CHAPTER 13

ACCOUNTING FOR CIVIL WORKS COST SHARED PROJECTS

13-1. General. The purpose of this chapter is to provide accounting guidance and procedures for applying non-Federal contributions toward the cost of project planning, engineering, design, construction, and operations and maintenance of Civil Works cost shared projects.

a. The Water Resources Development Act of 1986, Public Law 99-662, as amended, (hereinafter "WRDA 86" or "the Act") entered the Corps of Engineers into a new era of project financing through cost sharing with various non-Federal sponsors (public entities). Although the acceptance of funds from private parties is allowed under section 4, Rivers and Harbor Act (38 Stat. 1053; 33 U.S.C. 560) navigation authority, and other authorities, it is HQUSACE policy that funds shall be accepted only from duly appointed public entities. See ER 1165-2-30 for further guidance.

b. WRDA 86 specifies that the cost sharing provisions set forth therein apply to any studies for a water resources project commenced after November 17, 1986, or any water resources project, or any separable element thereof (as defined in the Act), for which a contract for physical construction had not been awarded before November 17, 1986. The Act further provides that, unless otherwise specified, the cost sharing provisions of Title I of the Act shall apply to all projects authorized therein. WRDA 86 further states that prior to initiating work on a project, other than hydropower, a legally binding cooperative agreement must be executed between the Department of the Army and the non-Federal sponsor to document the Government's responsibility and the non-Federal sponsor's responsibility for the project including, but not limited to, paying the non-Federal share of the costs of construction, paying 100 percent of the costs of the operation, maintenance, replacement, and rehabilitation costs, and holding and saving the Government free from damages. Similar requirements are included in the Act regarding planning and engineering of a project authorized by the Act. Model cost sharing agreements for feasibility studies (Feasibility Cost Sharing Agreement (FCSA)), for preconstruction, engineering and design (Design Agreement (DA)), and for construction, operation and maintenance (Project Cooperation Agreement (PCA)) of water resources projects have been approved by HQUSACE and by the Assistant Secretary of the Army (Civil Works) (ASA (CW)) for many of the Corps missions and authorities. The approved model agreements are maintained on the website for Civil Works: http://www.usace.army.mil/civilworks/cecwp/branches/policy_compliance/ccpca.htm

Further guidance regarding cost sharing requirements may be found in ER 1165-2-131, ER 1105-2-100, as well as in other engineering regulations, circulars and pamphlets, and Planning, Policy,

and Project Management Guidance Letters.

c. Many pre-WRDA 1986 projects are still active, and these projects may be subject to different cost-sharing obligations and existing assurance agreements or local cooperation agreements, which contain the contractual agreement of the non-Federal sponsor regarding the project cost-sharing obligations and the method of payment under the specific project authority. Unless these pre-WRDA 86 projects, or a separable element thereof, have been expressly made subject by Congress to the cost-sharing requirements of WRDA 86, as amended, the Government cannot unilaterally alter the contractual obligations of the non-Federal sponsor beyond those obligations set forth in the pre-existing cost sharing agreement executed by the sponsor.

d. Interdisciplinary teams led by the Project Manager are recommended by HQUSACE for development, negotiation and execution of PCAs, FCSAs, DAs, and escrow agreements. It is recommended that the team include a Resource Management (RM) representative. The RM representative must be familiar with the accounting procedures for all agreements and cost sharing procedures of all references in appendix A.

13-2. Policy.

a. General. The Corps of Engineers Financial Management System cost share programming reflects the financial requirements specified in law, regulation, and study or project specific cooperative agreements between the Government and non-Federal sponsors for each cost-share project. For Congressional Add projects with unique cost-sharing allowances during study, design, or construction, the PM will provide RM with copies of the authorizing language supporting the project cost-sharing allowance, with additional support from OC, if requested by RM. When a purchase request is certified, the Federal Government and all non-Federal sponsors must have their respective proportional shares (e.g., Federal cash, sponsor cash, or authorized and approved sponsor credit) available. (See PM Guidance letter No. 11 Revised, SUBJECT: Provisions of Non-federal Cash for Construction of Civil Works Projects and Separable Elements at:
http://www.usace.army.mil/inet/functions/cw/cecwp/branches/policy_compliance/pmg11.htm

