



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

SEP 23 2011

CECW-I

MEMORANDUM FOR SEE DISTRIBUTION

SUBJECT: Operations under a Fiscal Year 2012 Continuing Resolution – Civil Works Program

1. It is expected that the Civil Works Program will begin Fiscal Year (FY) 2012 under a Continuing Resolution (CR). Subject to additional Executive Branch guidance and the provisions of the CR, and except as provided in the enclosed guidance, management of the Civil Works program under the CR will be in accordance with the Full Year Continuing Appropriations Act for FY 2011, Public Law 112-10 Division B, as reflected in Engineer Circular 11-2-201.
2. Highlights of the enclosed guidance are as follows.
 - a. Absent ASA(CW) notification to the Appropriations Committees, no CR funding may be allotted or reprogrammed to a program, project, or activity (PPA) unless it received funding in FY 2010 through either the FY 2010 Act or Conference Report or a reprogramming taking place in FY 2010 on or after 28 October 2009. This is the same universe of projects that were eligible for funding under the FY 2011 CR.
 - b. The reprogramming baselines and limits as of 30 September 2011 will remain in effect for PPAs during the CR period, with adjustments for appropriation reimbursements, supplemental funding, rescissions, transfers, and allocations of withheld funding. For each PPA, all reprogrammings in FY 2011 and during the CR period count toward its limit on a cumulative basis.
 - c. CR funding may be allotted to each PPA only to the extent it must be available for solicitations or obligations during the CR period, only for the purposes specified in the enclosed guidance (in the case of a specifically authorized study or project), and only in an amount no greater cumulatively than the lesser of the amounts in the House and Senate Appropriations Committee reports (with limited exceptions to be coordinated with HQUSACE). No CR funding will be allotted to projects in the Continuing Authorities Program.
3. My point of contact is Mr. Mark Mazzanti, Chief, Civil Programs Integration Division, who can be reached at 202-761-4100.

FOR THE COMMANDER:

Encl

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

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SUBJECT: Operations under a Fiscal Year 2011 Continuing Resolution – Civil Works Program

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SUBJECT: Operations under a Fiscal Year 2011 Continuing Resolution – Civil Works Program

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Programs Management
FISCAL YEAR 2012 DIRECT AND REIMBURSED PROGRAMS – CIVIL WORKS
CONTINUING RESOLUTION

Operational Guidance

1. Purpose.

a. This document governs execution of Corps of Engineers (Corps) programs and projects using funding authorized by a Continuing Resolution (CR) for Fiscal Year (FY) 2012. This document also governs execution following enactment and pending apportionment of annual appropriations for Civil Works. This guidance is subject to change to reflect the provisions of the FY 2012 Continuing Resolution Act and Executive Branch guidance. 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 the Full-Year Continuing Appropriations Act for FY 2011, Division B of Public Law 112-10, including provisions and conditions of the Energy and Water and Related Agencies Appropriations Act, 2010, Public Law 111-85, that are applicable to FY 2011 appropriations in accordance with Public Law 112-10, as reflected in EC 11-2-201.

2. Applicability. This guidance applies to all HQUSACE elements, Division commands, Field Operating Agencies (FOAs), and District commands having Civil Works responsibilities. It is applicable to all Civil Works appropriations, except for appropriations under the American Recovery and Reinvestment Act of 2009. District and Division commands and FOAs 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, 30 Nov 2001.

b. ER 37-2-10, Financial Administration - Accounting and Reporting - Civil Works Activities, 11 Feb 2004, paragraph 6-10c (1).

c. EC 11-2-201, Execution of the Annual Civil Works Program, 31 May 2011.

d. DoD(AT&L) Defense Procurement and Acquisition Policy, subject: Class Deviation: Defense Federal Acquisition Regulation Supplement (DFARS) 232.705-70 (Oct. 27, 2009), primary continuing contract clause.

e. DoD(AT&L) Defense Procurement and Acquisition Policy, subject: Class

Deviation: Defense Federal Acquisition Regulation Supplement (DFARS) 252.232-7007 (Oct. 27, 2009), alternate continuing contract clause.

f. Engineer Federal Acquisition Regulation Supplement (EFARS) Part 252.232-5001, "true" continuing contract clause.

