



**US Army Corps
of Engineers** ®
Charleston District

SPECIAL PUBLIC NOTICE

PROPOSAL TO ACCEPT AND EXPEND
FUNDS FROM CHARLESTON COUNTY

PUBLIC NOTICE NO: SAC-2018-01715
COMMENT PERIOD: November 30, 2018 to December 14, 2018
POINT OF CONTACT: Amanda Heath (843) 329-8025

Applicant

Charleston County
Jennifer J. Miller – County Administrator
4045 Bridge View Drive
North Charleston, SC 29405

Location

Charleston County projects throughout Charleston County.

Activity

This Special Public Notice announces the preliminary intent of the District Commander, Charleston District, to accept funds and expend funds contributed by the County of Charleston to expedite processing of Department of Army (DA) permit applications, pursuant to 33 U.S.C. § 2352 (Section 214 of the Water Resources Development Act of 2000, as amended by Section 1006 of the Water Resources Reform and Development Act of 2014; 128 Stat. 1193; Public Law No. 113-121 [H.R. 3080]).

This Special Public Notice also solicits comments from the general public on the subject of acceptance and expenditure of funds contributed by the County of Charleston to expedite review of DA permit applications.

Comments should be mailed to:

**US Army Corps of Engineers, Charleston District
Regulatory Division
ATTN: Amanda Heath
69A Hagood Avenue
Charleston, South Carolina 29403**

Background Information: Section 214 of the Water Resources Development Act of 2000 (WRDA 2000) provides that the Secretary of the Army, after public notice, may accept and expend funds contributed by a non-federal public entity to expedite the DA permit review process. In doing this, the Secretary must ensure that the use of such funds will not impact impartial decision making with respect to permits, either substantively or procedurally.

Non-federal public entities are generally comprised of state and local governmental agencies and Indian tribal governments, but may also include entities such as port authorities, flood and storm water management agencies, and public infrastructure departments that have the desire to expedite the DA permitting process programmatically, or for a specific project.

Section 1006 of Water Resources Reform and Development Act (WRRDA), enacted after being signed by the President on June 10, 2014, eliminated the sunset date from the Section 214 authority for non-federal public entities.

How the Charleston District would expend funds: The U.S. Army Corps of Engineers, Charleston District's Regulatory Program is funded as part of a congressionally appropriated line item in the annual Federal budget. Additional funds received from Charleston County would be used to augment the Charleston District Regulatory budget in accordance with the provisions of WRRDA. The Charleston District would establish a separate account to track receipt and expenditure of the funds. A Charleston District regulatory employee would charge their time against the respective account when they do work related to permit actions for Charleston County.

Activities for which funds will be expended: Funds would primarily be expended on the salary and overhead of a Regulatory Project Manager performing the expedited DA permit processing activities for Charleston County. Such activities would generally include the following: pre-application meetings, jurisdictional delineations, site visits, public notice preparation, preparation of correspondence, conduct of public interest reviews, preparation of draft permit decisions, preparation and/or review of Environmental Impact Statements and Environmental Assessments, coordinate and

provide training on natural resource issues and permits, organize and/or attend meetings, organize and/or participate in conference calls. Charleston County funds would not be expended for a Corps' supervisor's review of a WRRDA-funded project manager's work, other components of the Charleston District, or other persons in the decision-making chain of command. Furthermore, Charleston County funding would not be used for enforcement activities.

Procedures to be used to ensure impartial decision-making: To ensure funds received from a non-federal public entity would not impact impartial decision-making, the following procedures, mandated from Headquarters, U.S. Army Corps of Engineers, would apply to all cases using funds provided by Charleston County:

- All final permit decisions must be reviewed by at least one level above the decision maker.
- All final permit decisions made for projects where funds are used, will be entered accurately into the Charleston District's ORM database and will be posted on the HQUSACE ORM2 public portal.
- The Charleston District will not eliminate any procedures or decisions that would otherwise be required for that type of project and permit application under consideration.
- The Charleston District will comply with all applicable laws and regulations.
- Funds will only be expended to provide expedited review of permit applications submitted by Charleston County, including the associated DA permit processing activities identified above (*i.e.*, "Activities for which funds will be expended")
- Funds will not be expended for the review of the decision maker's decision.

