

Chapter 11

Challenge Partnership Program

11-1. Purpose

This chapter establishes the policies and procedures for the Challenge Partnership Program as authorized by Section 225 of the Water Resources Development Act of 1992, as amended, (33 USC 2328), to share the cost of managing recreation facilities and natural resources at USACE water resource development projects. This chapter includes roles and responsibilities of USACE employees and criteria for determining when and with what entities challenge partnership agreements may be used.

11-2. Policy

a. The Challenge Partnership Program, as authorized by 33 USC 2328, will be used to provide opportunities for non-federal public and private groups and individuals to contribute to and participate in the operation and/or management of recreation facilities and natural resources at USACE water resource development projects. Partnering with others provides a way to stretch the USACE budget by sharing the cost of operating and/or managing recreation facilities and natural resources.

b. Challenge partnership agreements at water resource development projects may be used to provide operation and/or management and development of recreation facilities and natural resources where such facilities and resources are being maintained at complete federal expense. Challenge partnership agreements may not be used on outgranted, leased, or licensed lands.

c. Challenge partnership agreements for recreation facilities may be entered into when they supplement USACE programs without increasing future USACE O&M costs or result in reduced future USACE O&M costs, or, if future USACE O&M costs will be increased, when it is a sound business decision (such as any increase in O&M costs will be offset by future revenue increases).

d. Challenge partnership agreements may be used for the identification, protection, improvement, rehabilitation, preservation, management, or interpretation of natural resources, environmental features, recreation areas and facilities, or cultural resources.

e. The partner may contribute funds, including cash, materials, personal property, equipment, or services as their portion of the challenge partnership agreement. In addition, USACE may contribute to work accomplished by the partner that USACE is otherwise authorized to perform but may not give funds directly to the partner. These contributed resources will be combined with regular project resources as a supplement to accomplish the work designated in the agreement.

f. Real estate cannot be accepted as a partner's share of a challenge partnership agreement.

g. Work selected for challenge partnership agreements must be within current authorities. Work that will be accomplished through any current or potential agreements will be included in the annual work plan as an appendix of the approved OMP. Work will generally be accomplished during one fiscal year but may carry over to multiple years. Proposed work not in an approved OMP must be approved by the next higher management level.

h. Personal property that is contributed and accepted will be recorded, accounted for, and managed in the same way as other USACE property.

i. All facilities and work accomplished become the property of the government. The partner may not assume any ownership rights in the facilities constructed or in federal lands involved in the collaborative effort.

j. Under 33 USC 2328, there is no fixed rate of cost share. Flexible percentages are determined by mutual agreement between USACE and the partners. The roles of each entity are also flexible, and agreements may involve multiple partners.

k. Challenge partnership agreements are different from Project Partnership Agreements or PCAs.

l. These agreements are NOT cooperative agreements as that term is used in the FGCAA (31 USC 6301-6308) and are not otherwise subject to the FGCAA, nor are they subject to the DoDGARs published in Chapter I, Subchapter C of Title 32, CFR, including the requirement for execution by a certified grants officer. Although 33 USC 2328 uses the term “cooperative agreement,” the principal purpose of the agreements authorized under that section is not to transfer a thing of value from USACE to a non-federal entity and the agreements do not otherwise involve a type of transaction covered by the FGCAA or the DoDGARs.

m. Challenge partnership agreements must be negotiated and executed with non-federal public and private entities before those entities may participate in a challenge partnership project. The contribution by USACE and the partner(s) is to be determined by negotiation on a case-by-case basis. Each agreement must address the mutual benefits of the work, what each party will provide, and administration of the agreement. A sample agreement and a sample financial work sheet that itemizes the monetary value of each party’s contribution completed as part of the agreement is available on the NRM Gateway.

n. Regarding discretion to decline, challenge partnership opportunities may be declined due to the nature of the proposal; its use; conditions imposed; profit motive or the character or notoriety of the contributor; appearance contrary to, compromising, or inconsistent with the laws, regulations, purposes, principles, integrity, standing, or reputation of USACE, the United States Army, or the Government. Challenge partnership opportunities that create or give the appearance of a conflict of interest or have conditions inconsistent with USACE mission must be declined. A checklist of acceptance factors for consideration is available on the NRM Gateway.

o. The following policies relate to oversight and approval authorities.

