



DEPARTMENT OF THE ARMY
U.S. ARMY CORPS OF ENGINEERS
441 G STREET, NW
WASHINGTON, DC 20314-1000

CECW-P

SEP 28 2017

MEMORANDUM FOR SEE DISTRIBUTION

SUBJECT: Implementation Guidance for Section 1153 of the Water Resources and Development Act of 2016 (WRDA 2016) Amending Section 1024 of the Water Resources Reform and Development Act of 2014 (WRRDA 2014), Authority to Accept and Use Materials, Services, or Funds

1. Section 1153 of WRDA 2016 amends Section 1024 of WRRDA 2014 to authorize the Secretary to accept and use materials, services, or funds contributed by a non-Federal public entity, a nonprofit entity, or a private entity for the purpose of repairing, restoring, replacing, or maintaining a water resources project if the District Commander determines that there is a risk of adverse impacts to the functioning of the project for the authorized purposes of the project and that acceptance of the materials, services, or funds is in the public interest. Section 1024, as amended, further provides that the Secretary may only use materials or services if they comply with all applicable laws and regulations that would apply if they were acquired by the Secretary. It further provides that such services must be supplementary to existing federal employees used to perform work that would not otherwise be accomplished as a result of funding or personnel limitations. Finally, it includes reporting requirements. Copies of Section 1024 of WRRDA 2014, as amended (33 U.S.C. 2325a) and Section 1153 of WRDA 2016 are enclosed.

2. In accordance with the guidance provided in this memorandum, District Commanders are delegated authority to accept services, materials, or funds contributed (referred to as "contributions") from a non-Federal public entity, nonprofit entity, or private entity (referred to as "contributor") for the purpose of repairing, restoring, replacing, or maintaining a water resources project, if the District Commander determines that there is a risk of adverse impacts to the functioning of the project for the authorized purposes of the project and that such acceptance and use is in the public interest. This authority may not be further delegated. The District Commander must provide written documentation of these determinations. In addition, there may be special circumstances, such as, for example, if dam safety issues are involved, where the district should coordinate with the entire vertical team before the district commander determines whether to accept the contribution.

a. This guidance applies to federally authorized water resources projects operated and maintained by the U.S. Army Corps of Engineers (Corps).

b. Materials, including equipment, must meet Corps standards, and be approved by the District Commander or his or her designated representative. Material handling, storage, and disposal shall comply with provisions of EM 385-1-1, Safety and Health

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Requirements Manual. Materials intended as part of permanent repairs shall include a warranty that is transferable to Corps.

c. Services will not be accepted to displace Corps personnel. However, such services may supplement existing staff and may also include work that would not otherwise be accomplished because of Corps funding or personnel limitations. Services to be provided must be reviewed and approved by the District Commander.

d. Environmental compliance with all applicable laws must be completed before the initiation of repair, restoration, replacement or maintenance activities with contributions. The contributor must provide funds to the district to cover costs to complete any environmental compliance required for these activities.

e. Corps' acceptance and use of contributions under Section 1024, as amended, does not involve 33 U.S.C. 408.

f. The District Commander or his or her designated representative shall oversee the services provided to ensure that they are consistent with the plan approved by the district. The contributor bears responsibility if services provided are performed in a negligent manner.

g. Materials or services provided must comply with all applicable laws that would apply if such materials and services were acquired by the Secretary. Applicable Federal Laws and Regulations may include, but are not limited to, 40 U.S.C. 3141-3148 and 40 U.S.C. 3701-3708 (labor standards originally enacted as the Davis-Bacon Act, the Contract Work Hours and Safety Standards Act, and the Copeland Anti-Kickback Act); the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, Public Law 91-646, as amended (42 U.S.C. 4630 and 4655) and the regulations contained in 49 CFR Part 24; Section 601 of the Civil Rights Act of 1964 (P.L. 88-352), as amended (42 U.S.C. 2000d), and Department of Defense Directive 5500.11 issued pursuant thereto; the Age Discrimination Act of 1975 (42 U.S.C. 6102); the Rehabilitation Act of 1973, as amended (29 U.S.C. 794), and Army Regulation 600-7 issued pursuant thereto; Buy American Act (41 U.S.C. 8302); Clean Air Act (42 U.S.C. 7606; Clean Water Act (33 U.S.C. 1368; Jones Act (46 U.S.C. 55109); Shipping Act (46 U.S.C. 55109); Utilization of Small Business Act (15 U.S.C. 631, 644; and Equal Opportunity for Veterans Act (38 U.S.C. 4212). In addition, a list of related laws which may apply and must be satisfied when applicable, is set forth at 33 CFR Section 320.3. The District Commander should be prepared to provide copies of language used by the Corps in its standard contracts to serve as a guide for the contributor in developing its own contract.

