

SUBCHAPTER B. STRUCTURAL REPAIR GRANT PROGRAM
§§529.51 – 529.62

§529.50. Statutory Authority and Policy Statement.

Pursuant to §201.001(d), Agriculture Code, the Texas State Soil and Water Conservation Board is designated by the Texas Legislature as the state agency responsible for conserving soil and related resources of this state. Within this context, the State Board is charged with controlling and preventing soil erosion, controlling floods, preventing the impairment of dams and reservoirs, assisting in maintaining the navigability of rivers and harbors, and thereby protecting and promoting the health, safety, and general welfare of the people of this state. Consistent with this authority, it is the policy of the Texas State Soil and Water Conservation Board to administer a grant program through local soil and water conservation districts and other flood control dam sponsors that provides financial assistance for structural repair activities on United States Department of Agriculture Natural Resources Conservation Service assisted flood control dams. In accordance with this purpose, §§529.51 -529.62 of this subchapter (relating to Structural Repair Grant Program) are adopted.

§529.51. Definitions.

The following words and terms, when used in this subchapter, have the following meanings:

(1) Authorized representative--An individual representing all sponsors identified on an application for structural repair grant funds. The authorized representative shall be the single point of contact for all communications regarding an application.

(2) Eligible applicant--A partnership of all entities listed as a sponsor on a watershed agreement for a watershed project.

(3) Fiscal year--The 12-month period of time beginning September 1 of a year and ending on August 31 of the following year.

(4) Flood control dam--Floodwater retarding structures, also commonly referred to as flood control structures, watershed structures, flood prevention or "FP" sites, and certain grade stabilization structures included in the National Inventory of Dams built by the federal government under one of the four following federal authorizations:

(A) Public Law 78-534, Section 13 of the Flood Control Act of 1944;

(B) Public Law 156-67, the pilot watershed program authorized under the heading Flood Prevention of the Department of Agriculture Appropriation Act of 1954;

(C) Public Law 83-566, the Watershed Protection and Flood Prevention Act of 1954; and

(D) Subtitle H of Title XV of the Agriculture and Flood Act of 1981, commonly known as the Resource Conservation and Development Program.

(5) In-kind match--Non-monetary contributions of services, equipment, or other items of value included in a contract scope of work between the State Board and a sponsor for the purpose of

satisfying all or a portion of a non-state funded matching requirement for structural repair activities. In-kind match is not eligible if the source is contributing the in-kind match because it was enabled to do so directly through state appropriations.

(6) National Inventory of Dams--The U.S. Army Corps of Engineers' list of dams first authorized by the National Dam Inspection Act (Public Law 92-367) of 1972.

(7) Natural Resources Conservation Service (NRCS)--An agency of the United States Department of Agriculture which was formerly known as the Soil Conservation Service.

(8) Operation and maintenance (O&M)--The activities associated with maintaining optimal physical conditions and functioning of a flood control dam specified in §529.2(9) of this chapter; O&M is not structural repair as defined in §529.51(13) of this subchapter.

(9) Reimbursement request--A request for reimbursement of an activity included in a contract scope of work executed between the State Board and a sponsor.

(10) Soil and water conservation district (SWCD)--A governmental subdivision of this state and a public body corporate and politic, organized pursuant to Chapter 201 of the Agriculture Code.

(11) Sponsor--An entity or individual that is a signatory to a watershed project plan, watershed agreement, or O&M agreement.

(12) State Board--The Texas State Soil and Water Conservation Board organized pursuant to Chapter 201 of the Agriculture Code.

(13) Structural repair--The act of performing an activity or activities for the purpose of restoring a flood control dam to original design specifications or enhanced design specifications required as a result of design, construction, material, or foundation deficiencies not foreseen at the time of original design or construction. Structural repair is not an activity defined as operation and maintenance in §529.2(9) of this chapter. Structural repair activities include:

(A) Lime treatment, removal and replacement, and/or slope flattening of dam embankment to repair slope slides;

(B) Repair of sinkholes in dam embankment;

(C) Repair of cracks in dam embankment;

(D) The installation of armored plating on dam embankments to repair and mitigate wave erosion;

(E) Performing earthwork and establishing vegetation on dam embankments to repair and mitigate wave erosion;

(F) Drain system installation or repair;

(G) Repair of excessive settlement on dam embankment;

(H) Replacement or stabilization of vertical inlet on principal spillway;

