



DEPARTMENT OF THE ARMY

U.S. Army Corps of Engineers
441 G Street N.W.
WASHINGTON, D.C. 20314-1000

REPLY TO
ATTENTION OF:

CECW-P/CECW-I

AUG 11 2008

MEMORANDUM FOR Commanders, Major Subordinate Commands

SUBJECT: Implementation Guidance for Section 2013 of the Water Resources Development Act of 2007 (WRDA 2007) Relating to In-Kind Contributions and State Funding Limits for Planning Assistance to States Activities

1. Section 2013 of WRDA 2007 amends Section 22 of WRDA 1974, as previously amended, to add Technical Assistance to the services that the Corps can provide under Section 22; authorize to be appropriated \$5,000,000 annually to carry out the Technical Assistance activities; raise the annual per-State limit for comprehensive plans from \$500,000 to \$2,000,000; raise the amount of non-Federal contribution that may be provided through the provision of services, materials, supplies, or other in-kind services for the comprehensive plan from 50 percent to 100 percent; and require annual reporting to Congress of the individual comprehensive planning activities proposed for funding under subsection (a)(1) for that fiscal year. This memorandum addresses only the in-kind contributions and increased state funding limits. The technical assistance and reporting requirements will be addressed in more detail under separate guidance. Copies of Section 22 of WRDA 1974, as amended, and Section 2013 of WRDA 2007 are enclosed.

2. Section 2013(4) and Section 2013(6)(B).

a. Section 2013(4) raises the amount of the non-Federal contribution that may be provided through the provision of services, materials, supplies, or other in-kind services necessary to prepare a comprehensive plan under Section 22 of WRDA 1974, as amended, from 50 percent to 100 percent.

b. Section 2013(6)(B) raises the annual per-State limit for preparation of comprehensive plans under Section 22 of WRDA 1974, as amended, from \$500,000 to \$2,000,000.

3. Implementation Guidance on Increased Amount of In-Kind Contributions Allowed and Per-State Limit.

a. Both the increased amount of in-kind contributions allowed and per-State limit are applicable to comprehensive studies that do not have an executed Section 22 agreement as of 7 November 2007. Therefore, existing Section 22 agreements executed on or before 7 November 2007 will not be amended to raise the limits.

CECW-P/CECW-I

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b. Existing Section 22 agreements for comprehensive studies executed on or after 8 November 2007 should be amended to reflect the increased amount of in-kind contributions allowed and per-State limit. The MSC Commander is authorized to approve amendments drafted using the enclosed sample. Division Counsel review of, and recommendation to approve, any amendment is required prior to approval by the MSC Commander. The District Commander is authorized to execute the amendment after notification of its approval.

c. Until a Section 22 agreement model is developed, incorporating the increased amount of in-kind contributions allowed and per-State limit specified above into a future Section 22 agreement is not considered a deviation from the sample Section 22 agreements.

FOR THE COMMANDER



STEVEN L. STOCKTON, P.E.
Director of Civil Works

3 Encls

1. Section 22, as amended
2. Section 2013 WRDA 2007
3. Sample Amendment

DISTRIBUTION: MSC COMMANDERS

Great Lakes and Ohio Division
Mississippi Valley Division
North Atlantic Division
Northwestern Division
Pacific Ocean Division
South Atlantic Division
South Pacific Division
Southwestern Division

Section 22 of WRDA 1974, as amended

SEC. 22. (a) FEDERAL STATE COOPERATION.—

(1) COMPREHENSIVE PLANS.—The Secretary of the Army, acting through the Chief of Engineers, is authorized to cooperate with any State in the preparation of comprehensive plans for the development, utilization, and conservation of the water and related resources of drainage basins, watersheds, or ecosystems located within the boundaries of such State and to submit to Congress reports and recommendations with respect to appropriate Federal participation in carrying out such plans.

(2) TECHNICAL ASSISTANCE.—

(A) IN GENERAL.—At the request of a governmental agency or non-Federal interest, the Secretary may provide, at Federal expense, technical assistance to such agency or non-Federal interest in managing water resources.

(B) TYPES OF ASSISTANCE.—Technical assistance under this paragraph may include provision and integration of hydrologic, economic, and environmental data and analyses.