h. If the existing real property interests are not sufficient for the performance of work involving contributions under Section 1024, as amended, the contributor will be required to undertake acquisition of additional real property interests in accordance with the applicable provisions of the Uniform Relocation Assistance and Real Property

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Acquisition Policy Act of 1970, Public Law 91-646, as amended (42 U.S.C. 4601-4655), and the Uniform Regulations contained in 49 C.F.R. Part 24, or provide funds to the district to cover the costs associated with the acquisition of additional real property interests.

i. There will be no credit or repayment for contributions provided under Section 1024, as amended.

3 Procedure.

a. Prior to the acceptance of contributions under Section 1024, as amended, the district must develop a plan for use of the contributions. The plan must demonstrate that there is a risk of adverse impacts to the functioning of the project and that the acceptance of the contributions would be in the public interest. The plan must document in detail how use of the proposed contributions are in accordance with the operation and maintenance manual or related document that supports the operation, maintenance, repair, rehabilitation and replacement of the project. The plan will also document that the materials or services to be provided by the contributor meets the requirements of Engineer Manual 385-1-1 and other relevant Corps regulations and address, at a minimum, the following items:

(1) A defined scope of services will be provided by the contributor. The scope will describe how the contributions will serve to reduce risk of adverse impacts to the functioning of the project and help maintain a safe and reliable project. In addition the plan will identify whether additional real property interests need to be acquired to support the services to be provided and identify party responsible for acquisition.

(2) A listing of privately owned or leased vehicles, vessels, machinery, or other specialized equipment to be used by the contributor that comply with the requirements for inspection criteria, safety devices and operational aids, environmental considerations, operating rules, and guarding and safety devices.

(3) A listing of qualified contractors or employees of the contributor who are authorized to operate, for official use, government-owned or leased vehicles, vessels, machinery or other specialized equipment. Employees or contractors for the contributor must have the proper training, license, and/or experience in accordance with Corps operator permit policies and understanding of the safety requirements to the satisfaction of the District Commander before operating a government-owned or leased vehicle, vessel, or equipment. Government authorization policies apply to contractors or employees for each contributor.

(4) A security clearance for all contractors and employees for the contributor must be validated, when appropriate, as determined by the district commander. Individuals may be legal aliens (permanent residents) or foreign exchange students. Any non-U.S.

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citizen must present his/her Visa (or passport if in the U.S. in tourist status from a visa-waiver country where visas are not required) or U.S. Permanent Resident Card INS Form 1-551 (formerly known as Alien Registration Receipt Card) for review and verification. Persons who have been convicted of a violent crime, sexual crime, arson, crime with a weapon, or sale or intent to distribute illegal drugs, or are an organized crime figure will not be utilized as volunteers. Persons awaiting trial or under indictment for any of the crimes listed above will not be utilized as a volunteer until the case has been resolved in the person's favor through the legal process. Use of civilian prison labor from the Federal Bureau of Prisons, and State and County Correctional Systems is beyond the scope of this authorization.

(5) An approved Accident Prevention Plan for each contributor.

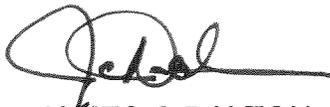
b. The District Commander will document in writing the approval for accepting contributions under Section 1024, as amended. Template agreements for acceptance and use of contributions will be posted on the Corps Agreements website. Following District Counsel review and concurrence that the negotiated agreement is acceptable, the District Commander may approve and sign the agreement. The agreement must be fully executed prior to the acceptance of contributions from the contributor. Any proposed substantive deviations to the template agreements must be submitted through the MSC to the appropriate Headquarters Regional Integration Team (RIT) for resolution.

