

REAL ESTATE

A GUIDE FOR PROJECT PARTNERS

WHO PAYS, AND WHERE DOES THE MONEY COME FROM? Corps and Sponsor Roles in Sharing and Financing Project Costs

INTRODUCTION

The Water Resources Development Act of 1986 made numerous changes in the way potential Corps projects are planned, evaluated and funded. It establishes a framework for partnerships between the Federal government, represented by the Corps, and non-Federal Interests, represented by sponsors. The Act gives sponsors a key role in project planning and design, balanced by requirements for greater non-Federal financial shares in the costs of studies and projects. By combining non-Federal money with Federal funds, limited Federal dollars can be spread farther to support a larger volume or construction nationwide. Certain provisions of this act have been revised in subsequent legislation.

The costs of Corps water resource studies and projects are shared between the Federal government (the Corps) and non-Federal interests (sponsors) in accordance with the cost sharing requirements outlined in Federal law and are revised from time to time by legislative amendment. The Corps' share of those costs is provided through the Federal budget process. Your sponsor share of those costs can be provided by a variety of means available to local governments.

The following discussion of cost sharing and Federal and local project financing is very general and does not reflect all of the potentially applicable legal and financial requirements and procedures. It is intended to be an overview of a subject that may have very complex applications for some projects. You should discuss cost sharing and financing with your Project Manager to understand the full range of requirements and how they would apply in a particular case.

COST SHARING AND TIMING

The foundation for building a project or conducting a study is a description of what must be done to complete the job, estimates of how long that will take and what it will cost. You play a critical role in working with us to accomplish this. Once the job, either a study or project, is described and a schedule and cost estimate is prepared, we are in a position to calculate how the costs will be shared. Cost sharing between us is based on formulas in Federal laws that are usually stated as percentages for the shares. Different cost sharing rules, and funding availability requirements apply to each phase of project development. The general phases of project development are: reconnaissance and feasibility phases of a planning study; the pre-

construction engineering and design (PED) and construction phases of a project (which also includes real estate acquisition); and the operation and maintenance phase. Different cost sharing rules also apply to various project purposes such as flood damage reduction, navigation and environmental restoration. The amount of money needed from each partner depends on the total estimated cost of each individual study and project and is calculated by applying the applicable rules to the total estimated cost.

Reconnaissance Phase - The cost of this first phase of project planning is paid entirely by the Federal government and no sponsor funds are required. At the end of this phase, a cost estimate and schedule for the next (feasibility) phase of planning are negotiated between us and documented in a Feasibility Cost Sharing Agreement (FCSA).

Feasibility Phase - The cost of this second phase of project planning is equally shared - 50/50. You may provide up to one-half of your share (up to one-quarter of the total study cost) in the form of in-kind services; at least one-half of your share must be provided in cash. In-kind services could include technical studies that you conduct, or analysis performed by a contractor hired by and working directly for you. Your funds must be provided up-front so that they are available before they are committed to be spent (not when the bills come in). Study cost sharing applies regardless of the potential project purposes involved, except for feasibility studies of navigation on inland waterways, which we fully fund.

Pre-construction Engineering and Design Phase - The cost of design following the feasibility phase is shared in the same proportion as the cost of project construction, as explained in the next paragraph. Your funds for this work are accounted for during the first year of project construction.

Construction Phase - The cost to construct a project is shared based on the project's purposes. In general, you must provide us with any needed real estate and property at 100% your expense before construction begins; to include lands, easements, rights of way, relocations and disposal areas (LERRD). In addition, you must provide, in cash, certain portions of the estimated total project construction cost; the value of LERRD may usually be credited toward this cash contribution. Construction cost sharing for common project purposes is:

■ Navigation, in Harbors - Your share is determined based on the depths of project navigation channels:

20% sponsor share for depths less than or equal to 20 feet, plus,

35% sponsor share for depths greater than 20 but less than or equal to 45 feet, plus,

60% sponsor share for depths greater than 45 feet.

■ Navigation, Inland Waterways System - One half the cost of a modification to the inland waterways system is funded by the Federal government. The other one-half is funded from the Inland Waterways Trust Fund, which derives its money from a

tax on fuel used on specified inland waterways.

■ Flood Control - Structural flood control features, including dams and reservoirs, channels, levees and floodwalls, require a sponsor share of between 35% and 50%. Non-structural flood control Features, including flood proofing, flood warning and preparedness. and evacuation, require a sponsor share of 35%.

■ Hurricane and Storm Damage - You must pay 35% of the cost of construction.

■ Hydroelectric Power - You must pay 100% of the cost of construction.