(b) Fees.--

(1) Establishment and collection. -- For the purpose of recovering 50 percent of the total cost of providing assistance pursuant to subsection (a)(1), the Secretary of the Army is authorized to establish appropriate fees, as determined by the Secretary, and to collect such fees from States and other non-Federal public bodies to whom assistance is provided under subsection (a)(1).

(2) IN -KIND SERVICES.-- The non-Federal contribution for preparation of a plan subject to the cost sharing program under this subsection may be made by the provision of services, materials, supplies, or other in-kind services necessary to prepare the plan.

(3) Deposit and use. --Fees collected under this subsection shall be deposited into the account in the Treasury of the United States entitled, 'Contributions and Advances, Rivers and Harbors, Corps of Engineers (8862)' and shall be available until expended to carry out this section..

(c) AUTHORIZATION OF APPROPRIATIONS.—

(1) FEDERAL AND STATE COOPERATION.—There is authorized to be appropriated not to exceed \$10,000,000 annually to carry out subsection (a)(1), except that not more than \$2,000,000 shall be expended in anyone year in anyone State.

(2) TECHNICAL ASSISTANCE.—There is authorized to be appropriated \$5,000,000 annually to carry out subsection (a)(2), of which not more than \$2,000,000 annually may be used by the Secretary to enter into cooperative agreements with nonprofit organizations to provide assistance to rural and small communities.

(d) ANNUAL SUBMISSION OF PROPOSED ACTIVITIES.—Concurrent with the President's submission to Congress of the President's request for appropriations for the Civil Works Program for a fiscal year, the Secretary shall submit to the Committee on Transportation and Infrastructure of the House of Representatives and the Committee on Environment and Public Works of the Senate a report describing the individual activities proposed for funding under subsection (a)(1) for that fiscal year.

(e) For the purposes of this section, the term "State" means the several States of the United States, Indian tribes, the Commonwealth of Puerto Rico, Guam, American Samoa, the Virgin Islands, the Commonwealth of the Northern Marianas, and the Trust Territory of the Pacific Islands.

SEC. 2013. TECHNICAL ASSISTANCE.

Section 22 of the Water Resources Development Act of 1974 (42 U.S.C. 1962d-16) is amended—

(1) in subsection (a) by striking “The Secretary” and inserting the following:

“(a) FEDERAL STATE COOPERATION.—

“(1) COMPREHENSIVE PLANS.—The Secretary”;

(2) by inserting after the last sentence in subsection (a) the following:

“(2) TECHNICAL ASSISTANCE.—

“(A) IN GENERAL.—At the request of a governmental agency or non-Federal interest, the Secretary may provide, at Federal expense, technical assistance to such agency or non-Federal interest in managing water resources.

“(B) TYPES OF ASSISTANCE.—Technical assistance under this paragraph may include provision and integration of hydrologic, economic, and environmental data and analyses.”;

(3) in subsection (b)(1) by striking “this section” each place it appears and inserting

“subsection (a)(1)”;

(4) in subsection (b)(2) by striking “Up to 1/2 of the” and inserting “The”;

(5) in subsection (c) by striking “(c) There is” and inserting the following:

“(c) AUTHORIZATION OF APPROPRIATIONS.—

“(1) FEDERAL AND STATE COOPERATION.—There is”;

(6) in subsection (c)(1) (as designated by paragraph (5))—

(A) by striking “the provisions of this section” and inserting “subsection (a)(1),”;

(B) by striking “\$500,000” and inserting “\$2,000,000”;

(7) by inserting at the end of subsection (c) the following:

“(2) TECHNICAL ASSISTANCE.—There is authorized to be appropriated \$5,000,000 annually to carry out subsection (a)(2), of which not more than \$2,000,000 annually may be used by the Secretary to enter into cooperative agreements with nonprofit organizations to provide assistance to rural and small communities.”;

(8) by redesignating subsection (d) as subsection (e); and

(9) by inserting after subsection (c) the following:

“(d) ANNUAL SUBMISSION OF PROPOSED ACTIVITIES.—Concurrent with the President’s submission to Congress of the President’s request for appropriations for the Civil Works Program for a fiscal year, the Secretary shall submit to the Committee on Transportation and Infrastructure of the House of Representatives and the Committee on Environment and Public Works of the Senate a report describing the individual activities proposed for funding under subsection (a)(1) for that fiscal year.”.

