



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

CECW-I

24 SEP 2007

MEMORANDUM FOR: Commanders, Major Subordinate Commands and Districts

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

1. In anticipation of a CRA at the onset of Fiscal Year (FY) 2008, I am providing the enclosed detailed guidance on Civil Works operations.

2. I want to emphasize a few of the key elements in the guidance.

a. Until the specific CRA language is known, our management of the Civil Works appropriated program will continue to be conducted in accordance with guidance contained in the Public Law 109-103 FY 2006 Energy and Water Development Appropriations Act (E&WDAA), and the Joint Resolution for FY 2007. Therefore, only specifically authorized programs, projects, and activities (PPAs) that received funds in FY 2006 or Continuing Authorities Program (CAP) projects that received funds in FY 2006 or FY 2007, whether through an initial allocation or through a reprogramming, may receive CRA allotments in FY 2008.

b. No allotment will be made to a new start reconnaissance study, a new start construction project/separable element (including a new CAP project), any other new PPA, or a new CAP phase.

c. Reprogrammings remain subject to the restrictions in Section 101 of the FY 2006 E&WDAA. The baseline amounts established for each project in FY 2007 for determining the Army's reprogramming limit are still in effect, and reprogramming actions accomplished in FY 2007 are to be included in determining the cumulative amount of reprogramming.

d. Funds shall not be allotted in a manner that would require a later reprogramming.


3. There may be instances of uncertainty concerning your authorities during the CR period. These should be fully coordinated with your vertical team to assure that we continue to act corporately.

4. Upon passage of the CRA and further Administration guidance this guidance will be reviewed and adjusted accordingly.

5. My point of contact for CR activities is the Programs Integration Division Chief, Mr. Gary Loew.

FOR THE COMMANDER:

Attachment


DON T. RILEY
Major General, U.S. Army
Director of Civil Works

Programs Management
FISCAL YEAR 2008 DIRECT AND REIMBURSED PROGRAMS – CIVIL WORKS
CONTINUING RESOLUTION AUTHORITY

CECW-I

24 September 2007

Operational Guidance

1. Purpose. This guidance provides Corps of Engineers (Corps) program and project management policies and practices for Fiscal Year (FY) 2008 to ensure that execution of the FY 2008 Continuing Resolution Act (CRA) for the Civil Works Program is conducted in accordance with existing statutes, direction, and intent of the Administration and Congress. 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. It documents changes in Corps processes that must be incorporated into FY 2008 execution plans and acquisition strategies to ensure that implementation of programs, projects, and activities (PPAs) in FY 2008 complies with the legal restrictions and commitments made to Congress. This guidance is subject to change to reflect the FY 2008 Continuing Resolution Act and OMB's automatic apportionment instructions for FY 2008.

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, para 5 & 6 (30 November 2001)
- b. ER 37-2-10, Financial Administration - Accounting and Reporting - Civil Works Activities, para 6-10c (1) (1 April 1969, as amended).
- c. EC 11-2-191, Execution of the Annual Civil Works Program, (19 Apr 07, as amended).
- d. CECW-I memorandum, subject: Existing Continuing Contract Notification Letter, 13 Feb 06
- e. CEPR-ZB memorandum, PARC Instruction Letter (PIL) 2006-05, Continuing Contracts and Incrementally Funded Contracts for Fiscal Year 2006, 22 Mar 06.
- f. DoD Financial Management Regulation (FMR), Vol. 3 Chapter 2.

- g. House Rep. No. 110-185, pt. 1 & pt. 2 (2007)
- h. Senate Rep. No. 110-127 (2007).
- i. CECW-CP Memorandum dated 30 March 2007, Subject: "Peer Review Process."

4. Direct Program. Pending FY 2008 appropriations, apportionment, and issuance of work allowances and Funding Authorization Documents (FADs), the following guidance will govern funding of Civil Works direct discretionary PPAs during a Continuing Resolution (CR) period subject to revision following enactment of the actual 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 CR period.

(2) Each MSC or SFOA will receive a fractional part of the amount automatically apportioned for each appropriation title. (See Attachment 1) initially, the fractional part for each appropriation title is based on the ratio of FY 2007 expenditures by the MSC or SFOA to total FY 2007 expenditures in that appropriation title, as adjusted to reflect HQ action on MSC funding requests.

