

# TWDB Subcontracting Guidelines

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## **Provisions required in all TWDB subcontracts**

If you enter into a contract with the Texas Water Development Board (TWDB), please be advised that you are required to submit any and all subcontracts to the TWDB for review and inspection. This review is conducted to ensure that the subcontract is consistent with the terms and requirements included in the TWDB funding contract (prime agreement).

Items that should be included in each subcontract of a TWDB contract include:

1. **Contract Dates** – there should be a starting date and ending date for your agreement.
2. **Contract Amount** – your agreement should list the total value of the subcontract.
3. **Terms of Reimbursement** - Subcontracts must be cost reimbursable. Lump sum agreements are not permitted for services. Please also note that the TWDB does not reimburse “handling costs” (mark-ups) on any expenses. Any eligible travel expenses related to a subcontract may be reimbursed at the current rate for State of Texas employees which can be found at:  
<https://fm.x.cpa.state.tx.us/fmx/travel/textravel/trans/personal.php>
4. **Scope of Work** – the terms of the scope of work must be consistent with the scope of the prime agreement.
5. **Task Budget** – as appropriate. The task budget must be consistent with the task budget specified in the TWDB prime agreement.
6. **Expense Budget** – as appropriate. The expense budget must be consistent with the expense budget specified in the TWDB prime agreement.
7. **Signatures** – each subcontract must be executed appropriately by signature, by each party to the agreement.

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## **Specific Clause Requirements**

The requirements listed in the next section of this guideline document must be included in your subcontract agreement in order for the agreement to be acceptable to TWDB. Please note that these requirements are provided to facilitate the contracting process and as such are not intended to be legal advice that would establish or create an attorney-client relationship. It is recommended that an attorney be consulted for any legal advice that you may require.

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## TWDB Subcontracting Guidelines, Continued

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### **State Auditor Clause**

The following clause should be included in TWDB subcontracting agreements:

“By executing this Contract, the SUBCONTRACTOR accepts the authority of the State Auditor's Office, under direction of the legislative audit committee, to conduct audits and investigations in connection with any and all state funds received pursuant to this contract. The SUBCONTRACTOR shall comply with and cooperate in any such investigation or audit. The SUBCONTRACTOR agrees to provide the State Auditor with access to any information the State Auditor considers relevant to the investigation or audit. The SUBCONTRACTOR also agrees to include a provision in any subcontract related to this contract that requires the SUBCONTRACTOR to submit to audits and investigation by the State Auditor's Office in connection with any and all state funds received pursuant to the subcontract.”

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### **Financial Records Clause**

The following clause should be included in TWDB subcontracting agreements:

“The SUBCONTRACTOR (S) and its contracted parties shall maintain satisfactory financial accounting documents and records, including copies of invoices and receipts, and shall make them available for examination and audit by the EXECUTIVE ADMINISTRATOR of the TWDB. Accounting by the SUBCONTRACTOR (S) and its contracted parties shall be in a manner consistent with generally accepted accounting principles.”

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### **Ownership Clause**

The following clause should be included in TWDB subcontracting agreements:

“The TWDB shall have unlimited rights to technical or other data resulting directly from the performance of services under this CONTRACT. It is agreed that all reports, drafts of reports, or other material, data, drawings, computer programs and codes associated with this CONTRACT and developed by the SUBCONTRACTOR (S) or its contracted parties pursuant to this CONTRACT shall become the joint property of the SUBCONTRACTOR (S) and the TWDB. These materials shall not be copyrighted or patented by the SUBCONTRACTOR (S) or by any consultants involved in this CONTRACT unless the EXECUTIVE ADMINISTRATOR of the TWDB approves in writing the right to establish

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## TWDB Subcontracting Guidelines, Continued

