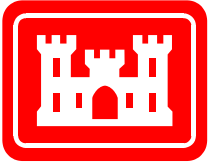


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PAYING FOR PROJECTS

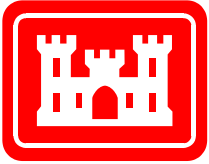
Kim Smith
Office of Water Project Review
Planning and Policy Division
HQUSACE



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DISCUSSION TOPICS

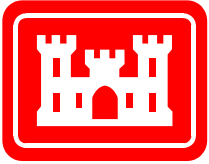
- **In-Kind Contributions Provisions of Section 221,
as amended by Section 2003**
- **Section 2001**
- **Accelerated Use of Sponsor's Funds**
- **Contributed Funds**
- **Advanced Funds**
- **Section 204**



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IN-KIND CONTRIBUTION PROVISIONS OF SECTION 221

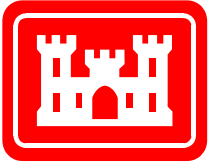
- **Section 221, as amended by Section 2003, provides a general authority for sponsors to provide in-kind contributions both prior to and after execution of applicable cost sharing agreement**
- **Applicable cost sharing agreements are the Design Agreement (DA) and Project Partnership Agreement (PPA)**



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IN-KIND CONTRIBUTION PROVISIONS OF SECTION 221

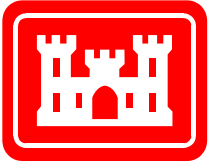
- **Details in EC 1165-2-208 In-Kind Contributions Provisions of Section 221, dated 06 Jun 08**
www.usace.army.mil/cw/cecw-p/pca/pcaguide.htm
- **Agreement toward which credit will be afforded must include language regarding in-kind contributions**
- **DA and PPA models will be revised to include optional text for in-kind contributions**



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APPLICABLE TO:

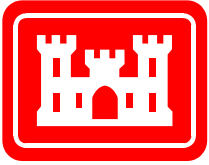
-
- Water resources projects authorized after 11/16/86 and projects initiated after 11/16/86 without specific authority in law if the PPA is executed after 11/08/07
 - Can amend a PPA executed prior to 11/08/07 to include in-kind contributions if requested and if construction of work in PPA had not been initiated as of 11/08/07
 - Construction initiated – date of award for first construction contract



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APPLICABLE TO:

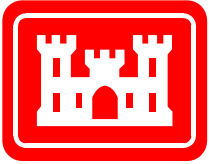
-
- Can amend a PPA executed after 11/08/07 to include in-kind contributions if the work the sponsor proposes to provide had not been initiated as of sponsor's request to provide in-kind contributions
 - Work initiated – Government award of contract for such work or started work using Government forces



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APPLICABLE TO:

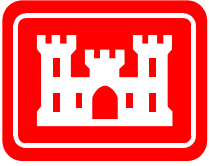
- **Can amend an executed DA to include in-kind contributions if the design work sponsor proposes to provide had not been initiated as of sponsor's request to provide in-kind contributions**
- **Work initiated – Government award of contract for such work or started work using Government forces**
- **Any amendment to DA or PPA would cover only in-kind contributions performed or provided after amendment**



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WILL NOT BE USED TO:

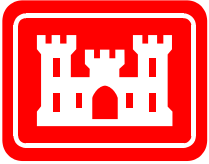
- **Will not be used to expand a project specific authority that specifically state limits on in-kind contributions - e.g. timing (prior to or after execution of PPA); type of work (design or construction only); or limit on amount of credit that can be afforded (not to exceed a dollar value or a percentage)**



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IN-KIND CONTRIBUTIONS PRIOR TO EXECUTION OF DA OR PPA

- For in-kind contributions carried out after 11/08/07 – execution of In-Kind MOU is required before sponsor carries out in-kind contributions
- Carried out after 11/08/07 - award of contract (including obligation of funds) or commencement of work by sponsor's forces occurs after 11/08/07
- Only in-kind contributions performed pursuant to In-Kind MOU executed after applicable milestone (see Table 1 of EC) are eligible for credit