(3) HQUSACE will allot CRA funding by appropriation title, to MSCs and SFOAs, by FAD.

(4) Each MSC is responsible for allotting CRA funding 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.

(5) Once FY 2008 appropriations are enacted by an Energy and Water Development Appropriations Act (E&WDAA) or a full-year CRA, normal work allowances and FADs will be issued. The work allowances and FADs will include funds already allotted for the FY under the CRA(s).

b. Management of Funds Available to PPAs Under the CRA.

(1) Definition of PPA. A program, project, or activity is an authorized water resources project, or an authorized environmental assistance program, or a water resources project study, or a project in a Continuing Authorities Program (CAP), or work that has received an allocation or sub-allocation in any Act or has been directed to be performed in any Act, or work that has received an allocation or sub-allocation within tables in any Statement of Managers / Conference Report for any fiscal year, or work that has received an allocation or sub-allocation within tables in any House Report or

Senate Report for any fiscal year if not superseded by the applicable Statement of Managers / Conference Report.

Note that each individual project within the CAP is a PPA. This is a change from FY 2007. However, Flood Plain Management Services, Planning Assistance to States, and the other Remaining Items are PPAs, not the individual projects or work items within these programs.

(2) Allotments of funds. MSC's/Districts and SFOAs have discretion to allot funds made available to them as needed to continue ongoing PPAs, subject to paragraph 2.(b)(3) below. When allotting funds to PPAs, funds may be allotted to projects disproportionately. That is, allotment may be made of a higher percentage of funds available under the CRA to a PPA 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 to PPAs that will have few funding needs during the CR period. In addition, unobligated balances from FY 2007 or prior years may be obligated on the PPAs that have the unobligated balances.

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

(a) Only PPAs that received funds in FY 2006 and CAP PPAs that received funds in FY 2006 or 2007, whether through an initial allocation or through a reprogramming, are eligible to receive CR allotments in FY 2008. However, CAP PPAs that were initiated in FY 2006 or FY2007 and were not named in the Conference Report for FY 2001 through FY 2006 will not receive an allotment.

(b) Except in the case of CAP PPAs, the amount of CRA funds allotted to each eligible PPA may not exceed the lesser of the amount provided for the PPA in the House Report or the amount provided for the PPA in the Senate Report. If either the House Report or the Senate Report provide zero funds for a PPA, MSC's may not allot any CRA funds to that PPA without prior CECW-I approval.

(c) Obligations of FY 2008 CRA funds for each PPA employing a "true" continuing contract (EFARS Part 252.232-5001) or a "special" continuing contract published in the PARC Instruction Letter (PIL 2006-05) must be limited to expected earnings and associated in-house costs through the period of the CRA, and once an Energy and Water Development Appropriation is signed, pending apportionment, to expected earnings and associated in-house costs through the end of the month in which distribution of funding is anticipated.

"Congress has appropriated limited funds through a stop-gap Continuing Appropriations act. Accordingly, pending enactment of the FY 2008 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 based on the last day of the

applicable CRA] 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."

Since CRA funding is limited, inclusion of the above paragraph in contracts awarded during the CRA period and ongoing contract notices under the continuing contract clauses is critical.

(d) 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.

(e) Obligations for in-house labor on eligible PPAs must be limited to expected earnings during the period of the CRA, which may not coincide with the end of a pay period. Example: If the CRA period extends to 31 October 2007, commit/obligate 31 days worth of labor earnings, not 41 days (Pay Period ends on 10 Nov 2007).

(f) Any movement from one PPA to another of carryover funds, or of FY 2008 funds once allotted by an MSC, must comply with the reprogramming limitations in Section 101(a) of the FY 06 E&WDAA as implemented by EC 11-2-191. The baseline amounts established for each project in FY07 for determining the Army's reprogramming limit are still in effect, and will not be recalculated to include FY 2008 CRA obligation authority. Reprogramming actions accomplished in FY07 are to be included in determining the cumulative amount of reprogramming authority available to a PPA during the CRA.

