



DEPARTMENT OF THE ARMY
U.S. ARMY CORPS OF ENGINEERS
WASHINGTON, D.C. 20314-1000

OCT 2 2008

CECW-I

MEMORANDUM FOR: Commanders, Major Subordinate Commands, Districts, and Separate Field Operating Activities

SUBJECT: Operations under a Continuing Resolution Act (CRA) – Civil Works Program

1. I am providing the enclosed detailed guidance on Civil Works operations under a CRA.
2. Subject to additional Executive Branch guidance, our management of the Civil Works appropriated program will continue to be conducted in accordance with guidance contained in the Energy and Water and Related Agencies Appropriations Act, 2008, Public Law 110-161, Division C, and the accompanying Joint Explanatory Statement, as reflected in Engineer Circular 11-2-192 and the Frequently Asked Questions at http://www.usace.army.mil/cw/cecwb/fy08/fy2008_ec_faq.pdf.
 - a. Only programs, projects, and activities (PPAs) that received funds in FY 2008, whether through an allocation or through a reprogramming, may be allotted funds during the CRA period. No new CAP phases may be initiated, and initiation of new PPAs is prohibited.
 - b. Reprogramming rules remain in effect. During the CRA period, the FY 2008 baseline amount (including allocated supplemental appropriations) applies to each PPA in each account, and reprogrammings accomplished in FY 2008 are included in determining cumulative net reprogramming amounts.
 - c. Contracting rules remain in effect. However, in addition, continuing contracts (including incrementally funded contracts) that would be funded from the Inland Waterways Trust Fund (IWTF) may not be advertised or awarded.
 - d. Funds may be allotted to each project only to the extent needed to support obligations during the CRA period. Further, obligations to continuing contracts must be limited to the amounts needed to pay earnings under the contract terms during the CRA period, and obligations to continuing contracts for new inland waterway construction projects funded by the IWTF must be made in monthly increments in the amounts needed per month.
3. Upon receipt of any additional Executive Branch guidance, this guidance will be reviewed and adjusted accordingly.
4. My point of contact is Mr. Gary Loew, Chief, Programs Integration Division.

FOR THE COMMANDER:

Enclosure

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

Programs Management
FISCAL YEAR 2009 DIRECT AND REIMBURSED PROGRAMS – CIVIL WORKS
CONTINUING RESOLUTION AUTHORITY

CECW-I

30 September 2008

Operational Guidance

1. Purpose.

a. This guidance governs execution of Corps of Engineers (Corps) programs and projects for Fiscal Year (FY) 2009 during the period of a Continuing Resolution Act (CRA). This document provides guidance and is not to be construed as an official legal opinion regarding any particular item in Act language or accompanying reports.

b. Except as provided in this guidance, management of the Civil Works appropriated program will continue to be conducted in accordance with guidance contained in the Energy and Water and Related Agencies Appropriations Act, 2008, Public Law 110-161, Division C, and the accompanying Joint Explanatory Statement, as reflected in EC 11-2-192 and the Frequently Asked Questions at http://www.usace.army.mil/cw/cecwb/fy08/fy2008_ec_faq.pdf. This guidance is subject to change to reflect the FY 2009 Continuing Resolution Act and Executive Branch guidance.

2. Applicability. This guidance applies to all HQUSACE elements, Major Subordinate Commands (MSCs) or Separate Field Operating Agencies (SFOAs) and district commands having Civil Works responsibilities. It is applicable to all Corps of Engineers Civil Works PPAs in all Civil Works Appropriations. District and Division offices shall inform CECW-I of any problems with the implementation of this guidance.

3. References.

a. ER 37-1-28, Financial Administration - Continuing Resolution Authority, paragraphs 5 and 6, 30 November 2001

b. ER 37-2-10, Financial Administration - Accounting and Reporting - Civil Works Activities, paragraph 6-10c (1), 1 April 1969, as amended.

c. EC 11-2-192, Execution of the Annual Civil Works Program, 7 March 2008.

d. CECW-I memorandum, subject: Existing Continuing Contract Notification Letter, 13 Feb 2006

e. CEPR-ZB memorandum, PARC Instruction Letter (PIL) 2006-05, Continuing Contracts and Incrementally Funded Contracts for Fiscal Year 2006, 22 Mar 2006.

f. DoD Financial Management Regulation (FMR), Vol. 3 Chapter 2.

g. House Report 110-___ (unfiled) on Energy and Water Development Appropriations Bill, 2009.

h. Senate Report 110-416 on Energy and Water Development Appropriations Bill, 2009.

i. Executive Order Protecting American Taxpayers from Government Spending on Wasteful Earmarks, January 2008.

j. Public Law 110-___, Joint Resolution making continuing appropriations for the fiscal year 2009, and for other purposes.

