



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

REPLY TO
ATTENTION OF

CECW-CO

SEP 30 2015

MEMORANDUM FOR SEE DISTRIBUTION LIST

SUBJECT: Implementation Guidance for Section 5014 of the Water Resources Reform and Development Act of 2014

1. Section 5014 of WRRDA 2014 directs the Secretary to establish a pilot program to evaluate the cost effectiveness and project delivery efficiency of allowing non-federal pilot applicants to carry out authorized water resources development projects for coastal harbor improvement, channel improvement, inland navigation, flood damage reduction, aquatic ecosystem restoration, and hurricane and storm damage reduction. Non-federal pilot applicants include the non-federal sponsor of the project, a non-federal interest as defined in Section 221 of the Flood Control Act of 1970, as amended, or a private entity with the consent of the local government in which the project is located or that is otherwise affected by the project. Section 5014 describes the processes and the selection criteria that are to be used in implementing the pilot program and requires that the Secretary conduct a public benefits assessment and provide justification in writing to the Committee on Environment and Public Works of the Senate and the Committee on Transportation and Infrastructure of the House of Representatives that the proposed arrangement provides better public and financial benefits than a similar transaction using traditional public funding or financing. Section 5014 provides that all laws that apply to the Secretary in carrying out a project, including cost sharing, labor, and environmental laws, apply to any non-federal pilot applicant carrying out a project under this section. Further, Section 5014 provides that any activity undertaken under this section is authorized only to the extent specifically provided for in subsequent Appropriations Acts. A copy of Section 5014 of WRRDA 2014 is enclosed.

2. Section 5014 provides that no specific project development activity may be undertaken pursuant to this authority until such time as funds are specifically appropriated for such activities. Because appropriations have not been made for this purpose, no activities may be undertaken under this section. At such time as appropriations are provided for Section 5014 activities, additional guidance will be provided.

STEVEN L. STOCKTON, P.E.
Director of Civil Works

Encl

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(see next page)

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Enclosure

SECTION 5014 OF WRRDA 2014. WATER INFRASTRUCTURE PUBLIC-PRIVATE PARTNERSHIP PILOT PROGRAM.

(a) IN GENERAL.—The Secretary shall establish a pilot program to evaluate the cost effectiveness and project delivery efficiency of allowing non-Federal pilot applicants to carry out authorized water resources development projects for coastal harbor improvement, channel improvement, inland navigation, flood damage reduction, aquatic ecosystem restoration, and hurricane and storm damage reduction.

(b) PURPOSES.—The purposes of the pilot program established under subsection (a) are—

- (1) to identify cost-saving project delivery alternatives that reduce the backlog of authorized Corps of Engineers projects; and
- (2) to evaluate the technical, financial, and organizational benefits of allowing a non-Federal pilot applicant to carry out and manage the design or construction (or both) of 1 or more of such projects.

(c) SUBSEQUENT APPROPRIATIONS.—Any activity undertaken under this section is authorized only to the extent specifically provided for in subsequent appropriations Acts.

(d) ADMINISTRATION.—In carrying out the pilot program established under subsection (a), the Secretary shall—

- (1) identify for inclusion in the program at least 15 projects that are authorized for construction for coastal harbor improvement, channel improvement, inland navigation, flood damage reduction, or hurricane and storm damage reduction;
- (2) notify in writing the Committee on Environment and Public Works of the Senate and the Committee on Transportation and Infrastructure of the House of Representatives of each project identified under paragraph (1);
- (3) in consultation with the non-Federal pilot applicant associated with each project identified under paragraph (1), develop a detailed project management plan for the project that outlines the scope, financing, budget, design, and construction resource requirements necessary for the non-Federal pilot applicant to execute the project, or a separable element of the project;
- (4) at the request of the non-Federal pilot applicant associated with each project identified under paragraph (1), enter into a project partnership agreement with the non-Federal pilot applicant under which the non-Federal pilot applicant is provided full project management control for the financing, design, or construction (or any combination thereof) of the project, or a separable element of the project, in accordance with plans approved by the Secretary;

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(5) following execution of a project partnership agreement under paragraph (4) and completion of all work under the agreement, issue payment, in accordance with subsection (g), to the relevant non-Federal pilot applicant for that work; and
(6) regularly monitor and audit each project carried out under the program to ensure that all activities related to the H. R. 3080—138 project are carried out in compliance with plans approved by the Secretary and that construction costs are reasonable.

