

Implementing Secure Rural Schools Act title II projects

The Secure Rural Schools and Community Self-Determination Act, as amended and reauthorized in Public Law 110-343 (the Act), authorizes the Forest Service to enter into contracts, grants and agreements to implement title II projects. (See section 202(b) and section 204(e) of the Act.) In addition, some projects may be accomplished by Forest Service personnel (force account).

In conformance with the Act, project proposals are expected to help create local employment opportunities, enjoy broad-based support and help improve cooperative relationships among the people that use and care for the national forests. Projects also must be consistent with the following purposes and objectives: improving the maintenance of existing national forest infrastructure; improving forest ecosystem health and water quality; maintaining or obliterating roads, trails, and infrastructure; improving soil productivity; restoring and maintaining watersheds; restoring, maintaining and improving wildlife and fish habitat; managing noxious and exotic weeds; and re-establishing native species. Projects are to be located on national forests and may be on other lands where projects would benefit the resources on national forests.

The Act encourages project proposals from a wide range of proponents including tribal and county governments, federal agencies including the Forest Service, state and local agencies and from organizations and individuals. The Act itself does not require matching funds or services from parties to an agreement.

Resource advisory committees (RACs) established under the Act review and recommend projects authorized by title II. The Forest Service staff, in support of the resource advisory committee, broadly solicits project proposals by a variety of methods including notices or advertising on appropriate websites and in newspapers of record for the national forests and the counties participating in funding projects. Contracting officers and grants and agreements specialists should be consulted to ensure proper procedures are followed for project solicitations and all requirements for submitting proposals are well publicized. Outreach should also be made to potential project proponents who may not have been involved with national forest management in the past; civil rights specialists may have advice on reaching a broader audience. Such outreach may require efforts in addition to the traditional notices on websites or in newspapers of record. Opportunities, resources, procedures and timelines for submitting project proposals must be well publicized to ensure a robust competition of proposals.

In the past, some project proposals have identified an individual, business or organization for implementing the project or have proposed a specific instrument such as a contract or agreement to carry out the project. In these cases, the RAC commonly views the proposal as a single package that addresses the outcome (authorized use) and the instrument and parties to implement the project. Consequently, the RAC may make recommendations about a project package including recommendations about the method of implementation, instrument and potential parties. The RAC's recommendations are forwarded through the designated federal official to the Forest Supervisor who, acting on behalf of the Secretary of Agriculture, considers the RAC's recommendations, and, if appropriate, approves a recommended project and incorporates it into a program of work. Work cannot begin on the basis of a RAC recommendation alone. A fully signed contract, grant or agreement is required to authorize the contractor or cooperator to incur expenses for a project.

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While the RAC may make recommendations about instruments and potential cooperators, under the Act the Forest Supervisor approving the project is responsible for determining the most appropriate method of implementation. RAC recommendations about the most appropriate method of implementation, including the appropriate instruments and potential cooperators, are not binding on the agency. In addition to considering the desires of the project proponent or the recommendations of the RAC, the Forest Supervisor must comply with applicable regulations and must avoid undue influence, conflicts of interests or the appearance of conflicts of interest with committee members or proponents when determining the best method of implementation to accomplish the intended outcome of the project.

In all cases, the project must meet the objectives of the Act and benefit the resources on NFS lands. The approving officer, with the advice of a contracting officers and grants and agreements specialist, must carefully consider the appropriateness of the instrument selected and ensure the appropriate acquisition procedures are followed. The contracting officer and G&A specialist will provide advice based on existing Forest Service policy in the applicable Forest Service Manual and Handbooks.

The Act provides broad discretion to enter into contracts, grants and agreements to implement title II projects. Projects that provide direct benefit to and are performed on National Forest lands are normally accomplished by force account or by purchase or contract. The Act authorizes "best value contracting" (section 204(e)(2)) and encourages the use of local vendors and resources such that the local economy also benefits. Depending on the circumstances and desired outcome of the title II project, a stewardship contract or timber sale contract may be appropriate. The Act requires a portion of projects that harvest merchantable timber be included in a pilot program and be implemented with two separate contracts, one for felling and decking of the timber and another for selling the timber. When the approving official determines that a purchase or service contract is the best method, the Federal Acquisition Regulation applies and additional procedures may be required to solicit proposals or bids for implementing the project.

In addition, the Forest Supervisor may rely on existing authorities and instruments to accomplish the project. Some of these may have matching or other requirements. Where a cooperator and the Forest Service would mutually benefit from an approved project on National Forest lands, a participating agreement citing the Secure Rural Schools and Community Self Determination Act may be considered. In some instances, if the cooperator has been authorized to use, occupy, or improve National Forest lands under a special use authorization, a cooperative agreement may be used to carry out a title II project. However, the Forest Service should not enter into a contract or agreement to perform work that is already required of a permit holder under the terms of the special use authorization. Projects approved for funding on non-National Forest lands but benefiting National Forest lands may be implemented via federal financial assistance grants or cooperative agreements.

Following are excerpts from the Act relevant to this discussion.

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SEC. 2. PURPOSES.

The purposes of this Act are--

(1) to stabilize and transition payments to counties to provide funding for schools and roads that supplements other available funds;

(2) to make additional investments in, and create additional employment opportunities through, projects that--

(A)(i) improve the maintenance of existing infrastructure;

(ii) implement stewardship objectives that enhance forest ecosystems; and

(iii) restore and improve land health and water quality;

(B) enjoy broad-based support; and

(C) have objectives that may include--

(i) road, trail, and infrastructure maintenance or obliteration;

(ii) soil productivity improvement;

(iii) improvements in forest ecosystem health;

(iv) watershed restoration and maintenance;

(v) the restoration, maintenance, and improvement of wildlife and fish habitat;

(vi) the control of noxious and exotic weeds; and

(vii) the reestablishment of native species; and

(3) to improve cooperative relationships among--

(A) the people that use and care for Federal land; and

(B) the agencies that manage the Federal land.