(1) MSC Commanders are responsible for the overall execution of the challenge partnership program in their respective MSCs.

(2) Approval authorities for challenge partnership agreements include:

(a) MSC Commanders for agreements that involve water resources projects from two or more of their subordinate Districts regardless of total dollar value of the agreement, and any agreement exceeding a total value of \$1,000,000 for any of their Districts.

(b) Commanders for agreements that involve water resources projects solely in their District with a total value greater than \$500,000 but equal to or less than \$1,000,000.

(c) District Chiefs of Operations for agreements solely in their District with a total value greater than \$100,000 but equal to or less than \$500,000.

(d) OPMs/Park Managers for agreements solely in their project boundaries with a total value equal to or less than \$100,000.

(3) Total value is the aggregate value of all services, materials, and equipment provided by a partner. The value of partner services is determined by estimating the total cost to the government if such services were procured by contract or the cost to perform the services using government personnel. The value of materials and equipment provided as part of the partnership should be determined using the local market value of comparable items for purchase or rent if for short-term use.

p. Funds and materials for a given year must be available before the work begins. Partners will not be given special privileges for participation in the challenge partnership program. USACE will not agree to any provision that limits USACE's ability to negotiate, accept, and execute challenge partnership agreements or contributions from other qualified entities. Challenge partnerships with multiple partners on the same work project, multiple work projects, and/or multiple physical locations may be accepted.

q. Services that the partner performs as a part of the challenge partnership program must be carried out in conformance with federal, state, and local laws and standards.

r. The following policies relate to partner-funded personnel.

(1) For purposes of this ER, the term "partner-funded personnel" is defined as individuals providing services at a CW project, at no cost to USACE, on an ongoing, long-term, or indefinite basis while receiving payment for such services from a third party (such as a non-USACE employee who works at the information desk of a USACE project visitor's center and receives payment from the local county government to do so).

(2) Services of partner-funded personnel may be accepted under 33 USC 2328 from non-federal public and private entities that have entered into a Challenge Partnership Agreement for Partner-Funded Personnel. A sample agreement is available on the NRM Gateway. Long-term staff and volunteers of cooperating associations do not need to complete a partner-funded personnel challenge partnership agreement as their services are covered under their cooperating association agreement.

(3) Partner-funded personnel are separate and distinct from volunteers, to include hosted workers, as described in Chapter 9. In particular, the legal status of the partner-funded personnel providing services to USACE under the authority of 33 USC 2328 differs from that of volunteers and short-term hosted workers providing service under the authority of 33 USC 569(c).

(a) Partner-funded personnel do not receive protections under the Federal Employees Compensation Act and the Tort Claims Procedure (28 USC Chapter 171) that volunteers and hosted workers receive under section 569(c).

(b) Partner-funded personnel are not authorized to receive reimbursements from the government for incidental expenses that volunteers and hosted workers may receive under section 569(c).

(c) Partner-funded personnel are considered employees of the partner organization that is funding them. Any pay, benefits, or liability protection must be 100 percent provided by the partner organization.

(4) Partner-funded personnel services may be accepted only from adults age 18 or older.

(5) Background investigations for partner-funded personnel are required according to the same guidelines provided under the USACE Volunteer Program in Chapter 9. Services from persons who have been convicted of a violent crime, sexual crime, arson, crime with a weapon, sale or intent to distribute illegal drugs, or are an organized crime figure will not be accepted.

(6) Consistent with guidance provided in paragraph 11–2s, partner-funded personnel may be authorized to operate, for official use, government-owned or leased vehicles, vessels, machinery, or other specialized equipment if deemed appropriate and beneficial.