Only the Secretary of the Army or the ASA (CW) can waive the non-Federal sponsor's proportionate share requirements. If there is no such waiver and the Government's and/or any non-Federal sponsor's proportionate share (net of any authorized and approved creditable work) is not available when a purchase request is processed, then the purchase request will not be certified. Purchase requests cannot be certified until the Government and each non-Federal sponsor's proportionate share requirements are met.

b. Feasibility Phase. Section 105(a) of WRDA 86 specifies the cost sharing requirements for studies that were initiated after 17 November 1986. Feasibility studies are cost shared 50% Federal and 50% non-Federal and are typically accomplished with General Investigations funding.

As originally enacted in WRDA 86, at least 50% of a non-Federal sponsor's share (25% of the total feasibility phase cost) was required to be in cash. With the passage of WRDA 2000, P.L. 106-541, Section 225, the non-Federal sponsor may now provide 100% of its share in "in-kind service" credit. No credit may be given to the non-Federal sponsor for work performed prior to execution of the FCSA or after completion of the feasibility phase.

(1) The Project Manager assigned to the feasibility study will coordinate actions with the RM representative prior to completion of the negotiations on the FCSA with the non-Federal sponsor. Coordination and accounting mechanisms will be established for: allocating and tracking non-Federal cash contributions, crediting the value of approved in-kind service contributions, and distribution of charges against the Federal and non-Federal sponsor accounts. They will document the effective, departmental overhead and any other rates, and identify increases that could trigger an amendment to the FCSA, or Project Management Plan (PMP).

(2) The Project Manager coordinates a draft FCSA with RM to ensure compliance of the following: procedures for receipt and accounting of non-Federal sponsor cash funds; establishment and handling of escrow accounts, if used; prohibitions pertaining to commingling of funds; the direct charging rule for recording direct labor cost; frequency of charges against the non-Federal sponsor contributed fund accounts; crediting the value of approved in-kind contributions; the F&A reporting products and their interpretation; circumstances precipitating increases in effective and departmental overhead rates; partial reconciliation of the accounts for the non-Federal sponsor and Federal end-of-year budgetary requirements; end of study reconciliation mechanism; and the provision and maintenance of accounting records for inspection and audit by Federal or non-Federal sponsor representatives.

c. Credits for work-in-kind during Feasibility Phase. In-kind services represent study work performed by the non-Federal sponsor during the feasibility phase per Section 105(a) of WRDA 86, as amended, for which credit may be given and counted towards the required non-federal contribution. A PMP is the basis for assigning tasks between the Government and the non-Federal sponsor and for establishing the value for credit for in-kind services. Examples of in-kind services are services, materials, supplies and other in-kind work items other than cash necessary to prepare the feasibility report. The determination of the initial dollar value of in-kind products or services will be based on negotiation of a detailed
Government estimate and a non-Federal sponsor proposal. The value of in-kind services will be stated as fixed fee amounts determined by applying applicable Federal regulations, including

OMB Circular A-87. Acceptance of the product will be as described in the PMP.

d. Preconstruction Engineering and Design (PED) Phase.

(1) Section 105(c) of WRDA 86 specifies that the cost sharing for design of projects will be shared in the same percentages as the project purpose. CECW-AG Memorandum, 3 August 1998, Subject: Model Design Agreement, requires that the Government and the non-Federal sponsor execute a design agreement for all Preconstruction Engineering and Design activities funded by General Investigations, and all engineering and design activities funded by either Construction, General or Operations and Maintenance, General appropriations with certain limited exceptions set forth therein. Since most project purposes have different cost sharing formulas, HQUSACE and ASA (CW) developed the model DA using 75/25 percent cost sharing. To ensure costs of design are ultimately shared in the same percentages as the project purpose, once design is complete total design costs are included in total project costs in the PCA for the project. Any adjustments required ensuring the non-Federal sponsor has contributed the correct percentage of total design costs are accomplished by adjusting the cash requirement from the non-Federal sponsor in the first year of construction. It is important to note that unlike Section 105(a) of WRDA 86, Section 105(c) of WRDA 86 does not authorize or permit any in-kind services to meet a portion of non-Federal sponsor contributions during design.

