posted on the RFPG website and on the Texas Secretary of State's website and must include:
 - i. the date, time, and location of the meeting;
 - ii. a summary of the proposed action(s) to be taken;
 - iii. the name, telephone number, email address, and physical address of a contact person to whom questions or requests for additional information may be submitted; and
 - iv. a statement of how and when comments will be received from the members and public.
- H. Solicit interested parties from the public and maintain a list of emails of persons or entities who request to be notified electronically of RFPG activities (§361.21(e)).**
- I. Maintain RFPG membership contact information and provide membership lists to the TWDB (§361.11(h)).**
 - i. Provide a current list of its voting and non-voting positions to the TWDB. The list must identify each required position, any other positions added by the RFPG, and the individual member name that fills each position.
 - ii. Since the vast majority of RFPG communications occur via email, it is recommended that the Planning Group Sponsor obtain and maintain updated email address information from RFPG members.
- J. Provide a copy of RFPG's bylaws to the TWDB (§361.11(d)).**
 - i. It is recommended that the RFPGs review and/or update their bylaws at least at the beginning of each planning cycle in order to account for legislative or other changes that may have occurred since the previous bylaws update.
- K. Submit draft and final regional flood plans in accordance with requirements in §361.50.**
 - i. The RFPG shall adopt their draft and final regional flood plans by a vote and submit their final adopted regional flood plan to the TWDB for approval and inclusion in the State Flood Plan.
 - ii. Prior to adopting a final regional flood plan, the RFPG must consider written or oral comments received from the public and the TWDB regarding the draft regional flood plan in accordance with TWDB rules.

3 Recommended Best Practices for Planning Group Sponsors

This section includes recommendations and information for Planning Group Sponsors related to communication, new member orientations, administrative costs, and web posting and newsletter distribution.

3.1 Communication with RFPG members

- A. Request updated email address information from planning group members at each RFPG meeting. This could be successfully accomplished by utilizing a sign-in sheet for RFPG members prefilled with their name and current email address, with an adjacent space to write updated email addresses. Full contact information may be solicited on a less frequent schedule.
- B. Forward all TWDB communications and data provided in emails to planning group members (the TWDB provides information to chairs, Planning Group Sponsors, and technical consultants) with the intent of creating more interest from the members and facilitating their engagement in the planning process by receiving these informational emails directly from the planning group's representative.
- C. Forward meeting notices and agendas to neighboring or upstream/downstream RFPGs via their liaisons, where applicable. Liaisons should then pass along this information to their respective RFPGs.
- D. During development of draft RFPG meeting agendas, it is recommended that the Planning Group Sponsor solicit comments from planning group chair and/or officers, consultants, and the TWDB project manager in order to ensure that the final agenda will meet necessary action item requirements.
 - i. Include a standing agenda item to receive public input. RFPGs may want to consider the practice of handling items on the agenda so that members of the public have an opportunity to address the RFPG on an item before a vote is taken.
 - ii. Encourage the technical consultant(s) to provide a planning process recap and next steps during each full RFPG meeting.
- E. Refer to [31 TAC §361.21](#) (General Notice Requirements) to calculate public notice deadlines for various types of meeting requirements, comment period requirements, and for scheduling Planning Group Sponsor tasks prior to an RFPG meeting.
- F. Encourage the technical consultant(s) to provide meeting materials to members as far in advance as possible to allow for additional time for members to review and digest the material and make informed decisions.
- G. Communicate with the RFPG members to encourage meeting materials to be reviewed prior the scheduled meetings.
- H. Encourage appropriate time for agenda item discussion.
- I. Survey RFPG members occasionally to determine how frequently they feel the group should meet, within budget limitations, in order to effectively develop their regional flood plan.
- J. Survey RFPG members occasionally to determine the preferred location, acknowledging facility constraints, to hold planning group meetings.
- K. Ensure that the RFPG's required website is kept up to date and that members are able to successfully navigate the website and access documents. Some RFPGs may have the Planning Group Sponsor directly perform the ongoing maintenance of the planning group's website while others may delegate the maintenance to the consultants.
- L. Ensure that planning group members are aware of how they can access the group's bylaws.

- M. Ensure that planning group members are aware of the RFPG's terms of office and process for selecting new members.
- N. Encourage all planning group members to attend committee meetings to assist with informed decision making.
- O. Facilitate interregional cooperation as appropriate.

3.2 New member orientation

This first planning cycle, the TWDB held welcome orientations for initially designated members of the RFPGs. Throughout this planning process and for future planning cycles, RFPGs will need to address how to orient additional new members. Planning Group Sponsors may either call or hold meetings with new members to provide such orientations. Orientations may occur during planning group meetings or be held separately for the new members. Examples of topics covered by Planning Group Sponsors to new members include an overview of the state and regional flood planning process, planning group history, open meetings requirements, and an overview of the flood planning region itself. Examples of documents provided to new members include a copy of the RFPG's bylaws, previous meeting packages or presentations, a copy of the current regional flood plan or plan summary, a list of members and consultants, a map of the flood planning region, and the regional flood planning rules.