(g) A new start is defined as a PPA that has not received a prior work allowance in the applicable account. No allotment 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, new CAP phases will not receive an allotment, and, as stated earlier, CAP PPAs that were initiated in FY 2006 or FY2007 and were not named in the Conference report for FY 2001 through FY 2006 will not receive an allotment.

(h) In the event that the CRA or CRA extension lasts beyond the first quarter of FY 2008, obligations toward continuing contracts funded in part from the Inland Waterways Trust Fund must be limited to a quarterly basis, based on expected earnings for each quarter.

(i) MSCs and SFOAs should allot funds only where they can be used during the CR period, thereby avoiding any cause for reprogramming.

(j). Starting with FY 2008, Districts must post a peer review plan and obtain MSC approval prior to allotment of funds to a study. See reference 3i for details.

(4) Remaining Items

(a) Each Program Manager for a Remaining Item (including the CAPs) will prepare and coordinate with the MSCs/SFOAs a plan for program execution while under the CRA. Each plan will include planned funding during the CR period by MSC/SFOA, with funding for the total FY 2008 program being assumed to be equal to the lesser of the amount for the Remaining Item in the House report or the amount for the Remaining Item in the Senate report.

(b) Each MSC/SFOA will distribute CRA funding from within the applicable appropriation title allotment to activities within each Remaining Item to accomplish the planned program execution as coordinated with the Program Managers.

(c) For CAPs, allotments may be made only to PPAs that received funds in FY 2006 or FY 2007. However, CAP PPAs that were initiated in FY 2006 or FY2007 and were not named in the Conference Report for FY 2001 through FY 2006 will not receive an allotment. The moratorium on the execution of new FCSAs will continue during the CR. The moratorium on the execution of new PCAs will continue during the CR, except where CECW-I approves PCA execution based on project completion being fully funded or non-federal funds being in jeopardy, as provided in ER 11-2-191.

(5). 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 2008 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.

(6) 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.

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

c. Contract Approvals:

(1) In accordance with EC 11-2-191, the use of a special continuing contract clause requires advance approval of the ASA(CW), except that use of the special continuing contract clause for contracts funded under the O&M Account and that meet certain conditions require advance approval of the MSC Commander.

(2) In accordance with EC 11-2-191, incrementally funded contracts (contracts using the clauses at DFARS Part 252.232-7007 or at Attachment B of Reference 3.e.) can be approved for award by the District Commander. However, the ASA(CW) must approve the use of any incrementally funded contract that does not complete a useful increment or work or navigation reach with expected FY funding.

(3) In accordance with EC 11-2-191, award of an options contract may be approved by the District Commander as long the contract does not set an expectation of continued federal funding beyond FY 2008. However, if the scope of the base contract and/or the options are not independently useful and, instead, create an expectation of continued federal funding beyond FY 2008, the contract must be approved in advance by the ASA(CW).

(4) With respect to contract work on projects funded by the Inland Waterways Trust Fund (IWWTF), requirements that the ASA(CW) approve in advance the advertisement of any new contract, the award of any new option or delivery order, or the obligation on additional funds under any incrementally funded contract remain in effect.

5. Reimbursable Program. The following guidance will govern Civil Works reimbursed program activities in FY 2008.

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 insure that these criteria are met, HQUSACE will issue another 30-day increment of funding using the same formula and methodology as was used during the CRA.

b. HQUSACE program managers will prepare work allowances as soon as appropriations are passed and complete them to coincide with OMB apportionment approval. However, work allowances for the Inland Waterways Trust Fund (IWTF) and the corresponding Construction account work allowances for IWTF projects will be issued in increments on a quarterly basis. Accordingly, obligations to IWTF-funded continuing contracts should be quarterly.

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

d. MSCs, Districts and SFOAs will adjust funding levels so as not to exceed the work allowance/FAD cumulative allotment for each PPA.

e. 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 immediately following the issuance of work allowances..

7. Points of Contact. Questions regarding this guidance should be directed to Evelyn Specht, CERM-BC, 202.761.5903 for Resource Management matters, or Joseph Bittner, CECW-IP, 202.761.4130. for Program Integration matters.