(2) Section 105(b) of WRDA 86 specifies the cost sharing for projects authorized in WRDA 86 for Planning and Engineering only. Non-Federal sponsors must contribute 50 percent of the cost of planning and engineering during the period of planning and engineering. The costs included herein are all costs necessary to produce a feasibility report. Once the period of planning and engineering is complete, the Government and non-Federal sponsor must execute a DA to cost share the costs of design.

(3) All Other PED. These costs may be incurred under several classes below: All PED costs incurred subsequent to the feasibility study, other than costs incurred during the period of planning and engineering discussed in 2. above, are considered a part of, and included in, the total project cost to be cost shared and included in the PCA. The PED costs are to be treated as a component of the first year construction costs and included in the non-Federal sponsor's first year cash requirements.

(a) Continuing Planning and Engineering. All such costs are subject to cost sharing, if incurred on or after 1 October 1985.

(b) Advance Engineering and Design.

e. Construction. The draft PCA is sent through RM for comment to insure the PCA cost sharing provisions will track and comply with established accounts. Coordination and accounting mechanisms will be established for: allocating and tracking non-Federal sponsor cash contributions, crediting for the value of authorized and approved Lands, Easements, Rights-of-Way, and initial and final Relocations, and Disposal Areas (except for general navigation projects/features), Section 104/215 and other authorized credits to the non-Federal sponsor's cost share; and distribution of charges against Federal and non-Federal sponsor accounts. Project cost estimates reflecting the detailed current schedule and cost share requirements are prepared annually by the project manager/programmer. The project programmer creates and updates the Cost Share Control Record in CEFMS that includes this summarized information annually.

(1) Non-Federal sponsor contributions of Project Cost. The non-Federal sponsor cost sharing and project financing responsibilities must be determined for each project based upon the statutory authority as spelled out in the cost sharing agreement and the project. Except as discussed in the next paragraph, the non-Federal sponsor must provide its share of total project costs during the period of construction. The non-Federal sponsor has flexibility to determine whether to make the total estimated non-Federal share of construction cost available prior to the start of construction or incrementally over the period of construction. The specific policy is generally outlined in ER 1165-2-131 and updated by Policy and Project Management Guidance Letters listed on the Planning and Policy Website.

(2) Authorities Allowing Deferred Payment by the non-Federal sponsor.

(a) For commercial navigation projects, Section 101(a)(1) of WRDA 86 provides that a portion of the non-Federal sponsor's share will be paid during construction. Section 101(a)(2) of WRDA 86 requires an additional 10 percent of the cost of general navigation features to be paid by the non-Federal sponsor over a period not to exceed 30 years at an interest rate determined pursuant to Section 106 of WRDA 86.

(b) In special circumstances (see ER 1165-2-131) where non-Federal sponsors request, non-Federal sponsor financing may be deferred under Sections 101(d) and 103(l) if approved by the Assistant Secretary of the Army (Civil Works) (ASA (CW)). In such an instance, the Government will finance the construction costs from Federal appropriations and the non-Federal sponsor will repay its share over time, plus interest at a stated rate. When this approach is taken, Interest During Construction (IDC) will be assessed, as well as interest during the repayment phase, since the Government is incurring an interest cost in financing the non-Federal share. All interest will be recorded in the Federal project account as miscellaneous receipts funds returned to the U.S. Treasury. Interest methodology is defined in ER 1165-2-131, Appendix I. This methodology will be followed for all projects subject to the provisions of WRDA 86, P.L. 99-662,

but will not be retroactively applied to projects when construction was begun under previous legislative authorities.

f. Flood Control and Coastal Emergencies.

(1) Cost-sharing provisions under natural disaster procedures specified in ER 500-1-1 require that 20 percent of the cost to rehabilitate a non-Federal levee be provided by non-Federal sponsors. This contribution may be cash or in-kind services provided during the period of construction.