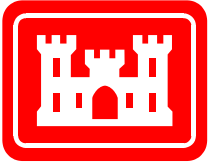


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IN-KIND MOU MODELS

- **2 In-Kind MOU models – one for design related work; one for construction related work**

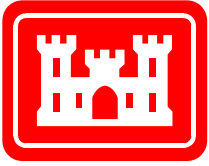
www.usace.army.mil/cw/cecw-p/pca/ccpca.htm
- **Delegation of approval and execution authority outlined in implementation memo for these models**
- **Execution of In-Kind MOU does not obligate Government to enter into future agreements for project**



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IN-KIND CONTRIBUTIONS PRIOR TO EXECUTION OF DA OR PPA

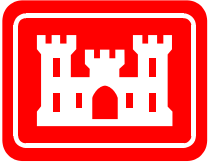
-
- For in-kind contributions carried out on or before 11/08/07 – In-Kind MOU is not required
 - Carried out on or before 11/08/07 - award of contract (including obligation of funds) or commencement of work by sponsor's forces occurred on or before 11/08/07
 - Only in-kind contributions carried out after applicable milestone (see Table 1 of EC) are eligible for credit



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IN-KIND CONTRIBUTIONS AFTER EXECUTION OF DA OR PPA

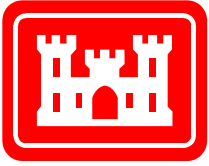
- In-kind contributions performed after execution of the applicable cost sharing agreement (DA or PPA) are performed pursuant to terms of such cost sharing agreement (DA or PPA)



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FORM OF IN-KIND CONTRIBUTIONS

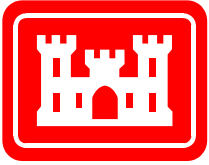
- **Form of eligible in-kind contributions: design (including data collection); management; mitigation; construction and construction services; and materials and services**
- **Will not afford credit for planning work unless specifically directed in law for a project**



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EXAMPLES OF IN-KIND CONTRIBUTIONS

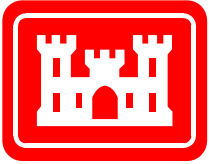
- Performing some of construction of project
- Performing all or part of design (including data collection)
- Providing materials for design or construction



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EXAMPLES OF ITEMS NOT IN-KIND CONTRIBUTIONS

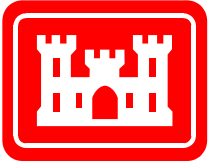
- Items that are inherent Gov responsibilities (e.g., managing Government construction contracts, District Quality Review, Agency Technical Review, Independent External Peer Review, Policy Review, & environmental compliance determinations)
- Other sponsor contributions (e.g., acquiring LERR; participation in Coordination Team; sponsor required audits; and investigations for existence and extent of hazardous substances)



IN-KIND CONTRIBUTIONS - DA

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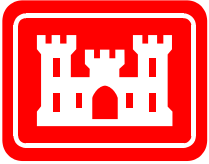
- Sponsor may perform all or a portion of design – work must be performed IAW ER 1110-2-1150 and reviewed IAW ER 1110-2-12 & peer review**
- Must sign DA even if sponsor performs all or portion of design**
- Government must make determinations on environmental compliance**
- Only design related work can be afforded toward sponsor's contribution for DA**



IN-KIND CONTRIBUTIONS - DA

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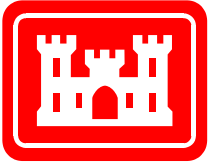
- **Total of sponsor's contributions for DA – including eligible in-kind contributions - must be at least 25% of total design costs in DA**
- **If sponsor's contributions – including eligible in-kind contributions – exceed 25% of total design costs – all costs (including all eligible in-kind contributions) are pulled into total costs of GNF in PPA – no reimbursement**



