



DEPARTMENT OF THE ARMY
U.S. ARMY CORPS OF ENGINEERS
WASHINGTON, D.C. 20314-1000

JUL 21 2010

CECW-CO-R

MEMORANDUM FOR COMMANDERS, MAJOR SUBORDINATE COMMANDS AND
DISTRICT COMMANDS

SUBJECT: Annual Reporting for Regulatory Section 214 Funding Agreements with Non-Federal Public Entities

1. Reference and Background:

a. Section 214 of the Water Resources Development Act (WRDA) of 2000 (Public Law 106-541) allows the Secretary of the Army to accept funds from non-federal public entities in order to expedite the regulatory permit review process. On 11 July 2001, the Secretary of the Army delegated his authority to the Chief of Engineers and his authorized representatives to, after public notice, accept and expend funds contributed by non-federal public entities to expedite the evaluation of regulatory permits under jurisdiction of the Department of the Army.

b. Section 1309 of the Transportation Equity Act for the 21st Century (TEA-21) and Section 6002(j) of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU, Public Law 109-59) allow for State Departments of Transportation to provide funds to the Corps to expedite the review of regulatory permit applications for transportation projects.

c. HQUSACE issued guidance on 17 July 2001 and 29 March 2004 for implementation of funding agreements under WRDA, TEA-21, or SAFETEA-LU, which included a requirement for districts to provide an annual report to HQUSACE on the status of funding agreements.

d. The Government Accountability Office (GAO) issued a report in May 2007 entitled "The Corps of Engineers Needs to Ensure that Permit Decisions Made Using Funds from Nonfederal Public Entities Are Transparent and Impartial (GAO-07-478)." Recommendations made in this report included updating the 2004 HQUSACE guidance referenced in 1.c. above and improving annual reporting of execution of the funding agreements.

e. On 1 October 2008, HQUSACE issued a memorandum to the field providing updated guidance in accordance with the 2007 GAO report.

f. In February 2010, GAO issued a follow-up report indicating that the Corps had not fully implemented all of the recommendations in the 2007 report. The 2010 GAO report indicated that improvements were needed with regard to transparency of decisions made under funding agreements and consistency in annual reporting in accordance with the 2008 guidance.

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2. Implementation:

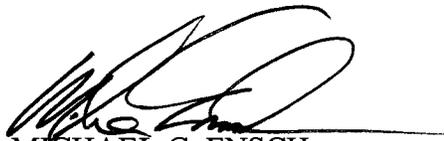
a. In response to the 2010 GAO report, HQUSACE has developed a standard template for use by districts for annual reporting for all regulatory permit process funding agreements. Use of the enclosed annual reporting template will improve consistency and meet recommendations provided in the 2007 and 2010 GAO reports.

b. All districts that accept and/or expend funds from a non-federal public entity under any of the above referenced authorities shall use the enclosed template to provide an annual report of all such active funding agreements.

3. Timing: Consistent with the 1 October 2008 guidance memorandum, District Commanders shall provide the completed annual report to Major Subordinate Commands for review. Major Subordinate Commands shall review the annual reports and ensure that they are provided to CECW-CO-R within 30 days of the conclusion of the fiscal year. CECW-CO-R shall compile all such annual reports received and provide an informational copy to OASA(CW) within 60 days of the conclusion of the fiscal year. This guidance is effective immediately and will remain in effect as long as any of the above authorities to accept and expend funds from non-federal public entities are in effect.

4. POC for this action is Jennifer Moyer at (202) 761-4598.

FOR THE COMMANDER:



MICHAEL G. ENSCH
Chief, Operations
Directorate of Civil Works

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MEMORANDUM FOR CECW-CO-R

SUBJECT: FY Reporting for Funding Agreements with Non-Federal Public Entities

1. Active Funding Agreements:

2. Public Notices: The Regulatory Program's 2008 guidance on implementation of funding agreements under Section 214 of WRDA 2000 requires districts to issue a public notice to announce when a district is considering accepting funds from a non-federal public entity and a second public notice when the district makes the decision to accept funds from a non-federal public entity. The following public notices regarding any funding agreements were issued this FY: .