(7) Partner-funded personnel may be authorized to sell permits and collect fees from the public at campgrounds, day-use facilities, visitor centers, administration offices, and other locations where fee collection is normally performed as a government function. The operations project manager will ensure, prior to partner-funded personnel collecting or otherwise managing fees, that partner-funded personnel are properly trained and provided a security awareness briefing and that their Challenge Partnership Agreement for Partner-Funded Personnel and associated Partner-Funded Personnel Status Recognition Statement include the appropriate provisions and acknowledgments regarding the collection and custody of fees.

(8) A signed Challenge Partnership Agreement for Partner-Funded Personnel between USACE and the partner organization, as well as a completed Partner-Funded Personnel Information Sheet and signed Partner-Funded Personnel Status Recognition Statement are required to accept the services of partner-funded personnel.

s. Regarding operation of vehicles, vessels, and equipment, partner personnel may be authorized to operate, for official use only, government-owned or leased vehicles, vessels, or other equipment if deemed appropriate and beneficial. Partner personnel must have the proper training, license, and experience per USACE operator permit policies before operating a government-owned or leased vehicle, vessel, or equipment. Partner personnel who are assigned to operate machinery or equipment (such as chain saws, power shop tools, or specialized equipment) must also demonstrate proficiency in the operation of that equipment and an understanding of the safety requirements to the satisfaction of USACE employees overseeing such work.

t. Regarding safety, all safety rules and regulations apply to work accomplished with challenge partnership agreements. Safety training provided to USACE personnel will also be provided to partners performing services, including review of the Activity Hazard Analysis. Injuries to partners performing services will be reported in the same manner as those involving USACE personnel. The reporting procedures will be the same except that item 17 on ENG Form 3394 (Mishap Notification and Investigation), will be checked "other – partner."

u. USACE does not provide tax advice. If solicited, USACE representatives should suggest partners consult their tax advisors to determine if their share of a challenge partnership agreement is charitable for tax purposes or deductible for any other reason.

v. Regarding procurement and contracting requirements, challenge partnership agreements will not be used as a substitute for contracts or procurements subject to the Federal Acquisition Regulations and other applicable procurement statutes and regulations.

w. Regarding accounting and reports, each water resources project office will maintain accurate records on challenge partnership agreements according to ER 37-1-30. Reports will consist of the name of the partner(s), the project undertaken, the total value of challenge partnership agreements, the partners' amount of contributions, and USACE's amount of contributions. This information will be reported annually via the CWBI-OPS or other HQUSACE designated data collection tool. Divisions or Districts may require more frequent reports of greater detail.

(1) Revenue collected from challenge partnership partners will be deposited into account 096X3123 of the U.S. Treasury according to the requirements outlined in ER 37-1-30. DD Form 1131 is the authorized form for transmittal to the Finance and Accounting Officer.

(2) These funds are immediately available to the collecting site for obligation and expenditure without further action by HQUSACE after the confirmed receipt is received

from the Federal Reserve Board. All funds will be disbursed under the same standards of accountability as annually appropriated funds.

(3) Appointment of authorized collectors and accepting officials for receiving funds from challenge partnership agreements must be made in writing by the Finance and Accounting Officer according to ER 37-1-30.

x. USACE may encourage participation in the challenge partnership program by informing prospective partners of the opportunities that are available. Potential participants include non-federal public and private entities such as civic organizations, nonprofits, cooperating associations, local businesses, universities, corporations, state and local governments, Tribal entities, and individuals.

y. Recognition consistent with standards of ethical conduct is encouraged to express appreciation to partners and publicly acknowledge support that has been received. Partners should be advised to keep USACE apprised of any publicity that they initiate. All publicity will be a joint effort by the partner and USACE, to include mutual agreement of any publicity materials. Procedures for appropriate types of recognition and publicity are provided in Chapter 10.