INTEGRAL DETERMINATIONS

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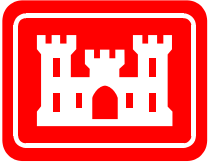
- For in-kind contributions to be considered eligible for credit – they must be determined to be integral to the project
- Integral determination must be made prior to approval of cost sharing agreement (DA or PPA)
- Processing of integral determinations follows procedures in paragraph 6 of EC
- Integral determination does not determine value of in-kind contributions – only if integral or not



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DETERMINING VALUE OF IN-KIND CONTRIBUTIONS

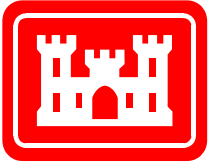
- Value of in-kind contributions will be determined in accordance with limitations and conditions contained in applicable cost sharing agreement (DA or PPA)
- Appendix C of EC contains typical list of limitations and conditions for determining value of in-kind contributions



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AFFORDING CREDIT FOR IN-KIND CONTRIBUTIONS

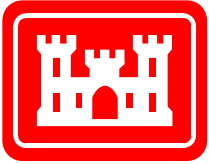
- Credit is afforded toward sponsor's required contribution of funds for design and construction (including 10% amount after it is reduced by value of LERR) for project or separable element IAW terms of PPA for such work
- Maximum credit afforded is least of – sponsor's required contribution of funds; value of in-kind contributions; or, if applicable, a stated amount or percentage
- Credit cannot be afforded toward a sponsor's requirement to provide LERR



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EXCESS IN-KIND CONTRIBUTIONS

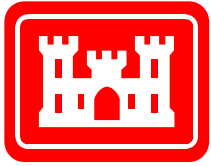
- If value of in-kind contributions exceeds amount of credit that can be afforded – will only include in total costs of GNF the value of in-kind contributions for which credit can be afforded
- Excess in-kind contributions cannot be applied toward another project or another separable element of the project
- No reimbursement will be made for excess in-kind contributions



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SECTION 2001 OF WRDA 07

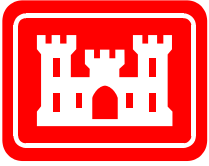
-
- Secretary may not solicit contributions from non-Federal interests in excess of appropriate non-Federal share of project nor may Secretary condition Federal participation on receipt of such excess contributions
 - Corps cannot solicit contributions in excess of sponsor's required share but Section 2001 does not prevent a sponsor from offering and Corps accepting pursuant to Contributed or Advanced funds authorities
 - No plan to issue implementation guidance for this section



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ACCELERATED USE OF SPONSOR'S FUNDS

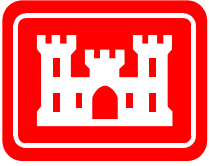
- **What is it?** Sponsor may offer to accelerate provision of their required contribution of funds AND the Government use such accelerated funds without having the matching Federal share available.
- **When can it be used?** On any cost shared project that requires a contribution of funds from the sponsor.



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ACCELERATED USE OF SPONSOR'S FUNDS

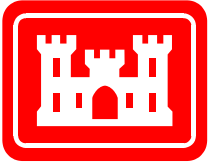
-
- **How to implement?**
 - **Sponsor indicates interest in having option to accelerate provision of and accelerated use of their required contribution of funds.**
 - **Committee notification required before accepting and using accelerated funds for a DA or a PPA.**
 - **Committee notification not required for FCSA.**



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ACCELERATED USE OF SPONSOR'S FUNDS

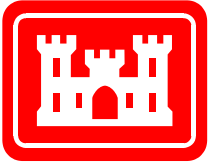
-
- **How to implement (cont)?**
 - **Cost shared agreement must include text addressing acceleration of funds either through an amendment of original agreement or including accelerated funds text when drafting original agreement.**
 - **HQ can approve if text previously approved by ASA(CW) is used.**



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ACCELERATED USE OF SPONSOR'S FUNDS