SECTION 22– PUBLIC LAW 93-251, AS AMENDED

SAMPLE AMENDMENT

NOTES:

1. FORMAT. - Remove the cover pages, notes section, all bold type references to notes, and any bold type text from the amendment prior to forwarding for review.

2. AMENDMENT NUMBER. - The number assigned should sequentially follow the number of the last executed amendment to the PAS Agreement for this project.

(Example: If two previously executed amendments – this should be amendment 3)

3. MULTIPLE SPONSORS. If the original executed agreement had multiple sponsors identified in the first paragraph and on the signature page, all the entities identified as sponsors should sign the amendment. The changes below are required for an amendment with multiple sponsors. These changes are not considered deviations from this sample.

A. Modify title and first paragraph to include name of each entity serving as a sponsor – as in original executed agreement.

B. Change “Sponsor” to “Sponsors” throughout the amendment.

C. On the signature page, a separate signature block will be required for each entity serving as a sponsor.

D. A separate Certificate of Authority will be required for each entity serving as a sponsor.

E. A Certification Regarding Lobbying must be signed by each signatory to the amendment.

4. REFERENCE TO SPONSOR. - Use “Sponsor”, “State”, “Commonwealth”, “Territory” or other identifier in the parenthetical phrase and consistently throughout the amendment as shown in the original executed agreement. This change is not considered a deviation from the sample.

5. SPONSOR REPRESENTATIVE. – Insert the title of the sponsor’s representative signing the amendment. Do not include the name, only the title. The title shown for the sponsor’s representative should match the title shown on the signature page and should be preceded by “the” or “its”, as appropriate, to match the title of the sponsor’s representative. (Example: the Mayor)

6. FIRST WHEREAS CLAUSE. - The civilian format for the date should be used. (Example: January 22, 2004)

7. WHEREAS CLAUSE ADDRESSING PRIOR AMENDMENTS.

A. If there are no prior amendments to the original executed agreement (this would be Amendment No.1), delete this Whereas Clause. Deletion of this Whereas Clause is not considered a deviation from this sample.

B. If there are prior amendments, include a Whereas Clause for each prior amendment following the format shown. The first blank should be the date of the amendment and the second blank should be a short description of what was accomplished by that amendment.

C. Choose Option (1) if this is the first amendment to the original executed agreement or Option (2) if the original executed agreement has been amended previously. Delete, in its entirety, the option not used.

8. VERIFY LOCATION OF LANGUAGE. - Verify the location of the language in your PAS Agreement which is to be amended. Other clauses specific to your project could alter its location slightly. The language shown in the sample is the usual location for the items required to be changed. If the location is different, correct the reference to the Whereas Clause or paragraph letter, as necessary. These corrections are not considered deviations from this sample.

9. CERTIFICATE OF AUTHORITY. - The attorney signing the Certificate of Authority cannot be the signatory to the amendment. The attorney signing the Certificate of Authority is certifying that the signatory to the amendment has the authority to sign for the sponsor. Do not forget to fill in the name in the first line prior to execution of the amendment.

10. PREPARING AMENDMENT FOR SIGNATURE.

A. When printing the amendment for execution: 1) remove the cover page, notes section, bold type references to notes, and any bold type text from the amendment; 2) ensure that the appropriate information has been included in all blanks in the amendment and the Certificate of Authority; and 3) ensure that there are no page breaks which allow half empty pages.

B. Since this is a civilian document use the civilian version of the District Engineer's signature block.

C. Before signature by the Government representative, ensure that the sponsor signs and dates a minimum of four copies of the amendment, and Certification Regarding Lobbying, and that the Certificates of Authority are signed and dated by the appropriate people. The date on the first page should be filled in by the Government representative signing the amendment, not the sponsor.

D. The Government should retain two copies of the fully executed amendment. All other copies should be provided to the sponsor. A photocopy or a pdf file (as determined by the MSC) of the fully executed amendment should be provided to the MSC within 7 days after execution of the amendment.

