

to occur), season (e.g., a snowpack that will melt in the coming spring runoff), or of known cyclical activities.

(2) *Unusual flooding.* A subjective determination that considers potential ability to approach an area's flood of record, a catastrophic level of flooding, or a greater than 50-year level of flooding.

Subpart G—Local Interests/ Cooperation Agreements

§ 203.81 General.

(a) *Requirements for Cooperation Agreements.* In order to maintain a firm understanding between the Corps and non-Federal interests concerning the responsibilities of each party in responding to or recovering from a natural disaster, division or district commanders shall negotiate a cooperation agreement (CA) with a non-Federal sponsor whenever assistance (other than short term technical assistance) is furnished. CA's do not require approval by HQUSACE unless they contain special or unusual conditions. For assistance to other than a public entity, a public agency is required to be the non-Federal sponsor, co-sign the agreement, and be responsible, from the Corps perspective, for accomplishment of all work and conditions required in the CA. Project sponsors must meet the definition contained in § 203.15.

(b) *Request for assistance.* (1) For urgent situations involving Flood Response activities, division/district commanders may respond to oral requests from responsible representatives of local interests. However, all oral requests must be confirmed in writing. Assistance can be furnished before the written statement is received.

(2) Before furnishing assistance (other than short term technical assistance) under Advance Measures, or under Emergency Water Supplies, the district/division commander must receive a request, signed by the Governor (or the Governor's representative for Emergency Water assistance due to a contaminated source), identifying the problem, verifying that all available State and local resources have been committed, and requesting Federal assistance.

§ 203.82 Requirements of local cooperation.

It is Corps policy that provision of assistance under Public Law 84-99 will, insofar as feasible, require local interests to: provide without cost to the United States all LERRD's necessary for the authorized work; hold and save the United States free from damages due to the authorized work, exclusive of damages due to the fault or negligence of the United States or its contractor; maintain and operate, in a manner satisfactory to the Chief of Engineers, all the works after completion. When assistance includes the construction of temporary protective works, the maintain and operate clause is modified by adding (or substituting, as applicable) the requirement for local interests to remove any temporary works constructed by the Corps under Public Law 84-99. If any permanent works are constructed, then the sponsor is required to operate and maintain the project in accordance with requirements determined by the Corps.

(a) *Furnishing of LERRD's.* This item provides for sites of structures, for borrow and disposal areas, and for access. It also provides for all other rights in, upon, through, or over private property as needed by the United States in connection with the authorized work. Performance by the local interests under their assurance to furnish LERRD's will normally not be considered a contribution. If more advantageous to the Federal Government, borrow and disposal areas may be assumed as a Federal responsibility. Easements must be provided for future Federal inspection of maintenance or removal. If a public agency sponsors a project for a non-public applicant, the applicant must provide an easement to the sponsor for future maintenance or removal, as well as for Federal inspection. Easements should extend to the life of the project.

(b) *Hold and save clause.* This clause serves as legal protection of the government. Where property concerned is under tenancy, both the property owner and the tenant should acknowledge the non-Federal sponsor's signed CA.

(c) *Maintain and operate clause.* This item is intended to protect the investment of government resources and provide proper stewardship of resources entrusted to the Corps. This clause must include: “It is understood that the foregoing maintenance and operation requirement extends to inter-related features of all protective work under the control of (insert name of sponsor, and owner if appropriate).”

(d) *Removal of temporary works.* Local interests are responsible for the removal of all temporary works constructed by the Corps, which are unsuitable for upgrade to permanent structures. Structures may be deemed unsuitable due to inherent health, access, or safety problems that could result from their location. The wording of this clause must not preclude the use of other Federal assistance programs to fund removal.

(e) *Request for retention of temporary flood control works.* Local interests may ask to retain a temporary structure for protection from future floods. This will not be approved by the Corps unless the works are upgraded to meet all Corps criteria for permanent projects. Public Law 84-99 funds will not be used to upgrade the structure. An upgraded project must comply with permitting, environmental, and other regulatory and legal requirements. Unless upgraded, such projects are not eligible for rehabilitation, and must be removed in accordance with paragraph (d) of this section. Unless upgraded, temporary projects which are not removed by the local sponsor will cause all projects with the same sponsor to lose eligibility for Public Law 84-99 assistance. Local interests must initiate action to upgrade or remove the temporary works within 30 days after the flood threat has passed.

(f) *Cost sharing.* (1) The Federal Government may assume up to 80 percent of the eligible construction costs for rehabilitation of non-Federal flood control projects, and up to 100 percent of the eligible construction costs for rehabilitation of Federal flood control projects. The Federal Government may assume up to 100 percent of the eligible construction costs for rehabilitation of HSPP’s. Sponsors will provide their share of costs as provided for in § 203.84.

The sponsor’s share is in addition to providing costs for LERRD’s, and any costs for correction of any deferred/deficient maintenance. The Corps will determine the dollar value of any in-kind services provided by the local sponsor.

(2) For those unusual occasions where permanent construction (vice the temporary standard) for Advance Measures projects is employed, the local sponsor will normally be required to provide 25 percent of the project cost, in addition to LERRD’s.

§ 203.83 Additional requirements.

(a) *Maintenance deficiencies.* Rehabilitation, Emergency Water, Post Flood Response, and Advance Measures authorities may not be used to correct deferred or deficient maintenance. Such correction must be accomplished by, or at the expense of, local interests. This may include restoring normal levee or dune height after subsidence, replacement of deteriorated components such as outlet structures and pipes, removal of debris, and new construction items such as protection against erosion. This restriction on use of these authorities does not preclude furnishing flood fight assistance during an emergency.

(b) *Areas of minor damage, flood control works.* Separable areas with minor damage will be included in the maintenance program of local interests.

(c) *Minor completion items.* Local interests should be responsible for minor completion items, such as dressing fills, placing sod, or seeding completed work.

(d) *Adequacy of requirements of local cooperation.* In determining the adequacy of the pledge of local cooperation, district/division commanders must consider the local sponsor’s performance capability, taking into account any shortcomings in meeting prior commitments. Local sponsors should make provisions to establish and provide resources for a “Contingency Fund” to meet future maintenance requirements if apparent inadequacies of protective works indicate maintenance costs will be unusually high. Local sponsors should make provisions to establish and provide resources for a “Capital Improvement Fund” to meet future costs of capital