3. Public Notice Comments:

a. Comments Received:

b. Response Provided:

4. Funding: Section 214 of WRDA 2000 and Section 6002(j) of SAFETEA-LU allow the Secretary of the Army to accept and expend funds contributed by non-federal public entities to expedite the permit evaluation process. The Regulatory Program's 2008 guidance on funding agreements gives examples of acceptable activities for funds to be expended on including technical writing, site visits, training, travel, field office set up costs, copying, coordination activities, additional personnel, and others. Funding may come directly from the non-federal public entity's budget or may be from a grant or other source. The following outlines the source of accepted funds, and the means of expenditures.

a. First Agreement:

- i. Carryover from previous FY:
- ii. Total funds accepted:
- iii. Total funds expended:
- iv. Reason for shortfall or carryover:
- v. Source of funding and type of expenditures:

b. Second Agreement:

- i. Carryover from previous FY:
- ii. Total funds accepted:
- iii. Total funds expended:

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SUBJECT: FY20__ Annual Reporting for Funding Agreements

- iv. Reason for shortfall or carryover:
- v. Source of funding and type of expenditures:

5. **Assessment:** The goal of funding through an agreement with a non-federal public entity is to expedite the permit evaluation process. This can be accomplished through qualitative means such as dedicating staff for improved communication, ability of the non-federal public entity to prioritize projects with Corps staff, and more thorough submittals of information. The permit process must be expedited quantitatively; by demonstrating that permit processing times have generally improved since inception of an agreement with emphasis on permit processing times for the non-federal public entity. The following describes how funds have been used to expedite the permit evaluation process.

- a. First Agreement:
 - i. Qualitative description:
 - ii. Quantitative description:
- b. Second Agreement:
 - i. Qualitative description:
 - ii. Quantitative description:

6. **Performance Metrics:** Establishing performance measures with the non-federal public entity for review of permit applications using contributed funds is a way to illustrate how effective the funding agreement is in expediting permit evaluations. The following performance metrics have been established for evaluation of permit applications for the non-federal public entity.

- a. First Agreement:
- b. Second Agreement:

7. **Impartial Decision Making:** While funds may be accepted to expedite the permit evaluation process, the funds must not impact impartial decision making. The main components of impartial decision making under the Regulatory Program's 2008 guidance on funding agreements include a one-level higher review and signature on all decisions (JD, NPR, GP, NW, LOP, SP, compliance actions) made under a funding agreement and the posting of all of these decisions on the district website. The higher level reviewer must be a position that is not fully or partially funded under the funding agreement. The 2008 guidance also indicates that funding may not be used for enforcement activities.

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The following outlines what measures have been taken to maintain impartial decision making on permit applications received from a non-federal public entity:

My signature below verifies that all decisions made under a funding agreement are clearly posted on the District website.

8. **Training:** The Regulatory Program's 2008 guidance on funding agreements requires that all funded staff complete annual training on the requirements of the guidance. Training was conducted this FY on _____, in the following manner: _____. My signature below verifies that all funded staff have completed the necessary training this FY.

9. **Level of Satisfaction:** Letters from the following non-federal public entities have been enclosed, rating the execution of their respective funding agreements: _____.

APPROVED BY:

Chief, Regulatory

Example for Instructional Purposes Only

CE Insert District

MEMORANDUM FOR CECW-CO-R

SUBJECT: FY2010 Reporting for Funding Agreements with Non-Federal Public Entities

1. **Active Funding Agreements:** *(List the active funding agreements by entity)* State DOT and XYZ County

2. **Public Notices:** The Regulatory Program's 2008 guidance on implementation of funding agreements under Section 214 of WRDA 2000 requires districts to issue a public notice to announce when a district is considering accepting funds from a non-federal public entity and a second public notice when the district makes the decision to accept funds from a non-federal public entity. The following public notices regarding any funding agreements were issued this FY: *(If no PNs were issued this FY then indicate no PNs were issued)* A PN was issued on 1 October 2009 indicating ABC District's decision to accept funds from XYZ County.