4. **Direct Program.** Pending final FY 2009 appropriations and the associated apportionment and issuance of work allowances and Funding Authorization Documents (FADs), the following guidance will govern use of Civil Works direct discretionary funds during a FY 2009 CRA period, subject to revision in accordance with the enacted CRA.

a. General. Resourcing under a CRA is intentionally constrained to marginal levels by law. The intent is to finance continuing operations at levels of obligation and expenditure that are not detrimental to Congressional prerogatives.

(1) HQUSACE anticipates that the Office of Management and Budget will automatically apportion funds for the CRA period. HQUSACE also may request written apportionment for certain accounts.

(2) The HQUSACE manager of each appropriation account will determine the fractional portion of apportioned funds to be allotted to each MSC or SFOA. HQUSACE Resource Management Division will allot the CRA funding for each appropriation title by FAD to MSCs and SFOAs. No work allowances for CRA funds will be issued pending apportionment of final FY 2009 appropriations; however, work allowances will be issued for carried-over undistributed funds and FY 2008 War Supplemental funds that become available on 1 October 2008.

(3) Each MSC is responsible for allotting CRA funds received from HQUSACE to districts, by appropriation title. MSCs' distributions to subordinate districts are formal allotments. Therefore, districts are accountable for Anti-Deficiency Act violations.

b. Management of FY 2009 Funds under the CRA.

(1) Allotments of CRA Funds. MSC's/Districts and SFOAs have discretion to allot funds made available to them as needed to continue ongoing work, subject to paragraph 4.(b)(2) below.

(a) When funds are allotted to work items, funds may be allotted among items disproportionately, that is, a higher percentage of funds available under the CRA may be allotted for work with high funding requirements (e.g. award of a fully funded

contract) during the CRA period and a smaller percentage of funds available under the CRA may be allotted for work that will have few funding needs during the CRA period.

(b) New contracts may be awarded for work items receiving allotments.

(2) Restrictions on Allotment and Obligation. Prior to allotting CRA funds, the MSCs and SFOAs shall ensure the following:

(a) Work does not migrate among accounts during the CRA. A type of work that was funded from a particular account in FY 2008 will be funded from the same account under the CRA.

(b) A program, project, or activity (PPA) is eligible to receive CRA allotments in FY 2009 only if the PPA received funds in FY 2008, whether through an initial allocation or through a reprogramming. Note that a PPA must have received funds in FY 2008; issuance of carried-over FY 2008 funds in FY 2009 does not make a PPA eligible to receive CRA allotments. Any non-PPA work item (such as a Planning Assistance to States study that never had been identified in a Report table or Act) within a PPA that was funded in FY 2008 may receive FY 2009 CRA allotments, subject to other provisions in this guidance.

(c) No allotment of CRA funds will be made to any new start reconnaissance studies, new start construction projects, including new start separable elements of projects, or any other new start PPAs. Furthermore, no previously unfunded phase of a study or PED will be initiated using CRA funds unless that phase is funded in the tables in both the House and Senate reports for FY 2009.

(d) Funds should be allotted only to the extent they can be obligated during the period of the CRA, thereby minimizing potential reconciliation or reprogramming problems.

(e) The amount of CRA funds allotted to each PPA may not exceed the lesser of the amount provided for the PPA in the tables in the House Report or the amount provided for the PPA in the tables in the Senate Report. This restriction applies to a temporary CRA and extensions of any duration; therefore, do not over-allot and over-obligate funds for a PPA early in the FY. If either the House Report or the Senate Report provides zero funds for a specifically authorized PPA, MSC's may not allot any CRA funds to that PPA without prior CECW-I approval. Each MSC approval request should include for each PPA the recent funding history, House and Senate amounts for FY 2009, interested Members of Congress, the amount proposed to be allotted, and the proposed use of the funds. In particular, indicate whether the funds would be necessary to cover the costs of labor associated with contracts awarded in previous fiscal years. MSCs may not allot any CRA funds to a specifically authorized PPA with zeroes in the tables in both the House Report and the Senate Report.

(f) Subject to other limitations in this guidance, CRA funds may be allotted to work within Remaining Items as follows.

(1) CAP Projects.

(a) Previous authorizations to execute CAP agreements expire on 30 September 2008. During the CRA period, no agreements may be executed without prior approval from CECW-I.

