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(5) Upon receipt from OCE of the full executed agreement, the District Engineer will transmit the signed agreement to the non-Federal entity.

(6) The Division Engineer will review the (partial) design memorandum, and, if it meets the relevant criteria in paragraph (d)(1) of this section, will submit it to OCE with the recommendations on whether or not the work may proceed subject to reimbursement under the agreement.

(7) The Division Engineer will approve plans and specifications.

(8) The non-Federal entity will award contract.

(9) The District Engineer will conduct periodic and final inspections.

(10) Upon completion of the local work, the District Engineer will certify the cost data, and that performance has been in accordance with the agreement.

(f) Agreements. Agreements under Section 215 should follow the general format presented in paragraph (c)(6) of this section, adapted as warranted by the specific case. Each agreement shall:

(1) Expire 3 years after the date of execution if the non-Federal entity has not commenced the work contemplated by the agreement.

(2) State the time allowed for completion of the work. A reasonable time shall be allowed, but normally not over 2 construction seasons.

(3) Fully describe the work to be accomplished by the non-Federal entity and specify the manner in which it will be carried out.

(4) The agreement will specify that reimbursement by the Federal Government will not exceed $1,000,000.

(5) Provide for necessary review of designs, plans, and specifications, by the District Engineer.

(6) Provide for examination and review of proposed contracts and for inspection of the work by the District Engineer for conformance with the terms of the agreement.

(7) State fully the basis on which reimbursement or credit shall be determined, and provide for the final adjustment when the balance of the Federal project is constructed. If the improvement proposed by the non-Federal entity includes work that will not become a part of the Federal project, the means of determining the part eligible for reimbursement shall be fully defined.

(8) State that such reimbursement shall depend upon appropriation of funds applicable to the project and shall not take precedence over other pending projects of higher priority.

(9) Specify that reimbursement or credit for non-Federal work shall apply only to that work undertaken after execution of the agreement. The term “work” shall include advance engineering and design as well as actual construction.

(10) State that the agreement is not to be construed as committing the United States to reimbursement if the Federal project is not undertaken, or if the Federal project should be modified in such a way that the work performed by the non-Federal entity does not constitute a part thereof.

(11) Contain applicable equal employment clauses from Armed Services Procurement Regulations.

(g) Nature and amount of reimbursement. (1) The non-Federal entity may be reimbursed by a payment of cash, or, preferably, by reductions in any non-Federal contribution to the Federal project that may have been required by the legislation authorizing it, or by a combination of cash and such reductions.

(2) The amount of reimbursement shall equal the approved expenditures made by the non-Federal entity for work that would have been accomplished at Federal expense if the entire project were carried out by the Corps of Engineers, and as covered in the agreement under paragraphs (f) (7) and (10) of this section. The amount of reimbursement will not exceed, however, the amount that the District Engineer finds to be a reasonable estimate of the reduction in Federal expenditure resulting from construction by the non-Federal entity.

APPENDIX A TO PART 209—PUBLIC LAW 90–483, 90TH CONGRESS, S. 3710, AUGUST 13, 1968

An act authorizing the construction, repair, and preservation of certain public works on rivers and harbors for navigation,
flood control, and for other purpose. (82 Stat. 731).

* * * * *

Sec. 215. (a) The Secretary of the Army, acting through the Chief of Engineers, may, when he determines it to be in the public interest, enter into agreement providing for reimbursement to States or political subdivisions thereof for work to be performed by such non-Federal public bodies at water resources development projects authorized for construction under the Secretary of the Army and the supervision of the Chief of Engineers. Such agreements may provide for reimbursement of installation costs incurred by such entities or an equivalent reduction in the contributions they would otherwise be required to make, or in appropriate cases, for a combination thereof. The amount of Federal reimbursement, including reductions in contributions, for a single project shall not exceed $1,000,000.

(b) Agreements entered into pursuant to this section shall (1) fully describe the work to be accomplished by the non-Federal public body, and be accompanied by an engineering plan if necessary therefor; (2) specify the manner in which such work shall be carried out; (3) provide for necessary review of design and plans, and inspection of the work by the Chief of Engineers or his designee; (4) state the basis on which the amount of reimbursement shall be determined; (5) state that such reimbursement shall be dependent upon the appropriation of funds applicable thereto or funds available therefor, and shall not take precedence over other pending projects of higher priority for improvements; and (6) specify that reimbursement or credit for non-Federal installation expenditures shall apply only to work undertaken or Federal projects after project authorization and execution of the agreement, and does not apply retroactively to past non-Federal work. Each such agreement shall expire three years after the date on which it is executed if the work to be undertaken by the non-Federal public body has not commenced before the expiration of that period. The time allowed for completion of the work will be determined by the Secretary of the Army, acting through the Chief of Engineers, and stated in the agreement.

(c) No reimbursement shall be made, and no expenditure shall be credited, pursuant to this section, unless and until the Chief of Engineers or his designee, has certified that the work for which reimbursement or credit is requested has been performed in accordance with the agreement.

(d) Reimbursement for work commenced by non-Federal public bodies no later than one year after enactment of this section, to carry out or assist in carrying out projects for beach erosion control, may be made in accordance with the provisions of section 2 of the Act of August 13, 1946, as amended (33 U.S.C. 426f). Reimbursement for such work may, as an alternative, be made in accordance with the provisions of this section, provided that agreement required herein shall have been executed prior to commencement of the work. Expenditures for projects for beach erosion control commenced by non-Federal public bodies subsequent to one year after enactment of this section may be reimbursed by the Secretary of the Army, acting through the Chief of Engineers, only in accordance with the provisions of this section.

(e) This section shall not be construed (1) as authorizing the United States to assume any responsibilities placed upon a non-Federal body by the conditions of project authorization, or (2) as committing the United State to reimburse non-Federal interests if the Federal project is not undertaken or is modified so as to make the work performed by the non-Federal Public body no longer applicable.

(f) The Secretary of the Army is authorized to allot from any appropriations hereafter made for civil works not to exceed $10,000,000 for any one fiscal year to carry out the provisions of this section. This limitation does not include specific project authorizations providing for reimbursement.

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[42 FR 24050, May 12, 1977]

PART 210—PROCUREMENT ACTIVITIES OF THE CORPS OF ENGINEERS

Sec.
210.1 Advance notice to prospective bidders.
210.2 Notice of award.
210.3 Notice to proceed.
210.5 Rules of the Corps of Engineers Board of Contract Appeals for cases subject to the Contract Disputes Act of 1978.


§ 210.1 Advance notice to prospective bidders.

In connection with all construction contracts estimated to cost $100,000 or more for which an invitation is scheduled to be issued, an advance notice to prospective bidders will be prepared sufficiently in advance of the actual issuance of the invitation to stimulate