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### **Ownership Clause** (continued)

copyright or patent; provided, however, that copyrighting or patenting by the SUBCONTRACTOR (S) or its SUB-SUBCONTRACTORS will in no way limit the TWDB 's access to or right to request and receive or distribute data and information obtained or developed pursuant to this CONTRACT. Any material subject to a TWDB copyright and produced by the SUBCONTRACTOR (S) or TWDB pursuant to this CONTRACT may be printed by the SUBCONTRACTOR (S) or the TWDB at their own cost and distributed by either at their discretion. The SUBCONTRACTOR (S) may otherwise utilize such material provided under this CONTRACT as it deems necessary and appropriate, including the right to publish and distribute the materials or any parts thereof under its own name, provided that any TWDB copyright is appropriately noted on the printed materials.

The SUBCONTRACTOR (S) and its contracted parties agree to acknowledge the TWDB in any news releases or other publications relating to the work performed under this CONTRACT.”

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### **No Debt Against The State Clause**

The following clause should be included in TWDB subcontracting agreements:

“This SUBCONTRACT and Agreement shall not be construed as creating any debt by or on behalf of the State of Texas and the TWDB, and all obligations of the State of Texas are subject to the availability of funds. To the extent the performance of this SUBCONTRACT transcends the biennium in which this SUBCONTRACT is entered into, this SUBCONTRACT is specifically contingent upon the continued authority of the TWDB and appropriations therefore.”

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### **Licenses, Permit and Insurance Clause**

The following clause should be included in TWDB subcontracting agreements:

“For the purpose of this CONTRACT, the SUBCONTRACTOR (S) will be considered an independent SUBCONTRACTOR and therefore solely responsible for liability resulting from negligent acts or omissions. The SUBCONTRACTOR (S) shall obtain all necessary insurance, in the judgment of the SUBCONTRACTOR (S), to protect themselves, the CONTRACTOR, the TWDB, and employees and officials of the TWDB from liability arising out of this CONTRACT. The SUBCONTRACTOR (S) shall indemnify and

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## TWDB Subcontracting Guidelines, Continued

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### **Licenses, Permit and Insurance Clause** (continued)

hold the TWDB and the State of Texas harmless, to the extent the SUBCONTRACTOR (S) may do so in accordance with state law, from any and all losses, damages, liability, or claims therefore, on account of personal injury, death, or property damage of any nature whatsoever caused by the SUBCONTRACTOR (S), arising out of the activities under this CONTRACT.

The SUBCONTRACTOR (S) shall be solely and entirely responsible for procuring all appropriate licenses and permits, which may be required by any competent authority for the SUBCONTRACTOR (S) to perform the subject work.”

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### **REGIONAL WATER PLANNING**

If you have entered into a Regional Water Planning agreement with the TWDB, you must include the previously listed clauses for **State Auditor, Financial Records, No Debt Against The State, Licenses, Permit and Insurance** in your subcontracts – and the following requirements:

#### **OWNERSHIP** (*substitutes for content listed on pages 2 and 3 of this document*)

"It is agreed that all reports, drafts of reports, or other material, data, drawings, computer programs and codes associated with this contract and developed by the (Name of SUBCONTRACTOR) pursuant to this contract shall become the joint property of the REGIONAL WATER PLANNING GROUP, (Name of SUBCONTRACTOR), (Name of SUB-SUBCONTRACTOR), and the Texas Water Development Board. These materials shall not be copyrighted or patented by the (Name of SUBCONTRACTOR). (Name of SUBCONTRACTOR) agrees that neither the Regional Water Planning Group nor the Texas Water Development Board are parties to this contract and agrees that that these entities have no liability under the terms of this contract. The Texas Water Development Board is solely a third-party beneficiary under this contract."

#### **COMPLIANCE WITH BOARD RULES AND STATE LAW**

The SUB-CONTRACTOR (S) shall comply with BOARD rules and adhere to all requirements in state law pertaining to the procurement of professional services.

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### **Questions?**

If you have any questions regarding these requirements, please send an email to [contracts@twdb.texas.gov](mailto:contracts@twdb.texas.gov).

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