FY 2008 EC FREQUENTLY ASKED QUESTIONS

Reprogramming

R1. Question: Paragraph 6.c.3. of ER 11-2-201, the Reprogramming Engineer Regulation, says that leftover minor amounts of funds should be assigned to overhead. Is this still the case?

Answer: No. The Directorate of Resource Management recently issued guidance that project funds are to be reprogrammed away (in the case of a Civil Works project) or returned to the customer. The ER will be updated to reflect this guidance. NOTE: See FAQ immediately following, concerning reprogramming funds from uncompleted projects.

R2. Question: When does a reprogramming of funds "eliminate" the project?

Answer: Generally, a reprogramming of funds from a project "eliminates" the project when no funds remain, or so few funds remain that constructive work cannot be performed with in-house labor or by contract. Constructive work includes such activities as planning, engineering, and design, or coordination with the Partner and stakeholders.

However, in the cases enumerated below, no further work on the project is possible, and the reprogramming of all or any amount of funds from the project does not eliminate it. Note that, although a reprogramming may not be an "elimination," other reprogramming limitations continue to apply.

1. The project has been physically completed, the final accounting, any required audit, and any reconciling payments (in the case of cost sharing) have been performed, and the final OMRR&R manual has been provided to the Partner (in cases of non-Federal OMRR&R); OR

2. The project has been deauthorized and the final accounting, any required audit, and any reconciling payments (in the case of cost sharing) have been performed; OR

3. With respect to Investigations or MR&T Investigations funds for a project, the project has been converted to, and funded as, a CAP project, or the project has received Construction appropriations for implementation; OR

4. With respect to Construction funds for a CAP project, the project has been converted to, and funded as, a study or PED in the Investigations or MR&T Investigations account; OR

5. The following conditions are met for a terminated project:

a. No funds were provided for the project in the most recent regular appropriations act or in the accompanying Statement of Managers, and remaining funds were not specified in law; AND

b. The cost sharing agreement with the Partner, if any, has been legally terminated; AND

c. If the project is a CAP project, the project was terminated before publication of the EC, or has been terminated as the result of the suspension and termination/reaffirmation process in the EC; AND

d. The final accounting, any required audit, and any reconciling payments (in the case of cost sharing) have been performed.

R3. Question: Does the Corps have the latitude, without notifying the Appropriations Committees, to reprogram up to $25,000 for Investigations and MR&T I, $300,000 for Construction and MR&T C, or $150,000 for Operation and Maintenance or MR&T O, or more if the baseline amount is high enough?

Answer: Sometimes, but not always.

If an Investigations, Construction, or MR&T I or C project did not receive any allocations in the FY 2008 Act or Statement of Managers but has received allocations in previous years, then any reprogramming to the project requires Committee notification unless the reprogramming is for "continuing obligations and concomitant administrative expenses," or is for a settled claim, changed conditions, or a real estate deficiency judgment. The definition of "continuing obligations and concomitant administrative expenses" should be narrowly construed. For instance, in-house costs for E&D and S&A on an already-awarded contract qualify, as do additional reservations of funds under an already-awarded "true" or "special" continuing contract.

If an O&M or MR&T M project did not receive any allocations in the FY 2008 Act or Statement of Managers but has received allocations in previous years, then only $150,000 may be reprogrammed to the project without Committee notification, regardless of the baseline amount, unless the reprogramming is for an emergency.

R4. Question: What is meant by "changed conditions" in section 101(a)(7) of the 2008 Act?

Answer: Congress provided latitude to the Corps of Engineers to reprogram up to $3 million, without Committee notification, to fund the costs of "changed conditions" as well as settled claims and real estate deficiency judgments. The costs of changed conditions will be considered to be the same as the costs of equitable adjustments to contracts resulting from differing site conditions. The FAR clause 52.243-5 refers to changed conditions as "……subsurface or latent physical conditions differing materially from those indicated in this contract or unknown unusual physical conditions at the site…." that is, differing site conditions. The contractor promptly notifies the government of changed conditions and submits a proposal for adjustment. The Contracting Officer is responsible for making an equitable adjustment, subject to the Disputes clause.

CAP

C1. Question: The EC says that a "completed" CAP project is one that is physically complete and fiscally closed out. This differs from the definition in the milestone metrics. Is this correct?

Answer: The EC will be corrected in future years to use one definition, namely, the one in the milestone metrics. "Completion" means the District Engineer has determined that the project is physically complete and has provided notice of completion and an OMRR&R manual to the sponsor. In the future, the definition in Appendix F also will be updated to agree with this definition.

C2. Question: If a non-Federal sponsor does not reaffirm a suspended CAP project, are the districts supposed to contact the offices of the Members of Congress to seek reaffirmation?

Answer: No. Members of Congress do not reaffirm suspended projects. Only sponsors reaffirm suspended projects. The purpose of contacting the offices of the Members, in circumstances when a project has not been reaffirmed, is to make them aware of the lack of reaffirmation and the potential that the project may be terminated.

C3. Question: Is a district permitted to execute an agreement for a section 107 project if the Office of the ASA(CW) has not reviewed the project fact sheet and made a determination regarding policy consistency, pursuant to Appendix F?

Answer: Authorization of an agreement by the CAP program manager does not excuse a district from compliance with Appendix F. The purpose of the policy review is to ensure that the policy status of the project is known before the agreement is signed, and can be reflected in the agreement. The policy review also assists in the allocation of funds in the budget and the allocation of appropriated funds, and to ensure that the policy status is known before execution of the PA. Therefore, even where in the past a district has failed to obtain policy review before execution of the FCSA, the district should still obtain policy review, that is, the district should "catch up."

Expenses

E1. Question: Can O&M, Construction, or other account funds be used to support executive direction and management of the HQ or Division offices?

Answer: No. This would be an impermissible augmentation of Expenses funds, and furthermore is specifically prohibited in the FY 2008 Act.