(2) In certain circumstances, notably for construction of wells to provide emergency drinking water, any construction of wells by USACE will be paid by the applicant. USACE may construct wells only when commercial or other sources cannot construct them within a reasonable time. The purpose of the well will be for human and livestock consumption only.
Reference ER 500-1-1.

g. Inland Waterways Transportation. Projects authorized under Section 102 of WRDA 86 are to be financed in part through transfer appropriation 96-20X8861 (Inland Waterways Trust Fund).
The Inland Waterways Trust Fund will be used to pay 50 percent of total construction cost. The term "construction" as used in Section 102 of WRDA 86 includes planning, designing, engineering, surveying, the acquisition of all lands, easements, and rights-of-way necessary for the project, including lands for disposal of dredged material, and relocations necessary for the project.

h. Operation, Maintenance, Repair, Replacement and Rehabilitation (OMRR&R). The non-Federal cost of OMRR&R of projects shall be in accordance with the statutory authority for the project.

i. Reimbursement For Advance Non-Federal Construction of Authorized Federal Harbors and Inland Harbor Improvement.

(1) Section 204(e) of WRDA 86, as amended, provides authority to reimburse a non-Federal sponsor for construction of an authorized Federal harbor or inland improvement or separable element thereof provided that certain statutory requirements are met.

(2) In accordance with the statutory authority, after project authorization and before initiation of construction of the project or separable element, the Secretary of the Army must approve the plans of construction of the project by the non-Federal interest, the non-Federal interest must execute an agreement to pay the non-Federal share, if any, of the cost of operation

and maintenance of the project, and the Secretary must determine before plan approval that the project or separable element of the project is economically justified and environmentally acceptable. Reimbursement cannot be made until appropriated funds are available and the Secretary has certified that the work has been performed in accordance with applicable permits and approved plans.

j. Lands, Easements, Rights-of-Way, Relocations and Disposal Areas (LERRD).

(1) In addition to cash requirements, the non-Federal sponsors are required, under many project authorities, to provide all lands, easements, rights-of-way, and to perform or assure performance of relocations (see paragraph (3) below) or bear the costs of such work if performed by the Government on behalf of the non-Federal sponsor. Except for commercial navigation projects, non-Federal sponsors also are generally required to provide all dredged or excavated material disposal areas.

For commercial navigation projects, the non-Federal sponsor does not generally provide dredged material disposal areas. They must provide the underlying lands, but the disposal area features will be treated as cost shared general navigation features. However, in order to determine the responsibility for a specific project, the statutory authority for the project must be examined. (See ER 1165-2-131 and chapter 12 of ER 405-1-12.)

(2) The non-Federal sponsor shall receive credit toward its share of total project costs for the fair market value of the lands, easements, and rights-of-way that it provides for the project and for the incidental costs of acquiring such interests. Fair market value, and the credit amount to be afforded shall be determined in accordance with the requirements of the cost-sharing agreement executed by the Government and the non-Federal sponsor.

(3) The general policy for performing and cost sharing of relocations, removal or alteration of highway bridges, railroad bridges, utilities and certain structures has been addressed in a series of policy guidance letters (PGL Nos. 1, 2, 2R 44 and 45). They may be found on the web at:
http://www.usace.army.mil/inet/functions/cw/cecwp/branches/guidance_dev/pgls/pgl101.htm
http://www.usace.army.mil/inet/functions/cw/cecwp/branches/guidance_dev/pgls/pgl02.htm
http://www.usace.army.mil/inet/functions/cw/cecwp/branches/guidance_dev/pgls/pgl02r.htm
http://www.usace.army.mil/inet/functions/cw/cecwp/branches/guidance_dev/pgls/pgl44.htm
http://www.usace.army.mil/inet/functions/cw/cecwp/branches/guidance_dev/pgls/pgl45.htm

Specific project statutory authority may provide a different cost-sharing responsibility.

k. Methods for Providing Non-Federal Funds.

(1) General. For projects involving a single or lump sum contract to be completed in one fiscal year or a project that will be completed in one fiscal year, the non-Federal sponsor shall provide its full cash requirement on or before the scheduled date of issuance of the solicitation of the first construction contract. For projects that will take more than one fiscal year to complete, the non-Federal sponsor may provide its share in periodic payments. The timing of these payments may be on a Federal fiscal year, quarterly, or fiscal year of the non-Federal sponsor basis in accordance with the cost-sharing agreement for the project. The non-Federal sponsor's payment may be made by any of the methods of payment (check, escrow account, letter of credit, or electronic funds transfer) outlined in the cost-sharing agreement executed by the Government and the non-Federal sponsor.