AMENDMENT NO. [SEE NOTE - 2]
TO
PLANNING ASSISTANCE TO STATES AGREEMENT
BETWEEN
THE DEPARTMENT OF THE ARMY
AND
[FULL NAME OF SPONSOR(S) AS SHOWN ON EXECUTED PAS AGREEMENT]
FOR

[FULL NAME OF STUDY AS SHOWN ON EXECUTED PAS AGREEMENT]

THIS AMENDMENT NO. [SEE NOTE - 2] is entered into this _____ day of _____, _____, by and between the Department of the Army (hereinafter the "Government"), represented by the U.S. Army Engineer, _____ District (hereinafter the "District Engineer"), and the [FULL NAME OF SPONSOR AS SHOWN ON EXECUTED PAS AGREEMENT] [SEE NOTE - 4] (hereinafter the "Sponsor"), represented by the [SEE NOTE - 5].

WITNESSETH, THAT:

WHEREAS, the Government and the Sponsor entered into a Planning Assistance to States Agreement on [SEE NOTE - 6] _____ (hereinafter the "Agreement") for the [FULL NAME OF STUDY AS SHOWN ON EXECUTED PAS AGREEMENT];

[SEE NOTE - 7]

WHEREAS, the Government and the Sponsor entered into an Amendment to the Agreement on _____ to _____;

WHEREAS, Section 2013 of the Water Resources Development Act of 2007, Public Law 110-114, amended Section 22 of the Water Resources Development Act of 2007, Public Law 93-251, as amended (42 U.S.C. 1962d-16) to increase the amount of in-kind contributions the Sponsor may provide toward its required contribution of Study Costs from 50 percent to 100 percent and to increase the statutory limitation on the amount that may be expended to carry out comprehensive plans in any one year in any one State from \$500,000 to \$2,000,000.

NOW, THEREFORE, the Government and the Sponsor agree to [SEE NOTE - 7 - CHOOSE: (1) amend the Agreement (2) further amend the Agreement] as follows:

[SEE NOTE - 8]

1. The last Whereas Clause is replaced with the following:

“WHEREAS, the Sponsor may provide up to 100 percent of its required contribution of Study Costs through the provision of services, materials, supplies or other in-kind-services necessary to prepare the plan.”

2. The second sentence of Article II.B. is replaced with the following:

“In-kind services may comprise 100 percent of the Sponsor’s contributions.”

3. Article XI – LIMITATION ON GOVERNMENT EXPENDITURES is amended by deleting “\$500,000” and substituting “\$2,000,000”.

4. All other terms and conditions of the [SEE NOTE - 7 - CHOOSE: (1) Agreement (2) Agreement, as amended] remain unchanged.

IN WITNESS WHEREOF, the parties hereto have executed this Amendment No. [SEE NOTE – 2] which shall become effective upon the date it is signed by the District Engineer.

DEPARTMENT OF THE ARMY

NAME OF SPONSOR

BY: _____

BY: _____

DATE: _____

DATE: _____

[SEE NOTE - 9]

CERTIFICATE OF AUTHORITY

I, _____, do hereby certify that I am the principal legal officer of the [FULL NAME OF SPONSOR AS SHOWN ON EXECUTED PAS AGREEMENT], that the [FULL NAME OF SPONSOR AS SHOWN ON EXECUTED PAS AGREEMENT] is a legally constituted public body with full authority and legal capability to perform the terms of Amendment No. [SEE NOTE - 2], between the Department of the Army and the [FULL NAME OF SPONSOR AS SHOWN ON EXECUTED PAS AGREEMENT] in connection with the [FULL NAME OF STUDY AS SHOWN ON EXECUTED PAS AGREEMENT], and to pay damages, if necessary, in the event of the failure to perform in accordance with the terms of this Agreement, as required by Section 221 of the Flood Control Act of 1970, Public Law 91-611, as amended (42 U.S.C. 1962d-5b), and that the persons who have executed Amendment No. [SEE NOTE - 2] on behalf of the [FULL NAME OF SPONSOR AS SHOWN ON EXECUTED PAS AGREEMENT] have acted within their statutory authority.

IN WITNESS WHEREOF, I have made and executed this certification this _____ day of _____, _____.

NAME
TITLE

CERTIFICATION REGARDING LOBBYING

The undersigned certifies, to the best of his or her knowledge and belief that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

(3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31, U.S.C. 1352. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

NAME
TITLE OF SIGNATORY TO AMENDMENT
DATE: _____