(e) SELECTION CRITERIA.—In identifying projects under subsection (d)(1), the Secretary shall consider the extent to which the project—

- (1) is significant to the economy of the United States;
 - (2) leverages Federal investment by encouraging non-Federal contributions to the project;
 - (3) employs innovative project delivery and cost-saving methods;
 - (4) received Federal funds in the past and experienced delays or missed scheduled deadlines;
 - (5) has unobligated Corps of Engineers funding balances;
- and
- (6) has not received Federal funding for recapitalization and modernization since the project was authorized.

(f) DETAILED PROJECT SCHEDULE.—Not later than 180 days after entering into a project partnership agreement under subsection (d)(4), a non-Federal pilot applicant, to the maximum extent practicable, shall submit to the Secretary a detailed project schedule for the relevant project, based on estimated funding levels, that specifies deadlines for each milestone with respect to the project.

(g) PAYMENT.—Payment to the non-Federal pilot applicant for work completed pursuant to a project partnership agreement under subsection (d)(4) may be made from—

- (1) if applicable, the balance of the unobligated amounts appropriated for the project;
- and
- (2) other amounts appropriated to the Corps of Engineers, subject to the condition that the total amount transferred to the non-Federal pilot applicant may not exceed the estimate of the Federal share of the cost of construction, including any required design.

(h) TECHNICAL ASSISTANCE.—At the request of a non-Federal pilot applicant participating in the pilot program established under subsection (a), the Secretary may provide to the non-Federal pilot applicant, if the non-Federal pilot applicant contracts with and compensates the Secretary, technical assistance with respect to—

- (1) a study, engineering activity, or design activity related to a project carried out by the non-Federal pilot applicant under the program; and
- (2) obtaining permits necessary for such a project.

(i) IDENTIFICATION OF IMPEDIMENTS.—

- (1) IN GENERAL.—The Secretary shall—

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(A) except as provided in paragraph (2), identify any procedural requirements under the authority of the Secretary that impede greater use of public-private partnerships and private investment in water resources development projects;

(B) develop and implement, on a project-by-project basis, procedures and approaches that—

(i) address such impediments; and

(ii) protect the public interest and any public investment in water resources development projects that involve public-private partnerships or private investment in water resources development projects; and H. R. 3080—139

(C) not later than 1 year after the date of enactment of this section, issue rules to carry out the procedures and approaches developed under subparagraph (B).

(2) RULE OF CONSTRUCTION.—Nothing in this section allows the Secretary to waive any requirement under—

(A) sections 3141 through 3148 and sections 3701 through 3708 of title 40, United States Code;

(B) the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.); or

(C) any other provision of Federal law.

(j) PUBLIC BENEFIT STUDIES.—

(1) IN GENERAL.—Before entering into a project partnership agreement under subsection (d)(4), the Secretary shall conduct an assessment of whether, and provide justification in writing to the Committee on Environment and Public Works of the Senate and the Committee on Transportation and Infrastructure of the House of Representatives that, the proposed agreement provides better public and financial benefits than a similar transaction using public funding or financing.

(2) REQUIREMENTS.—An assessment under paragraph (1) shall—

(A) be completed in a period of not more than 90 days;

(B) take into consideration any supporting materials and data submitted by the relevant non-Federal pilot applicant and other stakeholders; and

(C) determine whether the proposed project partnership agreement is in the public interest by determining whether the agreement will provide public and financial benefits, including expedited project delivery and savings for taxpayers.

(k) NON-FEDERAL FUNDING.—The non-Federal pilot applicant may finance the non-Federal share of a project carried out under the pilot program established under subsection (a).

(l) APPLICABILITY OF FEDERAL LAW.—Any provision of Federal law that would apply to the Secretary if the Secretary were carrying out a project shall apply to a non-Federal pilot applicant carrying out a project under this section.

(m) COST SHARE.—Nothing in this section affects a cost-sharing requirement under Federal law that is applicable to a project carried out under the pilot program established under subsection (a).

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(n) REPORT.—Not later than 3 years after the date of enactment of this Act, 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 and make publicly available a report describing the results of the pilot program established under subsection (a), including any recommendations of the Secretary concerning whether the program or any component of the program should be implemented on a national basis.

(o) NON-FEDERAL PILOT APPLICANT DEFINED.—In this section, the term “non-Federal pilot applicant” means—

- (1) the non-Federal sponsor of the water resources development project;
- (2) a non-Federal interest, as defined in section 221 of the Flood Control Act of 1970 (42 U.S.C. 1982d–5b); or H. R. 3080—140
- (3) a private entity with the consent of the local government in which the project is located or that is otherwise affected by the project.