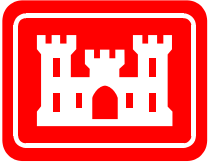
- **Any limitations?**
 - **Maximum amount sponsor may accelerate is limited to the contribution of funds required by agreement minus any funds already provided.**
 - **No reimbursement or cost share credit afforded for funds used if matching Federal funds are not provided by Congress.**



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CONTRIBUTED FUNDS

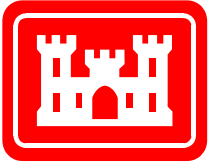
- **What is it?**
 - **Contributed Funds are funds above any required cost share provided by a State or political subdivision.**
 - **Funds must be contributed voluntarily and gratuitously, with no expectation of repayment or cost share credit.**



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CONTRIBUTED FUNDS

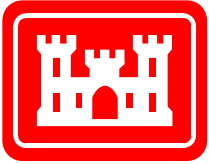
- **When can it be used?**
 - **May be accepted for authorized projects for navigation.**
 - **May be used for construction or maintenance work.**



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CONTRIBUTED FUNDS

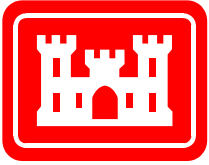
-
- **How to implement?**
 - **Sponsor indicates interest in providing contributing funds**
 - **Committee notification required prior to negotiation of agreement addressing Contributed Funds if no Federal funds have been appropriated for the work to be performed with Contributed Funds or if no Federal funds have been appropriated for work that is related to work to be performed with Contributed Funds.**



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CONTRIBUTED FUNDS

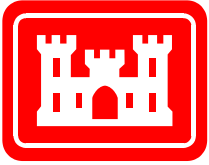
-
- **How to implement?**
 - **If sponsor proposes to contribute funds in amount less than \$2M and they are to be used for dredging of berthing areas or beneficial use of disposal material – follow procedures in ER 1165-2-30.**
 - **Agreement package will be reviewed by District and approved by District Commander.**



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CONTRIBUTED FUNDS

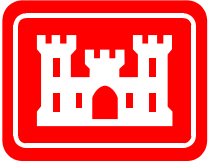
-
- **How to implement (cont)?**
 - **If sponsor proposes to contributed funds in amount in excess of \$2M or does not meet requirements in ER 1165-2-30 – follow procedures in Contributed Funds guidance memo, dated 7/2/07.**
 - **Agreement package will be reviewed by HQ and approved by Director of Civil Works.**



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CONTRIBUTED FUNDS

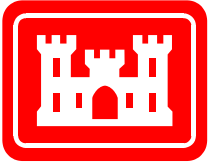
- **Any limitations?**
 - **No reimbursement or cost share credit provided to sponsor for any Contributed Funds provided by the sponsor and expended by the Government.**



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ADVANCED FUNDS

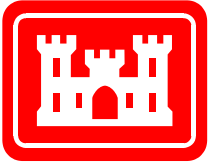
- **What is it?** Advanced Funds are funds provided by a sponsor to pay the Federal share of work to be performed, with the expectation of repayment.
- **When can it be used?** May be accepted for authorized projects for navigation and may be used for construction or maintenance work.



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ADVANCED FUNDS

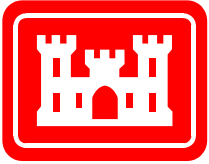
-
- **How to implement?**
 - **Sponsor indicates interest in advancing Federal share.**
 - **District contacts HQ RIT and vertical team for guidance on format of agreement.**
 - **Committee notification is required prior to negotiation of agreement addressing advanced funds.**
 - **Agreement package will be reviewed by HQ and approved by ASA(CW).**



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ADVANCED FUNDS

-
- **Any limitations?**
 - **No reimbursement will be made until Congress specifically provides funds for the reimbursement.**



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SECTION 204

-
- **Section 204(e) – non-Federal interest constructs projects and Federal share is reimbursed – details in ER 1165-2-120**
 - **Sections 204(f) – Secretary assumes O&M of project constructed by non-Federal interest - details in ER 1165-2-124**