(b) A CAP project may receive an allotment if the following four conditions are met: 1) the project received funds in FY 2008 through an initial allocation or reprogramming; and 2) the phase is continuing; and 3) either the project is named in the tables in both the House and Senate reports for FY 2009 or the allotment has received prior approval from the HQUSACE Program Manager; and 4) the allotment is consistent with Appendix F, amendment 2, to ER 1105-2-100. However, Section 14 projects are subject only to the first and fourth requirements. In requesting approval of an allotment, the MSC should indicate whether the funds would be necessary to cover the costs of labor associated with contracts awarded in previous fiscal years.

(c) Allotments of coordination funds require prior approval of the Program Manager.

(2) A PAS or FPMS study or activity may receive an allotment if either: 1) funds were reprogrammed to it in FY 2008 and it is funded in the table in either the House or Senate report for FY 2009; or 2) it received an FY 2008 initial allocation.

(3) Funds may be allotted to work within a Remaining Item (other than CAP, FPMS, or PAS) if either: 1) the work is named in the tables in both the House and Senate reports for FY 2009; or 2) the work is budgeted (included in justification materials) for FY 2009 and would not be limited or precluded by the allocations or provisions of the House report or the Senate report; or 3) the work has received prior approval from the HQUSACE Program Manager for the Remaining Item.

(g) For each PPA, cumulative obligations of CRA funds through the period of the CRA for any contract employing a "true" continuing contract (EFARS Part 252.232-5001) or any "special" continuing contract published in the PARC Instruction Letter (PIL 2006-05) and for in-house labor costs must be limited to the incremental amount (beyond carried-in undelivered orders on the continuing contract and carried-in unobligated funds on the PPA) needed to pay expected earnings under the contract terms for that contract, plus labor costs, through the CRA period. In addition, for projects funded from the Inland Waterways Trust Fund (IWTF), obligations on any continuing contract must be made monthly, not to exceed the CRA period. Note that the end of the CRA period may be sooner than the end of a pay period, and that only the portion of the pay period falling in the CRA period should be funded.

(h) When allotting funds to PPA's prosecuted by contracts that include the DFARS incremental funding clause at DFARS Part 252.232-7007, MSC's should plan allotments that meet the allotment schedule in subparagraph (i) of that clause to avoid funding shortfalls that would require termination of line items or the contract. If planned

allotments would require termination of line items or the contract, contact CECW-I prior to the allotment of funds.

(i) Any movement to or from a PPA of already-allotted CRA funds is considered a reprogramming during the CRA. The baseline amount for each project as of 30 September 2008 will be used in the CRA period for determining the reprogramming limits under the CRA, and will not be recalculated to include FY 2009 CRA obligation authority. Reprogramming actions accomplished in FY 2008 are to be included in determining the cumulative amount of reprogrammings and remaining reprogramming "authority" available to a PPA during the CRA. Reprogrammings to and from a PPA offset each other in computing the cumulative amount. Moving funds to or from a non-PPA within a PPA is considered a "reallocation," not a reprogramming, and is not subject to reprogramming limitations. (See paragraph 6.f. regarding reconciliation after enactment of final appropriations.)

(3) Flood Control and Coastal Emergencies. No funding is likely to be available for the Flood Control and Coastal Emergencies (FCCE) account under the CRA. FCCE-funded activities will be resourced during the CRA period using existing unallocated carryover funding. As a result, we will curtail program requirements during the CRA period to those activities that are necessary to maintain our essential emergency readiness and response capabilities. The following guidance applies to FCCE funding during the CRA period:

(a) Funding allocations for the first quarter FY 2009 will be adjusted to account for already allocated unobligated carry-in funds and will be limited to activities necessary to address emergency management employee salaries and facility costs; conduct scheduled inspections of non-federal flood damage reduction projects; perform critical emergency response training; award and maintain necessary emergency contracts and operate and maintain emergency information systems (EngLink) and Deployable Tactical Operation Systems (DTOS), and conduct emergency response operations.

(b) Funds already allocated for work on rehabilitation, drought, and advance measure projects will continue. Allocations to new project activities during the CRA period will be prioritized and resourced if funding is available.

(c) The following activities will not be funded during the CRA period: improvements to existing EOC/Office facilities and/or equipment enhancements to include supplies, and other operational items for an Alternate EOC; new leases or contract initiatives; hiring for vacant/new positions unless specifically approved by CECW-HS.

(4) Questionable PPA Funding Requirements. An MSC should coordinate any questionable PPA funding requirements, including reprogramming, through its Regional Integration Team (RIT) to arrive at a corporate decision.

(5) Power Marketing Agencies (PMA) Funding. When authorized, specific power purpose funding provided by the Power Marketing Administration (Specific Power) that are not part of the Federal appropriation may be 100% available, once apportioned.

c. Contracts.