The [New Member Overview](#) document maintained by the TWDB includes information on the regional flood planning process, key roles and responsibilities, funding the planning process, required planning considerations, plan contents, and TWDB resources. The [New RFPG Members](#) webpage includes additional information for orienting new members.

3.3 Web posting and newsletter distribution

RFPGs must create and maintain an external-facing website to make information available to the public. The required RFPG external website content includes RFPG, committee, subgroup, and subcommittee meeting notices, agendas, materials, and plan information. Materials could include presentations and handouts, and meeting minutes can also be posted on the RFPG website. The RFPG could post additional links to relevant materials available on the TWDB website to save the planning group time and storage space, such as links to the current draft regional flood plans, current planning cycle information, and flood planning data.

4 Open Meetings Act and Public Information Act

Pursuant to Texas Water Code § 16.062(l), all RFPG, committees, and subcommittees are subject to the Texas Government Code (Government Code) §§ 551 and 552 (Texas Open Meetings Act and the Public Information Act). This is of particular importance with regard to interactions between RFPG members outside of their publicly posted meetings.

The TWDB does not provide legal advice to the RFPGs. Therefore, RFPG members may wish to consult with attorneys from their organizations or their planning group sponsor for guidance. Members may also find the following helpful resources:

- Texas Open Meetings Act: <http://www.statutes.legis.state.tx.us/SOTWDocs/GV/htm/GV.551.htm>
- Open Meetings Act Handbook: https://www.texasattorneygeneral.gov/sites/default/files/files/divisions/open-government/openmeetings_hb.pdf
- Texas Public Information Act: <http://www.statutes.legis.state.tx.us/SOTWDocs/GV/htm/GV.552.htm>
- Public Information Act Handbook: https://www.texasattorneygeneral.gov/sites/default/files/files/divisions/open-government/publicinfo_hb.pdf

4.1 Training requirements

RFPG members, including voting and non-voting members, should complete the following trainings within 90 days from the date of their membership and preferably before their first planning group meetings.

- Open Meetings Act training required by Texas Government Code §551.005
- Public Information Act training required by Government Code §552.012.

Individuals may comply with the requirements by watching training videos on the AG’s website and printing completion certificates: [Public Information Act and Open Meetings Act Training Resources](#). RFPGs may choose if and how to maintain and make available for public inspection the record of its members’ completion of training.

The Open Meetings Act and Public Information Act both state that completing the training in one capacity satisfies the requirement in all capacities, so RFPG members who have completed these trainings as part of their outside employment would not need to complete them again as RFPG members.

Additionally, for the Public Information Act training, the members of a governmental body may appoint a “public information coordinator” to attend training in their place so long as the designee is the person primarily responsible for the processing of open records requests for the governmental body.

4.2 Meeting minutes and committee quorums

Pursuant to Government Code §551.021 and § 551.022, minutes of meetings or recordings must be taken of each meeting and those minutes or recordings are considered public records that must be made available for public inspection. The Open Meetings Act does not require minutes or recordings of closed (executive) sessions, but rather requires a certified agenda of those meetings.

Additionally, Texas Water Code §16.062(l) (as added by SB 8) states that each RFPG and any committee or subcommittee of a RFPG are subject to the Open Meetings Act. Therefore, quorums should be

calculated based on the membership of the committee or subcommittee, **not the RFPG as a whole**. For example, if an RFPG's Executive Committee is made up of five members, the number of members required for quorum would be three. Please see Section V(D) of the AG's Open Meetings Act Handbook for more information on this subject.

4.3 Additional guidance

The following information is generally based on questions TWDB staff has received for the regional *water* planning process, which operates administratively similar to the regional flood planning process. The RFPGs may wish to consult with the attorneys for their organizations on these questions.

A. Would a conference call (generally to discuss agenda setting) with Executive Committee members or pre-meeting "huddle" with Executive Committee members to discuss how the meeting will be run be subject to the Open Meetings Act?

- A call or "huddle" would be a meeting subject to the Open Meetings Act if it meets the definition of "meeting" in Government Code §551.001(4). This analysis also requires an analysis of the definition of "deliberation" in Government Code §551.001(2). Please see Section VI of the AG's Open Meetings Act Handbook and the cases and AG Opinions cited in that section for more information on this issue. Section VI(E) provides important information on "walking quorums," which are serial meetings of less than a quorum. Additionally, see Section 4.2 of this document regarding calculation of quorum for committees.