The benefits Charleston County would receive from their funds: In general, the workload of the Charleston District has increased over the past five years. Section 1006 of WRRDA is designed to enable the Charleston District to expedite the processing of DA permit applications for certain public projects. Charleston County can expect their DA permit applications to receive expedited handling by the Charleston District, and to the degree that the Charleston District considers it appropriate, Charleston County can set priorities among their pending DA permit applications. As a result of Charleston County's funding, Charleston County will have a dedicated Project Manager focus on their applications and requests, better availability for site visits and meetings, and overall streamlined DA permit processing.

Impacts to the Regulatory Program: This method of expediting the review of DA permit applications should not negatively impact the Charleston District's Regulatory Program or increase the waiting time for permit evaluations that are not subsidized by funds contributed by non-federal public entities. The remaining workload for non-funding

entities should actually be reduced. We expect the benefits of implementing this program to translate into an enhanced evaluation capability for all participants.

Consideration of Comments: This Special Public Notice has a 15-day comment period. Following the review of comments received, the Charleston District will determine if acceptance and expenditure of funds is in compliance with WRRDA. If the District Commander determines, after considering public comments, that acceptance and expenditure of the funds is in compliance with WRRDA, and is not otherwise contrary to the general public interest, the Charleston District will proceed to accept and expend such funds from Charleston County. Funds will be accepted only if the public interest is better served through cost-effectiveness, enhanced evaluation capability, streamlined permit processing, or other appropriate jurisdiction. A final public notice will be issued regarding the District Commander's decision. Beyond that, no new public notice will be issued if a participating non-federal public entity increases the amount of funds previously furnished, provided that the purpose remains the same.

Submission of Comments: Comments on implementing WRRDA will be accepted and made part of the record, and they will be considered in determining whether it would be in the best public interest to proceed with this administrative practice. Comments should refer to the *Proposed Acceptance of Funds from Charleston County, SAC-2018-01715* and the date of this Special Public Notice, and should reach this office no later than the expiration date of this public notice.

DRAFT

COOPERATIVE AGREEMENT

between

U.S. ARMY CORPS OF ENGINEERS

and

CHARLESTON COUNTY

For the 2019-2023 Federal Fiscal Years

(October 1, 2018 through September 30, 2023)

Article I. **FUNDING RECIPIENT**

US Army Corps of Engineers
Charleston District
69A Hagood Avenue
Charleston, SC 29403

Article II. **AUTHORITY**

This Agreement between the US Army Corps of Engineers, Charleston District (hereinafter referred to as the "Corps") and the County of Charleston ("County") is hereby entered into under the authority of 31 U.S.C. 6505 (Intergovernmental Cooperation Act), 10 U.S.C. 3036(d) (Chief's Economy Act), and 128 Stat. 1193; Public Law No. 113-121 [H.R. 3080] (Water Resources Reform and Development Act of 2014). Collectively, these two agencies are referred to herein as the "Parties".

Article III. **PURPOSE AND OBJECTIVE**

The purpose of this Agreement is to set forth the responsibilities of the Parties relative to priority review of County projects with the goal of achieving timely design and implementation of effective, safe and financially prudent County improvement projects, while also assuring such design and implementation is sensitive to protection of natural resources for which the Corps is responsible under Federal statutes and regulations.

The objective of this Agreement is for the Corps (Charleston District Office) to commit one full time employee dedicated exclusively to County activities, as outlined in Appendix A, in order to assure timely decisions on applications for Department of Army Permits (DA) for County projects. These applications may be subject to Section 10 of the Rivers and Harbors Act of 1899 and Section 404 of the Clean Water Act. Duties will not include enforcement actions related to any unauthorized activities by the County in accordance with CECW-CO memorandum dated 1 October 2008, but may include compliance activities. Enforcement actions will be turned over to non-funded Regulatory Project Managers for resolution. It is also understood that the funded employees will also participate in general Corps employee activities.

Article IV. **BACKGROUND**

The County has an extremely active transportation infrastructure improvement and public works program. In addition, the County has exhibited a strong commitment to incorporating environmental quality measures into the project planning process. In order to optimize environmental coordination, it is important to develop procedures that enable Corps personnel to work directly with the County and provide recommendations at the earliest stages of project development.

It is critical that the already established close working relationship be maintained and

expanded between the Corps and the County. Critical to the success of this Partnership is timely interagency communications, assurances of personnel availability for site visits and meetings and maintenance of continuity by trained and informed personnel.