(I) Installation of a liner to repair or mitigate pipe separation or cracking on principal spillway;

(J) Replacement of a principal spillway pipe due to separation or cracking;

(K) Installation of impact basin or armored plating on plunge pool due to erosion;

(L) Repair of major auxiliary spillway erosion from storm damage;

(M) Any activity defined as O&M in §529.2(9) of this chapter if the performance of the activity is determined to be necessary by the State Board in conjunction with a structural repair activity defined in this subchapter; O&M activities determined to be necessary by the State Board will be included in a contract scope of work executed between the State Board and a sponsor;

(N) Any other activity related to flood control dam structural repair at the discretion of the State Board and included in a contract scope of work executed between the State Board and a sponsor.

(14) Texas Commission on Environmental Quality (TCEQ)--The state agency created under Title 2, Subtitle A, Chapter 5 of the Texas Water Code (formerly the Texas Natural Resource Conservation Commission).

(15) Watershed agreement--A legal document that records the responsibilities of the sponsors and NRCS for implementing a watershed project plan relating to contributions of funding, the acquisition of land rights, construction, O&M, project administration, management of affected lands, as well as responsibilities regarding permitting and water and mineral rights.

(16) Watershed project--A geographic area delineated by the boundaries of a watershed within which a series of flood control dams have been constructed or are planned to be constructed by NRCS to prevent and/or minimize floodwater damage to lives and property.

(17) Watershed project plan (or Work Plan)--A plan developed by local sponsors with the assistance of NRCS for a watershed project that includes descriptions of the watershed, problems to be addressed, works of improvement to be installed, costs of installed works, project benefits, cost-benefit analyses, financing information, and general requirements for O&M.

§529.52. Administration of Funds.

(a) General Fiscal Provisions. SWCD sponsors entering into a contract with the State Board for structural repair activities must comply with all applicable provisions within the Manual of Fiscal Operations for Soil and Water Conservation Districts unless the contract scope of work specifies otherwise. The Manual of Fiscal Operations for Soil and Water Conservation Districts is approved and periodically amended by the State Board and is available on the State Board's website; hardcopies of this manual may be requested from the State Board.

(b) Sources of funding. The amount of funding made available for structural repair grants during a fiscal year will be determined by the State Board out of general revenue appropriated by the Texas Legislature. Other sources of funding may be used for structural repair grants by the State Board if

applicable and when available. Funds will be obligated by contract between the State Board and sponsors for the period of time specified within a contract.

(c) Reimbursement only. Payment will be made on a reimbursement basis only.

(d) Activities eligible for reimbursement. Funds may be used to reimburse costs associated with the performance of structural repair activities as defined by this subchapter on flood control dams, as well as costs associated with the purchasing of easements, engineering design, performance inspections, and any other structural repair activities approved by the State Board at their discretion. Legal fees associated with purchasing easements and land rights determinations may be eligible for reimbursement if specified in a contract scope of work executed between the State Board and sponsors.

(e) Non-state funded matching requirement. Contracts for structural repair projects between the State Board and a sponsor will require that 5-percent of the total contract cost be provided by funds not originating from state appropriations. The State Board may enter into a contract with sponsors that provides 100-percent of the total project cost if the flood control dam on which the activities are to be performed is a part of a watershed project where the original watershed agreement did not include at least one sponsor empowered by the State of Texas to levy taxes.

(f) In-kind match contributions. All or a portion of the non-state funded matching requirement may be satisfied through "in-kind" contributions. In-kind contributions must be documented in contracts between the State Board and sponsors at rates approved by the State Board prior to obligation of funds.

(g) Administrative costs of sponsors. Contracts between the State Board and sponsors may include an amount for administration not to exceed 5-percent of the total contract amount.

(h) Utilizing structural repair grant funds for O&M. Contracts between the State Board and sponsors may include funds for performing O&M activities as defined by §529.2(9) of this chapter if those activities are included in the contract scope of work.

§529.53. Prioritization of Structural Repair Needs.

It is the intent of the State Board that flood control dam sponsors prioritize structural repair needs within their respective jurisdictions. The act of submitting an application for structural repair grant funds shall be interpreted by the State Board as consensus that the projects identified in the application are the highest priorities mutually selected by all sponsors.

§529.54. Request for Applications.