(1) Contracts of \$20 million or less must be fully funded unless an alternative is approved by CECW-I in advance.

(2) Continuing Contract Notices. Since CRA funding is limited, inclusion of the paragraph below in “true” and “special” continuing contracts awarded during the CRA period and ongoing contract notices under the “true” and “special” continuing contract clauses is critical.

“Congress has appropriated limited funds through a stop-gap Continuing Appropriations act. Accordingly, pending enactment of the FY 2009 Energy and Water Development Appropriations and subsequent apportionment, we must reserve funds for your contract on a limited basis. The amount reserved for your contract through [insert the appropriate date] is \$xxx,xxx,xxx. After enactment of the Energy and Water Development Appropriation and apportionment, we will advise in writing of the amount reserved for your contract.”

For projects not funded from the IWTF, the appropriate date is the last day of the CRA period. For projects funded from the IWTF, the limited IWTF revenues and balance necessitate that the reservation of funds within the CRA period be monthly. Accordingly, the appropriate date to use with each monthly reservation of funds is the last day of the forthcoming month, or the last day of the CRA period, whichever is soonest.

d. Guidance for Inland Waterways Projects. As discussed in paragraphs 4.b.(2)(g) and 4.c.(2), obligations against IWTF continuing contracts will be monthly. In addition:

(1) Inland waterway rehabilitation projects will be funded only from the general fund, and not the IWTF, during the period of the CRA.

(2) To ensure that allotments of IWTF funds remain within the amount available in the IWTF, CECW-IP will issue to each MSC monthly allotment limitations. The allotment limitations will be included in each FAD. This practice will ensure “just in time delivery” and effective use of IWTF funds during the period of the CRA.

(3) No new contracts using the continuing contract authority, which includes incrementally funded contracts, may be advertised or awarded during the CRA period for the new construction projects funded from the IWTF under the CRA.

(4) Beginning in FY 2009, funds derived from the IWTF will be issued in the Construction account (96X3122) along with funds from the General Fund. The normal category-class-subclass (CCS) codes (e.g. 220 and 814) will be used for the General

Fund amount, and CCS 310 will be used for the IWTF amount. During the CRA, IWTF funds should be allotted to projects using 3312 310. Do not allot funds to 96 20 8861.

(5) In accordance with Reference 3.c., new contract awards and other financial commitments for inland waterways projects (including those rehabilitation projects not funded by the IWTF in FY 2009) require the prior approval of the ASA(CW).

5. Reimbursable Program. The following guidance will govern Civil Works reimbursed program activities during the CRA period.

a. Transfer appropriations under agency symbol 96 may be obligated to the extent that obligation and/or contract authority is available, unless otherwise advised by HQUSACE or the transferring agencies.

b. Reimbursable work may proceed to the extent that activities have received valid reimbursable orders from customers.

6. Post-CRA Procedures.

a. After the President signs an appropriations act into law, OMB automatic apportionment terminates. Agencies must submit SF132 apportionment requests to OMB for approval. OMB approval may take as much as 30 days. Volume 3, chapter 2, section 020506 of the DoD Financial Management Regulation (FMR) extends automatic apportionment for all DoD activities during this 30-day hiatus to the extent obligations are “reasonable and customary for the time period.” To ensure that these criteria are met, HQUSACE will issue another 30-day increment of funding by FAD using the same formula and methodology as was used during the CRA.

b. During the 30-day period pending apportionment, obligations for continuing contracts and in-house labor should be limited to earnings through the end of the period.

c. HQUSACE will issue work allowances upon OMB apportionment.

d. Work allowances for IWTF-funded projects will be issued in increments on a calendar month basis to ensure “just in time delivery” and effective use of IWTF funds. Accordingly, obligations against IWTF-funded continuing contracts after the CRA period should cover calendar month periods.

e. HQUSACE will issue funding through PBAS based on approved work allowances. FADs issued via PBAS will reflect cumulative funding.

f. Where funds allotted to a project in CEFMS differ from the initial work allowance, the MSC, District, or SFOA will reconcile the two, either by adjusting allotments or by adjusting work allowances using the REC, Reconciliation, code in P2-OFA.

g. MSCs should assure that PPA schedules aligned with the final appropriation act and accompanying conference report are maintained in the P2 system. These schedules will be baselined and locked in the systems following the issuance of work allowances.

7. Points of Contact. Questions regarding this guidance should be directed to Evelyn Specht, CERM-BC, 202.761.1955 for Resource Management matters, or Joseph Bittner, CECW-IP, 202.761.4130 for Program Integration matters.