This Agreement is intended to provide the resources necessary to increase direct and early Corps involvement in the County planning process. This increased focus will facilitate environmentally responsible project development while at the same time improving the Corps' ability to review, evaluate and process appropriate permits for County projects in a timely manner. This Agreement is predicated upon a relationship of trust among all Parties that will be maintained and strengthened as a result of this effort.

Article V. **SCOPE OF WORK**

For the period hereinafter set forth, the Corps will furnish the necessary personnel, materials, services and facilities needed to carry out the activities described below:

Specifically, the Corps will:

- A. Employ one Regulatory Project Manager to carry out work as detailed in Appendix A and other work contemplated by this Agreement. The Corps will use funds provided under this Agreement to pay the costs of salary, associated benefits and actual burdened overhead rate. These funds will also be used to supply the Regulatory Project Manager with the tools of the trade customarily provided to and utilized by colleagues in the Regulatory Program, such as cell phones, snake boots, other safety equipment, use of government vehicles, etc.
- B. This individual is located in the Charleston District office in Charleston, South Carolina. This individual and location will not change, unless all Parties agree to such a change. Reason for such a change would have to be unforeseen circumstances, where such a change is the only reasonable resolution.
- C. Ensure that this staff person maintains daily time and attendance records identifying the number of hours spent working on tasks related to County projects and any other work tasks, including those listed in Appendix A and Section VI Coordination.
- D. Maintain accurate accounting records necessary for substantiating hours and costs billed against this Agreement. A budget summary report will be run quarterly and sent to the County for their review and records. As required by federal regulations, records will be kept during and for a period of five years thereafter the completion of work conducted under this Agreement. These records will be subject to examination or audit by the County if they should so desire.
- E. Refund the County with any funds advanced under this Agreement that were not expended towards fulfilling the intent of this Agreement or that remain at the end of the funding period. With approval from all Parties, the Corps shall carryover any remaining funds from the previous funding period into the next funding period for expenditure in accordance with this Agreement.
- F. Coordinate with and assist the County in developing options for wetland and stream mitigation in compliance with current Corps' Guidance, Standard Operating Procedures, Laws, and Regulations to address the needs of the County's future public projects.

- G. Provide electronic monthly status reports to the County by the 15th of each month. Reports shall include the status for all projects pending and issued by category (SP, GP, JD) and identify the status of all pending actions.
- H. Report annually on or before the 1st of September, the percentage of time frames achieved for those items in Appendix B that can be readily obtained from the Corps' ORM2 database.

Specifically, the County will:

- A. Provide funding sufficient to pay for salary, benefits and all associated overhead for one (1) full time GS-12 employee, adjusted annually to cover all Government- wide Pay Increases, including Local Market Supplement, Rate Range Adjustment, Base Salary Increase and Bonus Award.
- B. These funds will also be used to supply the Regulatory Project Manager with the tools of the trade customarily provided to and utilized by colleagues in the Regulatory Program, such as computer equipment, cell phones, safety equipment, use of government vehicles, etc.
- C. Once this Agreement has been signed by all Parties, transmit an advance payment equal to the funding period total in Article IX, needed to support the services contemplated by this Agreement.
- D. The Charleston County Transportation Development Director will clearly communicate project priorities to the Corps staff and will have the final authority on project priorities for the Regulatory Project Manager.
- E. Provide the Corps with a one year out project planning list that will be updated and submitted to the Corps at least quarterly. The list should provide the Project Title, Location, Type of Project, Status (funding, planning, design, permitting, etc.) and anticipated construction date.

Regarding all Parties:

- A. The Parties to this Agreement act in an independent capacity in the performance of their respective functions under this Agreement; and neither Party shall be construed as the officer, agent or employee of the other.
- B. In no way shall this be construed or implied that either the County or the Corps is by this Agreement intending to abrogate its obligation and duty to comply with the regulations promulgated under the 1973 Endangered Species Act, the Fish and Wildlife Coordination Act of 1958 (as amended), the National Environmental Policy Act of 1969, the Clean Water Act of 1977 (as amended), the Rivers and Harbors Act of 1899 or any other Federal statute or implementing regulations. Nor shall this Agreement be construed to imply that the Corps' impartial decision making will be compromised in any way.
- C. The Parties will establish a primary point of contact for administration of this Agreement and list them in Article XIII, which will hold monthly meetings to establish priorities and evaluate work performed under the Agreement. These meetings will

be the forum to discuss management level concerns related to staff performance, workload priorities and management initiatives.