B. May RFPGs meet via telephone or video conference calls?

- Yes, meetings via telephone conference calls and video conference calls are permitted under the Open Meetings Act (Government Code §551.125 and §551.127) in limited circumstances. Please be aware that there are specific requirements and procedures that must be met in order to comply with the law such as special requirements for notice, record-keeping, and two-way communication between meeting locations.
- Please review the requirements in full before deciding whether to hold a meeting via teleconference or video conference.
- Please see Section VI(F) of the AG's Open Meetings Act Handbook for more information on the issue of both telephone and video conference calls, including references to cases and AG Opinions that may be helpful.
<https://www2.texasattorneygeneral.gov/opinions/opinions/49cornyn/op/2001/pdf/jc0352.pdf>

C. Are email discussions subject to the Open Meetings Act, if all member emails are visible in the "to" or "cc" fields?

- An email discussion is subject to the Open Meetings Act and may violate the Act if the discussion involves matters under the RFPG's responsibility or jurisdiction. This analysis also requires an analysis of the definition of "deliberation" in Government Code §551.001(2). The Open Meetings Act does not provide that the words exchanged must be spoken in person; members of a governmental body need not be in each other's physical presence to constitute a quorum. A deliberation may include an exchange of written materials or electronic mail. The definition of meeting reaches gatherings of a quorum of a governmental body even when the members of the quorum do not participate in deliberations among

themselves or third parties; the governmental body may be subject to the Open Meetings Act when it merely listens to a third party speak at a gathering the governmental body conducts or for which the governmental body is responsible. An email discussion could be a meeting subject to the Open Meetings Act if a quorum of the RFPG (or committee/subcommittee) were in the to, cc, or bcc fields. Please see Section VI of the AG's Open Meetings Act Handbook and the cases and AG Opinions cited in that section for more information in this issue. Section VI(E) provides important information on "walking quorums," which are serial meetings of less than a quorum.

- Note: Attorney General (AG) Opinion GA-0896 specifically discusses questions regarding email exchanges.

D. What are record-keeping expectations for RFPGs as they are subject to the Public Information Act?

- The RFPGs should consult with the attorneys for their sponsor political subdivision to determine what laws or rules governing the preservation of records would apply to the RFPG. Please see Section X of the AG's Public Information Act Handbook and the cases and AG Opinions cited in that section for more information on this issue.

E. Can staff from the RFPG's designated Planning Group Sponsor be appointed as the Public Information Act public information coordinator?

- The Public Information Act states that "A public official may designate a public information coordinator to satisfy the training requirements of this section for the public official if the public information coordinator is primarily responsible for administering the responsibilities of the public official or governmental body under this chapter..." (Government Code §552.012). It is the discretion of the RFPG who they choose to be the designated coordinator, if one is designated.

F. Can older training certificates be accepted for maintaining the record of members' completion of training?

- The Open Meetings Act and Public Information Act both state that completing the training in one capacity satisfies the requirement in all capacities, so RFPG members who have completed these trainings as part of their outside employment with political subdivisions would not need to complete them again as RFPG members. The Acts simply require public officials to complete the training within 90 days of taking office/assuming responsibilities as a member of the governmental body; it does not specify repeat training requirements.

G. Would a notarized statement affirming training completion be acceptable if a member has taken the training but cannot locate the completion certificate?

- It will be up to the RFPGs to prove compliance with the Act if they're questioned on it. It is up to the RFPG to prove compliance however they see fit.

H. Are "workgroups" formed by the RFPG subject to the Open Meetings Act?

- The AG's Open Meetings Act Handbook states that when a governmental body appoints a committee that includes less than a quorum of the parent body and grants it authority to supervise or control public business or public policy, the committee may itself be a governmental body subject to the Act (see Section V(D) and (E) of the AG's Open Meetings Act Handbook). It further states that the fact that a committee is called an advisory

committee does not necessarily mean it is considered an advisory committee under the Act. Based on the language in the AG's Open Meetings Act Handbook, the TWDB believes the more conservative interpretation would be to treat a workgroup in the same way as a committee.

- I. **Is telephonic texting between individual RFPG members during public meetings allowed under the Texas Open Meeting Act?**
 - No. Any communications related to the business of the RFPG must be made available to the public under the Texas Open Meetings Act and the Texas Public Information Act.

5 Useful TWDB webpage and document links

- [Regional Flood Planning Main Page](#)
- [Regional Flood Planning FAQs](#)
- [New RFPG Member Page](#)
- [1st Planning Cycle Documents \(2020-2023\)](#)
- [RFPG Upcoming Meeting Schedule](#)
- [Useful Flood Planning Links and Resources](#)
- Flood Planning Statutes - [Texas Water Code §16.061](#) and [§16.062](#)
- Flood Planning Rules - 31 Texas Administrative Code [Chapter 361](#) and [Chapter 362](#)

Please feel free to ask your region's TWDB [project manager](#) for assistance navigating any of the resources provided above.