4. Within 30 days of accepting contributions under Section 1024, as amended, the District Commander will submit, through the MSC Commander, to the appropriate RIT, a report that includes a description of the activities undertaken using the contributions, including the costs associated with such activities, and a comprehensive description of how the activities were necessary for maintaining a safe and reliable water resources development project. CECW-I will consolidate the information from each RIT into a report, and by 30 October of the first fiscal year in which contributions are accepted under Section 1024, as amended, and by 30 October of each subsequent fiscal year, the Director of Civil Works, will transmit the draft annual report to the Assistant Secretary of the Army (Civil Works) for review and submission to the Committee on Environment and Public Works of the Senate and the Committee on Transportation and Infrastructure of the House of Representatives by 1 February.

5. This guidance supersedes the implementation guidance for Section 1024 of WRRDA 2014, dated 8 June 2016. This guidance is in addition to and does not affect guidance relating to the acceptance of contributed funds pursuant to other authorizations, such as ER 1130-2-500 for voluntary contributions for Sections 203 and 225 of WRDA 1992 and the implementation guidance for Sections 1015 and 1023 of WRRDA 2014, dated 11 February 2015.

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Director of Civil Works

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Section 1024 of WRRDA 2014, as amended by Section 1153 of WRDA 2016 (33 U.S.C. § 2325a). Authority to accept and use materials and services

(a) In general

Subject to subsection (b), the Secretary is authorized to accept and use materials, services, or funds contributed by a non-Federal public entity, a nonprofit entity, or a private entity to repair, restore, replace, or maintain a water resources project in any case in which the District Commander determines that--

(1) there is a risk of adverse impacts to the functioning of the project for the authorized purposes of the project; and (2) acceptance of the materials and services or funds is in the public interest.

(b) Limitation

Any entity that contributes materials or services under subsection (a) shall not be eligible for credit or reimbursement for the value of such materials or services.

(c) Additional requirements

(1) Applicable laws and regulations

The Secretary may only use materials or services accepted under this section if such materials and services comply with all applicable laws and regulations that would apply if such materials and services were acquired by the Secretary.

(2) Supplementary services

The Secretary may only accept and use services under this section that provide supplementary services to existing Federal employees, and may only use such services to perform work that would not otherwise be accomplished as a result of funding or personnel limitations.

(d) Report

Not later than February 1 of each year after the first fiscal year in which materials, services, or funds are accepted under this section, the Secretary shall submit to the Committee on Environment and Public Works of the Senate and the Committee on Transportation and Infrastructure of the House of Representatives an annual report that includes--(1) a description of the activities undertaken, including the costs associated with the activities; and (2) a comprehensive description of how the activities are necessary for maintaining a safe and reliable water resources project.

Section 1153 of WRDA 2016. Authority to Accept and Use Materials and Services.

Section 1024 of the Water Resources Reform and Development Act of 2014 (33 U.S.C. 2325a) is amended—

(1) by striking subsection (a) and inserting the following:

“(a) IN GENERAL.—Subject to subsection (b), the Secretary is authorized to accept and use materials, services, or funds contributed by a non-Federal public entity, a nonprofit entity, or a private entity to repair, restore, replace, or maintain a water resources project in any case in which the District Commander determines that—

“(1) there is a risk of adverse impacts to the functioning of the project for the authorized purposes of the project; and

“(2) acceptance of the materials and services or funds is in the public interest.”;

(2) by redesignating subsection (c) as subsection (d);

(3) by inserting after subsection (b) the following:

“(c) ADDITIONAL REQUIREMENTS.—

“(1) APPLICABLE LAWS AND REGULATIONS.—The Secretary may only use materials or services accepted under this section if such materials and services comply with all applicable laws and regulations that would apply if such materials and services were acquired by the Secretary.

“(2) SUPPLEMENTARY SERVICES.—The Secretary may only accept and use services under this section that provide supplementary services to existing Federal employees, and may only use such services to perform work that would not otherwise be accomplished as a result of funding or personnel limitations.”; and

(4) in subsection (d) (as redesignated by paragraph (2)) in the matter preceding paragraph (1)—

(A) by striking “Not later than 60 days after initiating an activity under this section,” and inserting “Not later than February 1 of each year after the first fiscal year in which materials, services, or funds are accepted under this section,”; and

(B) by striking “a report” and inserting “an annual report”.