- D. The Agreement Officers listed in Article XII, or their designated representative, will meet at least annually to facilitate communication, discuss interagency cooperation and identify programmatic initiatives and strategic goals. Issues which the Agreement Administrators have identified and are unable to resolve at their level should be brought forward and resolved at this meeting.

Article VI. COORDINATION

- A. Both the County and the Corps agree that ready and reasonable access will be provided to working level staff of the other agency in an effort to minimize the need for formal meetings. Both agencies are committed to frequent and productive interaction and the establishment of working-level interpersonal relationships which will allow for expedient scheduling of field visits, meetings and all manner of open communications in a sustained effort to achieve the stated goals of this Agreement.
- B. The County and the Corps agree to conduct early and frequent coordination on issues such as, but not limited to, comments on project alternatives; mitigation plans; review of and comments on Biological Assessments; implementation of permit streamlining processes; and interagency County/Corps training.

Article VII. PERFORMANCE OBJECTIVES

- A. As part of this Agreement, the Corps has agreed to make every effort to adhere to the timeframes outlined in Appendix B; and to document general adherence to these timeframes the Corps shall provide the County a quarterly report. Adjustments to the timeframes may be made when practical and agreed to by all Parties.
- B. Monthly agency coordination meetings shall occur in addition to a staff level coordination meeting at a minimum of once per fiscal year. These coordination meetings will address overall performance and discuss any potential improvement measures.

Article VIII. PERIOD OF PERFORMANCE

- A. This Agreement shall be effective for a period of five (5) years from the start date of the funding period. Options for renewal of this Agreement will be determined at the end of the five year period.
- B. Any Party may terminate this Agreement upon ninety (90) day written notification to the other Parties. Upon termination by the County, the Corps will refund to the County any funds which had been previously advanced, but which had not been used or would not be used in accordance with this Agreement. At such time, all County projects will be redistributed amongst existing Corps staff and all commitments made by the Corps under this Agreement shall cease.

Article IX. **AWARD AMOUNT**

- A. 1ST FUNDING PERIOD: October 1, 2018 - September 30, 2019
- 2ND FUNDING PERIOD: October 1, 2019 - September 30, 2020
- 3RD FUNDING PERIOD: October 1, 2020 - September 30, 2021
- 4TH FUNDING PERIOD: October 1, 2021 - September 30, 2022
- 5TH FUNDING PERIOD: October 1, 2022 - September 30, 2023

- B. TOTAL ESTIMATED COSTS FOR 1st FUNDING PERIOD: [REDACTED]
- TOTAL ESTIMATED COSTS FOR 2nd FUNDING PERIOD: [REDACTED]
- TOTAL ESTIMATED COSTS FOR 3rd FUNDING PERIOD: [REDACTED]
- TOTAL ESTIMATED COSTS FOR 4th FUNDING PERIOD: [REDACTED]
- TOTAL ESTIMATED COSTS FOR 5th FUNDING PERIOD: [REDACTED]
- C. TOTAL FUNDING FOR THIS AGREEMENT: [REDACTED]

Article X. **PAYMENT PROVISIONS**

In accordance with the Intergovernmental Cooperation Act, 31 U.S.C. 6505, advance payment is required to be given to the Corps prior to the commencement of goods or services as described in this Agreement. Additionally, under authority of Public Law 105-277, the Corps is entitled to receive advance payment before incurring any expenditures and providing any goods or services as outlined in this Agreement.

Award amount should be sent by check, prior to the start date of the Funding Period, payable to:

USAED
Accounting Officer
Charleston District
69A Hagood Avenue
Charleston, South Carolina 29403

Article XI. **FUNDING**

- A. The estimated amount for the funding period is based on the annual cost including overhead for one (1), GS-12, Regulatory Project Manager and associated costs for benefits, overhead, safety equipment, vehicles, etc.
- B. The funding amount may have to be adjusted, either increased or decreased, to adequately compensate for the employee's actual total cost and/or any reasonable unforeseen costs. If a funding adjustment is required, all Parties will meet and agree to the appropriate amount in writing.
- C. Any funds that have not been expended during the current fiscal year will be applied towards the next funding period covered by this Agreement.