(2) Check.

(3) Escrow Accounts.

(a) Non-Federal sponsors of water resource projects, especially those projects that will be constructed over a period of years, may wish to provide their required contributions in an interest bearing escrow account. The escrow account provides a means for the non-Federal sponsor to earn interest on its funds and ensures that funds are available for use immediately by the Government when needed. Funds are not available for obligation purposes by the Government until withdrawn from the non-Federal sponsor's escrow account and deposited into the U.S. Treasury. Usually, the District Commander or another designated official for deposit will withdraw funds in escrow into the U.S. Treasury in increments as needed. Approval from HQUSACE (CECC-G) is required only when escrow agreements differ from the model escrow agreement. Further discussion is provided in ER 1165-2-30, ER 1165-2-131, ER 37-1-30, in Memorandum, CECC-ZA, 8 October 1997, subject: Escrow Agreements in Support of Agreements Other than Project Cooperation Agreements, as amended by Memorandum, CECW-PG, 28 September 2000, Subject: Revision to Model Escrow Agreement, and references cited therein.

(1) The model escrow agreement found in those ERs has been modified. The revised model is located at the following Internet address:
http://www.usace.army.mil/civilworks/cecwp/branches/policy_compliance/ccpca.htm

(b) Escrow accounts must meet certain criteria. The financial institution must be financially secure. The financial institution that holds the escrow account must hold a national charter (i.e., be a member of the Federal Reserve) or at least be insured by the Federal Deposit

Insurance Corporation (FDIC). In addition, the deposit of funds must be irrevocable. The non-Federal sponsor must not be able to withdraw the funds until the Government has certified that no additional funds will be needed. The funds will not be used for speculative investment. Any investment by the financial institution must be a direct obligation of the Federal Government (e.g., Treasury bills) or obligations of Federal agencies guaranteed by the Federal Government (e.g., certificates issued by the Government National Mortgage Association), or in a money market mutual fund consisting solely of such obligations.

(4) Letter of Credit. The non-Federal sponsor may wish to provide an irrevocable letter of credit for its share of project costs. A letter of credit is similar to an escrow account. With a letter of credit, a financial institution guarantees to the Federal Government that funds are available upon request from the non-Federal sponsor to meet the required cash outlays. HQUSACE (CECC-G) must approve the letter of credit. A suggested example of a letter of credit has been placed on the HQUSACE Civil Works website at:
http://www.usace.army.mil/civilworks/cecwp/branches/policy_compliance/ccpca.htm

(5) Electronic Funds Transfer.

(6) Deferred Payments. Deferred payments by non-Federal sponsors are covered in ER 1165-2-131 and the mechanisms would need to be specifically provided in the project cooperation agreement.

(7) There are occasions when non-Federal sponsors may wish to meet their cost sharing responsibilities at least in part with funds they have received from the Government. As a general rule, non-Federal shares of project cost are to be satisfied through the use of non-Federal funds. Federal funds may not be used to meet the non-Federal sponsor's share of project costs unless the expenditure of such funds is expressly authorized by statute as verified in writing by the granting agency. (See ER 1165-2-131.)

l. Voluntary contributions for recreation and natural resources activities, 33 USC 2325.

(1) Acceptance. USACE is authorized to accept contributions of cash, funds, materials, and services from persons, including governmental entities but excluding the project sponsor in connection with management of recreation and natural resources activities at water resources development projects.

(2) Deposit. Any cash or funds received shall be deposited in the U.S. Treasury into account "Contributions and Advances, Rivers and Harbors, Corps of Engineers (96X8862)" and shall be available until expended.

m. Challenge Partnership Agreements program for the management of recreation and natural resources activities, 33 USC 2328.

(1) General. USACE is authorized to develop and implement a program to share the cost of managing recreation and natural resources activities at water resources development projects.

(2) Cooperative agreements. To implement this program, USACE is authorized to enter into cooperative agreements with non-Federal public and private entities to provide for operation and management of natural resources activities at Civil Works projects.

(3) Contributions. USACE may accept contributions of funds, materials, and services from non-Federal public and private entities for the Challenge Partnership Agreements program. Any funds received shall be deposited in the U.S. Treasury into account "Contributions and Advances, Rivers and Harbors, Corps of Engineers (96X8862)" and shall be available until expended.