3. **Public Notice Comments:**
 - a. **Comments Received:** *(Only indicate the comments that were received on the PNs listed in Section 2 above. If no comments were received, indicate no comments were received).* No comments were received.

 - b. **Response Provided:** *(N/A is sufficient if no comments were received or if all comments were in favor of the proposal)* N/A

4. **Funding:** Section 214 of WRDA 2000 and Section 6002(j) of SAFETEA-LU allow the Secretary of the Army to accept and expend funds contributed by non-federal public entities to expedite the permit evaluation process. The Regulatory Program's 2008 guidance on funding agreements gives examples of acceptable activities for funds to be expended on including technical writing, site visits, training, travel, field office set up costs, copying, coordination activities, additional personnel, and others. Funding may come directly from the non-federal public entity's budget or may be from a grant or other source. The following outlines the source of accepted funds, and the means of expenditures. *(The fields below are self explanatory and are for this FY only. Source of funding and type of expenditures means listing all sources of funds and all categories of expenditures)*
 - a. **First Agreement:** State DOT
 - i. Carryover from previous FY: \$25,000
 - ii. Total funds accepted: \$100,000

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- iii. Total funds expended: \$125,000
- iv. Reason for shortfall or carryover: Carryover is the result of fewer applications being submitted by the non-federal public entity than what was originally anticipated
- v. Source of funding and type of expenditures: \$100,000 of the funds came from State DOT including \$25,000 in federal funding of State DOT and \$25,000 was carryover from FY2009. The \$125,000 was expended as follows: \$80,000 covered labor and benefits for 1 dedicated PM, \$30,000 were spent on travel and training, and \$15,000 was spent on equipment including digital camera, workstation setup in a field office, etc.

b. Second Agreement: XYZ County

- i. Carryover from previous FY: none
- ii. Total funds accepted: \$60,000
- iii. Total funds expended: \$40,000
- iv. Reason for shortfall or carryover: Due to economic downturn, the County was unable to fund many of the projects that they intended to submit applications for. The agreement allows for carryover of the \$20,000 into the next FY.
- v. Source of funding and type of expenditures: The County provided \$30,000 of the funds, and the remaining \$30,000 came from federal grants. \$30,000 of the funds was expended on labor for PMs that spent part of their time reviewing XYZ County's projects. The remaining \$10,000 was spent on copies and setting up an additional workstation in the field office in XYZ County.

5. **Assessment:** The goal of funding through an agreement with a non-federal public entity is to expedite the permit evaluation process. This can be accomplished through qualitative means such as dedicating staff for improved communication, ability of the non-federal public entity to prioritize projects with Corps staff, and more thorough submittals of information. The permit process must be expedited quantitatively; by demonstrating that permit processing times have generally improved since inception of an agreement with emphasis on permit processing times for the non-federal public entity. The following describes how funds have been used to expedite the permit evaluation process.

a. First Agreement: State DOT

- i. Qualitative description: *(This should be a description of how funds have improved the process such as improved communication, ability for the non-federal public entity to prioritize work, improved responses to requests for*

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additional information, etc. If the agreement is not being effective at this time, indicate why and steps taken to improve on issues) Having 1 FTE dedicated to State DOT's projects has expedited review of their projects. The FTE, through better communication with the DOT is aware of upcoming projects and can better prioritize workload. The FTE has also worked with DOT in early planning stages, so that DOT was able to modify a project from being an SP to something that qualified for a NWP.