Article XII. **AGREEMENT OFFICERS**

- A. US Army Corps of Engineers
Travis Hughes - Chief, Regulatory Division
69A Hagood Avenue
Charleston, SC 29403

- B. Charleston County
Jennifer J. Miller – County Administrator
4045 Bridge View Drive
North Charleston, SC 29405

Article XIII. **AGREEMENT ADMINISTRATORS**

- A. US Army Corps of Engineers
Amanda Heath – Chief, Special Projects Branch
69A Hagood Avenue
Charleston, SC 29403
(843) 329-8044

- B. Charelston County
Steven L. Thigpen – Director of Transportation Development
4045 Bridge View Drive, Suite C204
North Charleston, SC 29405

IN WITNESS WHEREOF, each Party has caused this Agreement to be executed by an authorized official on the date and year set forth below their signature.

U.S. Army Corps of Engineers

JEFFREY S. PALAZZINI
Lieutenant Colonel, EN
Commander, U.S. Army Engineer District, Charleston

Date

Charleston County

Jennifer J. Miller
Charleston County Administrator

Date

Appendix A

The Corps staff will accomplish the reviews and tasks appropriate to expedite, implement and coordinate the Project Development Process and meet the County's needs for compliance with applicable State and Federal statutes. The Corps staff reviews and work tasks may include, but are not limited, to the following:

- Coordinate with and assist the County in developing options for wetland and stream mitigation in compliance with current Corps Guidance, Standard Operating Procedures, Laws, and Regulations to address the needs of the County's projects
- Review project plans and programs
- Participate in agency scoping
- Participate in Needs Analysis review and comment
- Participate in wildlife resource inventory and impact assessment
- Provide preliminary environmental analysis, guidance and review
- Provide preliminary and detailed alternatives analyses guidance and review
- Represents the Corps at meetings as appropriate
- Participate in the development and implementation of written County and Corps guidance
- Ensure Corps reviews coordination on separate reports for the same project
- Conduct document reviews and draft agency responses, which may include but are not limited to:

- * Wetlands Identification and Delineation Reports
- * Wetland Functional Assessment Reports
- * Wildlife Resources and Related Technical Reports
- * Alternatives Analyses
- * Cultural Resource Assessments
- * Endangered Species - Biological Assessments
- * Floodplain Determination
- * Hydraulics Report
- * Habitat Evaluation Procedure Reports
- * Purpose and Need Statements
- * Preliminary Alternatives Reports
- * Environmental Impact Statements
- * Environmental Assessments
- * Categorical Exclusion Evaluations
- * FONSI Requests
- * Environmental Evaluation Reports
- * Mitigation Reports and Plans
- * Section 404 Permit Applications
- * Policies and Procedures

- Coordinate and provide training on natural resource issues and permits
- Organize meeting and conference calls to clarify problems at the request of the County or the Corps
- Perform other related tasks as defined by the County and agreed to by the Corps

Appendix B

Under normal circumstances, the Corps will make every effort to meet the following timeframes. Please be advised that these timeframes can be affected by Regulation changes, Supreme Court decisions, National Guidance, National Policy, etc.

1. With all requests for Nationwide Permit authorization (NWP) and Individual Permit (IP) applications, the Corps shall provide notification of any need for additional, required information/clarification within 15 days of the Corps' receipt of such applications.
2. Upon receipt of a completed application or the requested (required), additional information associated with an IP application, the Corps shall disseminate the 30-day Joint Public Notice within 15 days.
3. For Individual Permits, within 15 days of the end of any Joint Public Notice the Corps shall provide, to the County, all comments received as a result of the notice, as well as those comments from the Corps.
4. With all of the County's requests for Jurisdictional Determinations (JDs), the Regulatory Project Manager shall provide notification of any need for additional, required information/clarification within 15 days of the Corps' receipt of such JD requests.
5. For IP applications, upon resolution of comments/issues with the Corps, the resource and other regulatory agencies, and issuance of 401 Water Quality Certification and/or a Critical Area Permit, the Corps shall render a permit decision within 30 days, in 95% of all instances.
6. Upon receipt of a completed and correct JD request, the Corps shall issue the Jurisdictional Determination within 30 days, provided coordination with EPA and Corps HQ is not required pursuant to the Rapanos Guidance. Completed and correct JD requests requiring coordination with EPA and/or Corps HQ, but not elevated, will generally be completed within 45 days.