13-3. Procedures.

a. Cost Shared Accounting Procedures can be found at: http://www.usace.army.mil/inet/functions/rm/finance/finance.htm

b. Financial Management System. The Corps of Engineers Financial Management System (CEFMS) user manual at http://rmf31.usace.army.mil/cefmsdoc provides detailed financial system procedures for cost sharing management.

APPENDIX A

Required Publications

P.L. 99-662 (The Water Resources Development Act of 1986)

P.L. 100-676 (The Water Resources Development Act of 1988)

P.L. 106-541 (The Water Resources Development Act of 2000)

38 Stat. 1053; (Rivers and Harbor Act of 1915) 33 U.S.C. 560, Section 4

OMB Circular A-87 (Cost Principles for State and Local Governments)

EFARS (Engineer Federal Acquisition Regulation Supplement)

ER 37-1-30 (Accounting and Reporting)

ER 405-1-12 (Real Estate Handbook)

ER 500-1-1 (Natural Disaster Procedures)

ER 1105-2-100 (Guidance for Conducting Civil Works Planning Studies)

ER 1165-2-30 (Acceptance and Return of Required, Contributed or Advanced Funds for Construction or Operation)

ER 1165-2-120 (Reimbursement for Advance Non-Federal Construction of Federally Authorized Harbor and Inland Harbor Improvements)

ER 1165-2-131 (Project Cooperation Agreements for New Start Construction Projects)

APPENDIX B

Final Accounting Report

13-B-1. The terms of the FCSA, PCA, and Design Agreement require that the Corps must provide the non-Federal sponsor with a final accounting report of total study/project cost. The project manager and the F&A office will prepare the final accounting report. The project manager, RM representative and non-Federal sponsor may develop the final accounting report format during the preliminary negotiations of the FCSA or PCA. It is recommended that a draft report format be presented to the non-Federal sponsor for concurrence. The F&A office must ensure that the final report agrees with the cost recorded in the official accounting records (CEFMS). Commanders and project managers must ensure that responsibilities are clearly assigned, since the report may require a billing or refund to the non-Federal sponsor. An independent review of the final accounting report must be performed prior to billing or returning funds to the sponsor. CEIR reviews the USACE records and DCAA reviews the sponsor records.

13-B-2. The percentage of total project cost which the non-Federal sponsor must provide is normally a joint effort between Project Management, Resource Management, Counsel, and Real Estate and determined based on Federal laws. Under P.L. 99-662, cost sharing requirements for certain project feature/purposes are different from others. The final accounting report must contain clear splits where different project purposes exist. The cost accountant must coordinate with the project manager to determine if different project purposes are involved and hence the applicable cost share percentages have been established prior to start of work.

13-B-3. The terms of the model FCSA require that the final accounting report of study cost be provided to the non-Federal sponsor within 90 days of the study completion. The terms of the FCSA require the following items to be included in the final accounting report:

(1) Government disbursement of Federal Funds.

(2) Cash contributions from the sponsor.

(3) Credits for the negotiated cost of the non-Federal sponsor.

Within 30 days after the final accounting report, the Government shall refund to the sponsor the excess of cash contributions and credits over 50 percent of total study cost, if any, subject to the availability of appropriation funds. Within 30 days after the final accounting report, the non-Federal sponsor shall provide the Government any cash contributions required so that total sponsor's share equals 50 percent of total study cost.

13-B-4. The terms of the PCAs for civil works projects require the Corps, upon completion of construction and resolution of all relevant claims and appeals, to compute total cost of construction and tender to the non-Federal sponsor a final account of the sponsor's share of total project cost. The final accounting report should be provided within 90 days.

a. In the event that the total contributions by the non-Federal sponsor are less than its required share, the sponsor shall, no later than 90 calendar days after receipt of written notice, make cash payment to the Government to meet its required share of project cost.

b. Structural flood control model PCA. See Article VI D for requirements regarding refund of the non-Federal sponsor's contribution.

c. Harbor model PCA.

13-B-5. If interest on deferred payments or during construction applies, it must be computed as earned and reflected in the final accounting report for proper accounting and to preclude allegations that the Corps failed to disclose all cost.