SEC. 3. DEFINITIONS.

(7) FEDERAL LAND- The term `Federal land' means--

(A) land within the National Forest System, as defined in section 11(a) of the Forest and Rangeland Renewable Resources Planning Act of 1974 (16 U.S.C. 1609(a)) exclusive of the National Grasslands and land utilization projects designated as National Grasslands administered pursuant to the Act of July 22, 1937 (7 U.S.C. 1010-1012);

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SEC. 202. GENERAL LIMITATION ON USE OF PROJECT FUNDS.

(a) Limitation- Project funds shall be expended solely on projects that meet the requirements of this title.

(b) Authorized Uses- Project funds may be used by the Secretary concerned for the purpose of entering into and implementing cooperative agreements with willing Federal agencies, State and local governments, private and nonprofit entities, and landowners for protection, restoration, and enhancement of fish and wildlife habitat, and other resource objectives consistent with the purposes of this Act on Federal land and on non-Federal land where projects would benefit the resources on Federal land.

SEC. 203. SUBMISSION OF PROJECT PROPOSALS.

(b) REQUIRED DESCRIPTION OF PROJECTS.-In submitting proposed projects to the Secretary concerned under subsection (a), a resource advisory committee shall include in the description of each proposed project the following information:

(1) The purpose of the project and a description of how the project will meet the purposes of this title.

(2) The anticipated duration of the project.

(3) The anticipated cost of the project.

(4) The proposed source of funding for the project, whether project funds or other funds.

(5)(A) Expected outcomes, including how the project will meet or exceed desired ecological conditions, maintenance objectives, or stewardship objectives.

(B) An estimate of the amount of any timber, forage, and other commodities and other economic activity, including jobs generated, if any, anticipated as part of the project.

(6) A detailed monitoring plan, including funding needs and sources, that –

(A) tracks and identifies the positive or negative impacts of the project, implementation, and provides for validation monitoring; and

(B) includes an assessment of the following:

(i) Whether or not the project met or exceeded desired ecological conditions; created local employment or training opportunities, including summer youth jobs programs such as the Youth Conservation Corps where appropriate.

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(ii) Whether the project improved the use of, or added value to, any products removed from land consistent with the purposes of this title.

(7) An assessment that the project is to be in the public interest.

(c) AUTHORIZED PROJECTS.- Projects proposed under subsection (a) shall be consistent with section 2.

SEC. 204. EVALUATION AND APPROVAL OF PROJECTS BY SECRETARY CONCERNED.

(a) Conditions for Approval of Proposed Project- The Secretary concerned may make a decision to approve a project submitted by a resource advisory committee under section 203 only if the proposed project satisfies each of the following conditions:

(1) The project complies with all applicable Federal laws (including regulations).

(2) The project is consistent with the applicable resource management plan and with any watershed or subsequent plan developed pursuant to the resource management plan and approved by the Secretary concerned.

(3) The project has been approved [*i.e., recommended*] by the resource advisory committee in accordance with section 205, including the procedures issued under subsection (e) of that section.

(4) A project description has been submitted by the resource advisory committee to the Secretary concerned in accordance with section 203.

(5) The project will improve the maintenance of existing infrastructure, implement stewardship objectives that enhance forest ecosystems, and restore and improve land health and water quality.

(e) Implementation of Approved Projects-

(1) COOPERATION- Notwithstanding chapter 63 of title 31, United States Code, using project funds the Secretary concerned may enter into contracts, grants, and cooperative agreements with States and local governments, private and nonprofit entities, and landowners and other persons to assist the Secretary in carrying out an approved project.

(2) BEST VALUE CONTRACTING-

(A) IN GENERAL- For any project involving a contract authorized by paragraph (1) the Secretary concerned may elect a source for performance of the contract on a best value basis.

(B) FACTORS- The Secretary concerned shall determine best value based on such factors as--

(i) the technical demands and complexity of the work to be done;

(ii)(I) the ecological objectives of the project; and

(II) the sensitivity of the resources being treated;

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(iii) the past experience by the contractor with the type of work being done, using the type of equipment proposed for the project, and meeting or exceeding desired ecological conditions; and

(iv) the commitment of the contractor to hiring highly qualified workers and local residents.

(3) MERCHANTABLE TIMBER CONTRACTING PILOT PROGRAM-

(A) ESTABLISHMENT- The Secretary concerned shall establish a pilot program to implement a certain percentage of approved projects involving the sale of merchantable timber using separate contracts for--

(i) the harvesting or collection of merchantable timber; and

(ii) the sale of the timber.

SEC. 205. RESOURCE ADVISORY COMMITTEES.

(b) Duties- A resource advisory committee shall--

(1) review projects proposed under this title by participating counties and other persons;

(2) propose projects and funding to the Secretary concerned under section 203;

(3) provide early and continuous coordination with appropriate land management agency officials in recommending projects consistent with purposes of this Act under this title;

(4) provide frequent opportunities for citizens, organizations, tribes, land management agencies, and other interested parties to participate openly and meaningfully, beginning at the early stages of the project development process under this title;

(5)(A) monitor projects that have been approved under section 204; and

(B) advise the designated Federal official on the progress of the monitoring efforts under subparagraph (A); and

(6) make recommendations to the Secretary concerned for any appropriate changes or adjustments to the projects being monitored by the resource advisory committee.