■ Municipal and Industrial Water Supply - You must pay 100% of the cost of construction.

■ Agricultural Water Supply - You must pay 35% of the cost of construction.

■ Recreation - You must pay 50% of the cost assigned to recreational navigation. You pay 50% of the separable costs of recreation features at other projects, such as picnic areas and trails.

■ Fish and Wildlife Enhancement - In most cases, you must pay 25% of the cost to construct features for enhancement of fish and wildlife resources. In certain cases involving nationally significant resources, we will pay 100% of the construction cost.

■ Aquatic Plant Control - You must pay 50% of the cost.

■ Operational and Maintenance, Flood Damage Reduction - You must pay 100% of the cost.

The timing of when your cash contribution for construction is required varies with each purpose and in some cases, the circumstances of a particular project. As a general guideline, you must pay us all required funds during the construction period. You should discuss the timing of making funds available and other cost sharing issues, such as reimbursement for advance work with your Project Manager.

Operation and Maintenance Phase - Costs for operation, maintenance, rehabilitation and repair (OMRR) for newly completed projects are 100% sponsor costs. Exceptions to this are: commercial navigation, where we usually pay 100% of operation and maintenance costs for projects with depths to 45 feet and 50% of increased operation and maintenance costs for depths in excess of 45 feet; and fish and wildlife enhancement where we pay 75% of OMRR costs.

A project cost estimate, cost sharing requirements and timing for the project construction phase are described in each project's Project Cooperation Agreement (PCA), which is negotiated and jointly signed by you and the Assistant Secretary of the Army for Civil Works before construction starts. Costs for the pre-construction engineering and design phase and the operation and maintenance phase are also covered in the agreement.

CORPS FUNDING

The Corps gets its share of money for studies and projects through the Federal budget process. As an executive branch agency, the Corps works for the Administration and with the Congress during the budget process.

In the Federal process, our funds are provided one year at a time and are provided in the amount that is expected to be required for one fiscal year, beginning October 1st. The process is repeated each year. From the first program and budget development stages until funds are finally available in our local Corps District, the process takes about twenty months to complete. The following provides a description of who is involved in the Federal budget process and a general chronology of the events that lead to Federal funding.

Who's Involved in the Federal Budget Process for Civil Works Projects?

* District - This is the local Corps office where the request for Federal funds is initiated.

* Division - This is the regional Corps office which reviews its Districts' budget requests.

* Headquarters - The Corps Headquarters prepares the Corps' national program based on the eight Division submittals.

* Assistant Secretary of the Army for Civil Works - The Assistant Secretary's office reviews the Corps' national request to ensure it is consistent with the Administration's policies and programs.

* Office of Management and Budget - The executive agency which prepares

the overall President's budget request to the Congress based on requests from all the Federal agencies.

* Congress - Committees of the Senate and House of Representatives develop the annual appropriations act.

* Sponsor - You are the non-Federal cost sharing partner representing the project's beneficiaries. You work with the local District to develop the schedules and cost estimates that are the foundation of the budget request. You may also provide input to your Congressional delegation.

What Are the Steps in the Federal Budget Process for Civil Works Projects?

The Federal budget process involves many steps over an extended period of time as outlined in the following description. The months for the events described here are general estimates, and may be different in any particular fiscal year. Your Project Manager can tell you at what step our study or project is, and explain more about the process and your roles as an active participant.

• January - April - At the Washington level the Office of Management and Budget, the Assistant Secretary and the Headquarters **staff** prepare and issue guidance to be used by our local offices when they prepare their budget requests. The Districts and Divisions review and revise project and study cost estimates and schedules according to guidance provided from Headquarters. These estimates and schedules provide the basis for their funding requests and should be prepared with your active participation.

- May - The local Districts submit budget requests for individual projects and studies to their respective regional Divisions. Divisions review and prioritize requests to put together a regional program request that is at or below their budget ceiling.

- June - August - Divisions submit their program requests to Headquarters. Headquarters further reviews and prioritizes requests, develops nationwide program and a budget request based on various total budget ceilings and policy criteria and prepares recommended lists of studies and construction projects to be started (called “new starts”).

- August - Headquarters submits the Corps’ nationwide budget request for the Civil Works Program to the Assistant Secretary. The Assistant Secretary reviews and revises the request based on the Administration's policy and program emphasis for that year. The Assistant Secretary submits its request to the Office of Management and Budget

- September - November - The Office of Management and Budget reviews the Assistant Secretary’s request to the context of the overall President's budget request for all Federal programs. In what is called “passback”, the Office of Management and Budget notifies the Assistant Secretary of approved budget allowances for various studies, projects and programs that will be included in the President's budget. For a very brief period, the Assistant Secretary may appeal certain budget decisions (called “reclama”) before the budget request is finalized.

