

§ 203.83

33 CFR Ch. II (7-1-11 Edition)

(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

improvement projects such as replacement of culverts in levees, pump station equipment, etc.

(e) *Eligibility under other Federal programs.* The Cooperation Agreement must be worded to allow local interests to accept funding from other Federal programs for meeting the local responsibility. For example, removal of temporary works will be without cost under Corps Public Law 84-99 assistance, but will not be "at no cost to the United States." Use of another Federal agency's funds is contingent upon that agency providing the Corps written assurance that such usage does not violate any existing laws or rules concerning the usage or expenditure of such funds.

§ 203.84 Forms of local participation—cost sharing.

In addition to the standard requirements of local cooperation and according to the circumstances, local participation in project work may be in the form of: contributed funds; the furnishing of materials, equipment, or services; and/or accomplishment of work either concurrently or within a specified reasonable period of time. The final terms agreed upon will be set forth in writing and made a part of the CA before commencement of work.

(a) *Contributed funds.* Contributed funds may be accepted, or refunded, without further reference or approval by the Chief of Engineers. The required certificate of the district commander will cite 33 U.S.C. 701h as the pertinent authority.

(b) *Obligation of contributed funds.* Per OMB Circular A-34, all contributed funds must be received in cash and deposited with the Treasury before any obligations can be made against such funds. Public Law 84-99 assistance for well construction is exempted from this requirement because financing is specifically authorized. However, the CA for such well construction assistance (*see* subpart G of this part) must be signed in advance of any obligations. To reduce administrative problems, CA terms for well construction should be for no longer a period than that which will allow for payments within the means of the applicant.

Public Law 84-99 limits the term to a maximum of 30 years.

(c) *Provision of work or services in kind.* To the extent practicable, local interests should be allowed to minimize the amount of contributed funds by providing equivalent work or services in kind. Such services do not include LERRD's.

§ 203.85 Rehabilitation of Federal flood control projects.

Some sponsors of Federal flood control projects are not required to furnish written assurances of local cooperation, when such assurances already exist from the PCA of the original construction of the project. In lieu of a new PCA, the Corps will notify the sponsor, in writing, of the sponsor's standing requirements. These requirements include such items as LERRD's, costs attributable to deficient or deferred maintenance, removal of temporary works, cost-sharing requirements, and any other requirements contained in §203.82. The project sponsor must acknowledge its responsibilities prior to the provision of Rehabilitation Assistance. If the existing PCA does not adequately address responsibilities, then a CA will be required.

§ 203.86 Transfer of completed work to local interests.

Responsibility for operation and maintenance of a project for which emergency work under Public Law 84-99 is undertaken will always remain with the non-Federal sponsor throughout the process, and thereafter. The Corps will notify the non-Federal sponsor by letter when repair/rehabilitation/work efforts are completed. Detailed instructions, and suggestions relative to proper maintenance and operation, may be furnished as an enclosure to this letter. The letter will remind the local interests that they are responsible for satisfactory maintenance of the flood control works in accordance with the terms of the PCA or CA. In appropriate cases for Federal projects, refer to the "Flood Control Regulation for Maintenance and Operation of Flood Control Works: (33 CFR 208)" or the project's Operation and Maintenance Manual. Reporting requirements placed on the non-Federal