The State Board may publish a request for applications for structural repair grants. The amount of funding made available through the request for applications will be determined by the State Board. Upon being made aware of flood control dam repair needs not identified on an application received as a result of the request for applications, the State Board may independently solicit for contractors to complete a structural repair project.

§529.55. Submitting an Application.

(a) Applications must be submitted on forms provided by the State Board.

(b) Copies of applicable watershed agreements for the flood control dams identified in an application must be submitted with the application.

(c) All applications must have certification signatures by authorized individuals from all sponsors identified in the applicable watershed agreement acknowledging and approving the application prior to it being submitted to the State Board for consideration. Certification by signature means the sponsor agrees to cooperate on the project with the other sponsors, may consider entering into a contract with the State Board relating to the project's completion, and is aware that the State Board may not pay more than 95-percent of the total project cost. Where one or more of the sponsors listed on the watershed agreement is no longer formally in existence, the remaining sponsors should contact the State Board prior to submitting an application for additional guidance.

(d) Each application must identify one individual as the person that will represent all sponsors identified on the application. The authorized representative shall be the single point of contact for all communications regarding an application.

(e) Each application must include cost estimates for the entire project. Cost estimates must be categorized by construction, engineering design, and easement purchasing.

(f) Each application must specify the length of time in which the project is anticipated to be completed.

(g) Each application must include a characterization of the amount, type, and source of match funding the sponsors intend to acquire if the application is selected by the State Board for contracting.

(h) Submittal of an application does not constitute a contractual agreement or a promise of a contractual agreement between the State Board and any entity.

§529.56. Review and Selection of Applications.

(a) The State Board will perform an administrative and technical review of all applications to evaluate consistency with state law and program rules and guidance.

(b) Applications determined to be administratively and technically complete, as well as consistent with program rules, will be evaluated against criteria adopted by the State Board. Criteria used by the State Board for determining which applications may result in a contract for grant funds include, but are not limited to:

- (1) Accuracy and completeness of the application;
- (2) Risk of dam failure;
- (3) Potential loss of life due to dam failure;
- (4) Potential damage to critical infrastructure due to dam failure;
- (5) The extent and type of structural repair needed; and

(6) The ability of sponsors to provide five-percent of the total cost of the project through funds not originating from state appropriations.

§529.57. Contracts Between the State Board and Sponsors.

(a) Structural repair grant funds may be obligated through contractual agreement to any entity listed as a sponsor on a watershed agreement, or to the NRCS. The State Board may execute contracts with multiple sponsors to complete the project as necessary.

(b) Contracts between the State Board and sponsors shall specify that the State Board is responsible for no more than 95-percent of the total contract amount. The remaining 5-percent must be documented as a monetary or in-kind contribution in the contract.

§529.58. Solicitation of Bids by Contracted Sponsors.

Solicitation of bids will be required for purchases more than \$50,000 in accordance with provisions of §271.024 of the Local Government Code.

§529.59. Subcontracting Requirements.

(a) Contracted sponsors may let subcontracts for engineering design, contraction, and easement purchasing. Subcontracts must be in written form and be made available to the State Board upon request.

(b) If a subcontract is for the construction of public works and is required by §271.024 of the Local Government Code to be submitted to competitive bidding, the successful bidder must comply with §271.059 of the Local Government Code relating to payment and performance bonding.

§529.60. Engineering Design and Inspection.

(a) Funding for required engineering design and inspection on structural repair activities may be included in a contract between the State Board and a sponsor, or may be provided through a separate agreement between the State Board and another contracted entity.

(b) Where engineering designs associated with a structural repair grant will result in a change to the functioning of the dam, the engineer of record must be notified of the planned change in design prior to the commencement of work.

(c) If concurrence from the NRCS and/or TCEQ must be obtained for a structural repair activity included in a contract scope of work, such concurrence must be obtained and provided in writing to the State Board prior to the commencement of work.

§529.61. Reimbursements.

(a) Reimbursement requests for contracted structural repair activities are subject to approval by the State Board and must be submitted on forms provided by the State Board.

(b) All reimbursement requests for activities performed by a subcontractor must be accompanied by applicable invoices.

§529.62. Structural Repair Grants Used as Match for Federal Watershed Rehabilitation Projects.

Grant funds included in a contract between the State Board and a sponsor for a structural repair activity may be used as match funding for a federal watershed rehabilitation project if the repair need is included in the rehabilitation project scope of work.

Proposed
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