- December - January - Districts and Divisions prepare testimony about individual projects and studies to be delivered to the Congress based on the final approved budget allowances.

- January - The President’s budget request is given to Congress on or before the first Monday after January 3rd. The President’s State of the Union Message is usually delivered before the end of January.

- February - The Assistant Secretary, and from Headquarters, the Chief of Engineers and Director of Civil Works, appear before the Congressional appropriations subcommittees on energy and water development to explain the budget request for the overall Corps Civil Works Program. The Division Engineers also testify about funds requested for individual projects and studies in their regions. These hearings are called "departmental testimony”.

- March - April - Sponsors and other interests outside the Corps appear before the same Congressional appropriations subcommittees to express their views and comments concerning budget requests for Corps studies, projects and programs. These hearings are called “non-departmental testimony”.

- May - June - The Congressional subcommittees occasionally ask the Assistant Secretary and Headquarters representatives to reappear before them to clarify previous testimony and comment on the requests of sponsors and other local Interests. These are called “recall hearings”.

- May - September - The Congress develops and passes an appropriations

act that gives the Administration funds for studies, projects and programs.

The Congressional process that leads to an act is generally as follows:

- The House and Senate appropriations subcommittees review the transcripts of the testimony, discuss the requests and testimony, and report their recommended appropriations to their respective full committees.

- The full appropriations committees then make recommendations to their respective legislative body, the House or the Senate

- Appropriations bills always start in the House; therefore, the appropriations bill is written in the House committee first and voted on by the House.

- When passed by the House, the bill is sent to the Senate where it is revised to reflect Senate committee recommendations. It is then voted on by the Senate.

- In what is called a 'conference committee', representatives of the House and Senate committees meet to negotiate any differences between their bills and recommend a bill that will be acceptable to both houses.

- The resulting bill is then presented to both the House and Senate for enactment. Either house may return the bill to conference if it is still not acceptable; however, the bill is usually accepted and enacted by the Congress.

- The bill, which is called an "act" when passed by the Congress, is sent to the President for signature.

- When signed by the President, the act becomes a "law". However, each provision of the act is now subject to the possibility of a "line item veto".

September - October - The Office of Management and Budget apportions the funds available to all Federal agencies. Funds provided to the Corps are issued in "work allowances" to the Districts. A work allowance provides the District with the fiscal year's final approved budget for each project and study.

Other Aspects of the Federal Budget Process

- Disclosure of Budgetary Information - In the interest of maintaining the best possible circumstances for internal decision making, Federal policy prohibits the disclosure of information about the nature or amount of budget requests except in very limited circumstances. Simply put, a Corps employee may not tell you how much (or if) money has been requested for a project or study until the Administration's final and official budget request is presented to the Congress. The Corps' full policy statement on this subject is presented in the "Digest of Water Resources Policies and Authorities (Corps pamphlet number EP 1165-2. 1, dated 15 February 1989), and should be discussed with your Project Manager. While budget requests cannot be discussed, it is very important that you continue to work with the District to ensure that schedules and cost estimates, which are the basic foundations for a budget request, reflect your plans for land acquisition, cash flow, and other factors.

- New Starts - Getting started as either a “new start” study or later a “new start” construction project, in the Federal budget process are probably the most critical steps to take. Once an action passes the tests for these two hurdles, each year’s funding requests will usually continue to be approved until the study (including pre-construction engineering and design) or construction is complete. This is called “seamless funding”, and provides both the Corps and you with a degree of confidence that funds will be available to continue progress. This commitment to continued funding of a phase is earned by passing the new start budget tests. While the details vary somewhat each fiscal year, a key part of the budget test is your position about a project or study. Your Project Manager can describe current new start requirements.

SPONSOR FINANCING

The non-Federal share of a Corps study or project usually consists of some combination of two major components: a cash contribution and real estate interest. You have considerable flexibility to select the way you will raise funds to pay for your share. In addition, you also have latitude in deciding how your share is given to us.

How Can Sponsors Raise Funds for Their Share of a Civil Works Project?

Sponsors use any one, or a combination, of a number of means to fund their cash share of a project or study. These include:

- Tax receipts or other revenues.

- Bonds, including general obligation bonds, limited or special obligation bonds, and revenue bonds.

- Grants and loans from Federal, State or other government agencies, or financial institutions. We can accept Federal funds from a Non-Federal Sponsor for construction (example: grant money from another Federal agency) only if the statute under which the funds are provided to you specifically authorizes use of these funds for that purpose.