- ii. Quantitative description: *(This should be a number-focused discussion that shows that applications are being processed more efficiently as a result of funding. Focus on improvements in processing time for applications from the non-federal public entity. Feel free to use ORM reports, charts, or other figures. Do NOT just list the total number of actions from the non-federal public entity reviewed. If numbers are not positive, provide an explanation why and actions taken to improve numbers)* For State DOT actions, 60% of SP/LP were issued within 120 days of being complete and 90% of GP/NW were issued within 60 days of being complete. This compares to the remainder of ABC District's actions in which only 50% of SP/LP were issued within 120 days and 75% of GP/NW were issued in 60 days. In addition, the total time in review of State DOT's actions is 20 days shorter than ABC District's general actions. Prior to execution of State DOT's agreement ABC District was not meeting the national performance measure for SP/LP and total time in review averaged 15 days longer, so all applicants have seen an improvement since inception of the agreement.

b. Second Agreement: XYZ County

- i. Qualitative description: The agreement with XYZ County is new this FY, so there hasn't been much opportunity to show trends in more efficient permitting at this time. However, XYZ County previously had issues with submitting poor applications and alternative analyses. As a result of interagency training and workshops under the agreement, XYZ County's applications are now much more thorough and alternative analyses are more effectively written.
- ii. Quantitative description: No SP/LP were issued for XYZ County during this FY. 75% of GP/NW were issued within 60 days of being complete as a result of the interagency workshops and training. This does not represent an improvement as compared to all permit applications; however for the reasons above, this is expected to improve as the agreement develops.

6. **Performance Metrics:** Establishing performance measures with the non-federal public entity for review of permit applications using contributed funds is a way to illustrate how

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effective the funding agreement is in expediting permit evaluations. The following performance metrics have been established for evaluation of permit applications for the non-federal public entity. *(List any performance measures for the funding agreement. Indicate if the performance measure was met and if not, explain why)*

- a. First Agreement: State DOT has determined to adopt 2 performance measures: issue 60% of SP/LP within 120 days of being complete and issue 80% of GP/NW within 60 days of being complete. ABC District met both of these performance measures.
- b. Second Agreement: XYZ has adopted national performance measures 7 and 8 for the funding agreement's performance measures. The performance measure for GP/NW was met. The performance measure for SP/LP was not met for the reasons indicated in Section 5 above.

7. **Impartial Decision Making:** While funds may be accepted to expedite the permit evaluation process, the funds must not impact impartial decision making. The main components of impartial decision making under the Regulatory Program's 2008 guidance on funding agreements include a one-level higher review and signature on all decisions (JD, NPR, GP, NW, LOP, SP, compliance actions) made under a funding agreement and the posting of all of these decisions on the district website. The higher level reviewer must be a position that is not fully or partially funded under the funding agreement. The 2008 guidance also indicates that funding may not be used for enforcement activities. The following outlines what measures have been taken to maintain impartial decision making on permit applications received from a non-federal public entity: *(List all measures in place to monitor impartial decision making. If there were any issues or lapses, indicate so, and what steps were taken to ameliorate the situation.)* ABC District's signatory authority does not allow for any funded PMs to sign any final actions (JD, GP, NW, LOP, SP, and NPR). In addition, all final funded actions are posted on ABC District's website at <http://www.abc.usace.army.mil/RD/fundingagreements.htm>. This site is updated monthly. Due to the State DOT's supervisor having to go on unexpected sick leave for 4 weeks, the State DOT PM had to forward all decisions to the district office from the field office in order to ensure impartial decision making was preserved.

My signature below verifies that all decisions made under a funding agreement are clearly posted on the District website.

8. **Training:** The Regulatory Program's 2008 guidance on funding agreements requires that all funded staff complete annual training on the requirements of the guidance. Training was conducted this FY on *(Insert the date(s) that training was conducted)* 30 September

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2009, in the following manner: *(Provide a description of how PMs were trained – PPT, webinar, independent review, etc.)* all PMs that review actions from either non-federal public entity and staff from State DOT and XYZ County came to the district office for a 2 hour training session that included a powerpoint presentation and an open Q&A session. In addition, ABC District held quarterly conference calls among all funded PMs to discuss any issues. My signature below verifies that all funded staff have completed the necessary training this FY.

9. **Level of Satisfaction:** Letters from the following non-federal public entities have been enclosed rating the execution of their respective funding agreements: *(Indicate which entities provided letters and attach to this document)* Both State DOT and XYZ County provided letters.

APPROVED BY:

(The Regulatory Branch/Division Chief shall sign the document.)

Chief, Regulatory Branch