- Cash donations and contributions from, for example, potential project beneficiaries and interested parties.

- Cash on hand.

Sponsors may also use various methods to acquire necessary real estate interests, including:

- Donations of land, easements and rights of way from other agencies of government, interested parties and potential project beneficiaries.

- Condemnation, where agreement with an owner cannot be reached on a mutually acceptable basis or if a defect or cloud on title cannot be readily resolved.

☞ Purchase subject to PL 91-646 **acquisition** requirements.

The type of interests to be secured range from fee title to some form of easement and will vary from project to project based on legal requirements, project needs, and other factors. There are many possibilities as to who (sponsor or Corps) actually carries out acquisition of

real estate interests and who holds title to those interests. You may acquire all interests or, at your request, we may acquire interests on your behalf if you provide necessary funds for acquisition in advance. Ordinarily, you will retain title to real estate. A right of entry for construction and proof that you have sufficient interest in needed lands will usually satisfy our needs.

If you borrow funds to purchase real estate or provide your cash contribution, money to repay the lender may be raised through, for example, taxes, special assessments, and user charges. These methods are also widely used after project construction to pay for ongoing project operation and maintenance, repair and rehabilitation costs that are the sponsor's responsibility.

How Can Sponsors Provide Their Share of Civil Works Project to the Corps?

Sponsors may provide their cash share of project or study costs in advance of work to the Corps by one of the following means:

- Direct Cash Payment; Projects completed in one year require a direct cash payment. Payment for longer-term projects may be made periodically. Direct deposit is the preferred method of cash payment.
- Escrow Account: You may deposit your funds in an interest bearing account that we can draw on as needed.
- Letter of Credit: You may deposit your funds in a financial institution that guarantees to us that funds are available to meet cash outlays.

- Federal Repayment Districts: Section 916 of the Water Resources Development Act of 1986 provides that the Assistant Secretary may enter into a contract with a Federal Repayment District or other political subdivision of a State for the payment or recovery of a share of a project prior to the project's construction, operation, improvement or financing.

Before we obligate Federal funds for a project or study, you must either pay your share of the costs to the Corps, or place your funds in an escrow or other account acceptable to us or provide some other irrevocable commitment of payment. During the period of study or construction when funds are needed, you have considerable flexibility to schedule when you make funds available. You need not provide your total cash share of construction before construction begins unless the project is to be built under a single contract fully obligated at the start of construction. To the extent possible, projects and studies are scheduled to permit an incremental obligation of both your funds and our funds, and cash contributions should be provided in the same proportion. Your share in real estate interests is usually established before any project construction contract is advertised. If you request the Corps to perform any real estate services for you and we elect to perform any or all of the requested services, you normally must provide the full amount of the funds required to pay for such work in advance of the Corps incurring any financial obligation associated with it.

What Is the Sponsor's Financial Analysis?

A financial analysis **is required** to ensure that you have a reasonable plan to meet your ~~financial commitments~~ **is required**—before a local cooperation agreement can be signed. The analysis includes a financing plan and a statement of financial capability, which are prepared by you, and an assessment of financial capability prepared by the District Engineer. Your financing plan consists of a schedule of expenditures, a schedule of sources and uses of your funds during and after construction and an explanation of your method of financing. Your statement of financial capability provides evidence of your authority to use the identified funds and capability to obtain remaining funds.

NEED MORE INFORMATION?

Cost sharing, Federal funding and sponsor financing for Civil Works projects are complicated subjects with unique applications and results for each project and study. You should contact your Project Manager to discuss these subjects in detail for your circumstances. In addition, the following Corps publications provide guidance about these subjects:

- “Annual Program and Budget Request for Civil Works Activities, Corps of Engineer, Fiscal Year XXXX” (Corps circular number EC 11-2-XXX, issued annually) - This provides guidance for the development and submittal of the Civil Works ten year program and annual budget request.
- “Digest of Water Resources Policies and Authorities” (Corps pamphlet number EP 1165-2-1, 15 February 1989) - Often called the “Policy Digest”, this

provides an overview of general policies and guidance including that related to cost sharing, Corps funding and sponsor financing.

- “Local Cooperation Agreements for New Start Construction Projects” (Corps regulation number ER 1165-2-131, 15 April 1989) - Provides guidance on local cooperation agreements, including construction cost sharing and sponsor financing.
- “Planning Guidance” (Corps Regulation Number ER 1105-2-100, 15 September 1990) - Often called the “Planning Guidance Notebook”, this provides guidance for Civil Works planning, including reconnaissance and feasibility phase cost sharing.