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

h. Energy and Water and Related Agencies Appropriations Act, 2010, Public Law 111-85.

i. Conference Report, Energy and Water Development and Related Agencies Appropriations Act, 2010, House Report 111-278.

j. Full-Year Continuing Appropriations Act for FY 2011, Public Law 112-10, Division B.

k. U.S. Army Corps of Engineers - Civil Works, FY 2011 Work Plan, 13 May 2011.

l. FRAGO 1 (USACE Guidance for Emergency Repairs) to OPORD 2011-50, 2011 Greater Mississippi Flood Repairs and Post-Flood Assessment of Flood Operations.

m. Committee on Appropriations, United States House of Representatives, House Report 112-118 on Energy and Water Development and Related Agencies Appropriations, 2012.

n. Committee on Appropriations, United States Senate, Senate Report 112-75 on Energy and Water Development and Related Agencies Appropriations, 2012.

4. **Direct Program.** Pending final FY 2012 appropriations and the associated apportionment and issuance of work allowances and Funding Authorization Documents (FADs), the following guidance will govern use of FY 2012 Civil Works direct discretionary funding.

a. Apportionment of FY 2012 CR Funding. HQUSACE anticipates that the Office of Management and Budget will automatically apportion FY 2012 funding made available by the CR for the CR period (CR funding). The amount automatically apportioned for each account is equal to the amount of regular (excluding supplemental) funding enacted for FY 2011, times the percentage of historical obligations that have taken place in that account in periods equal to the CR period, but not to exceed the pro-rated portion of the enacted amount. HQUSACE also may request written apportionment for certain appropriations.

b. Allotment of FY 2012 CR Funding. Resourcing under a CR 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 will determine the fractional portion of apportioned funding for each appropriation to be allotted to each Division or FOA. HQUSACE Resource Management Division (CERM) will allot the CR funding for each appropriation by CR paper FAD to HQUSACE, Divisions, and FOAs. No initial work allowances will be issued until a final FY 2012 appropriations act for energy and water development is enacted and funds under that act are apportioned.

(2) Once CERM allots CR funding to Divisions, each Division is responsible for allotting CR funding in the applicable appropriations to districts, by appropriation title. Divisions' distributions to subordinate Districts are formal allotments. Obligating or expending CR funding in excess of such an allotment constitutes an Anti-Deficiency Act violation.

(3) Funding of Programs, Projects, and Activities For Which Funding Was Not Made Available by Public Law 111-85. CR funding may not be allotted to a PPA for which funding was not made available by the Energy and Water Development and Related Agencies Appropriations Act, 2010, Public Law 111-85 (Reference 3.h.) This precludes funding for any new start, including a new reconnaissance study, a new construction project or separable element, or a new remaining item, as well as continuing projects that do not meet the criteria discussed below. Further, CR funding, once allotted, may not be reprogrammed to a PPA for which funding was not made available by Public Law 111-85. Only funding that was carried into FY 2011 unobligated and that remains available for reprogramming may be reprogrammed to a PPA that previously had been funded within the appropriation but for which funding in that appropriation was not made available by Public Law 111-85. The amount of funding carried into FY 2011 unobligated and remaining available for reprogramming from a source project is determined by subtracting its obligations in FY 2011 and in the FY 2012 CR period from its unobligated carry-in to FY 2011.

(a) A program, project, or activity (PPA) is a specifically authorized project study, project, or program funded in the I, C, O&M, or MR&T appropriation, or a project funded in the FUSRAP appropriation, or work that has received an allocation in the most recent Act providing annual appropriations for Energy and Water Development, or work that has received a specified amount in a first-tier line item in a table of allocations in the Statement of Managers accompanying the Act. Since there was no Statement of Managers accompanying the Full-Year Continuing Appropriations Act for FY 2011 (reference 3.j.), the first-tier line items are those appearing in the Conference Report for FY 2010 (reference 3.i.) For further discussion, see EC 11-2-201 (reference 3.c.).

(b) Funding for a PPA was "made available by Public Law 111-85" if it received funding in one of four ways:

- In a statutory earmark in the Act itself. This funding was issued using the “C” transaction code.
- In the Statement of Managers (Reference 3.i.) accompanying Public Law 111-85. This funding was issued using the C and “ALL” transaction codes.
- In supplemental appropriations for FY 2010. This is true even if the work allowance and FAD were not issued until after FY 2010. This funding was issued using the “SUP” transaction code with a Category-Class-Subclass (CCS) of “70E.”
- Through a reprogramming of funding that took place in FY 2010 on or after 28 October 2009. The reprogramming would have been under the authority of Public Law 111-85. This funding was provided with one of the following work allowance transaction codes: “CGR,” “EMR,” or “REP.”

Funding provided in FY 2010 through work allowances using transaction codes other than C, ALL, CGR, EMR, or REP or provided through a SUP work allowance at any time with a CCS other than 70E do not represent funding “made available by Public Law 111-85.”

(4) When allotting CR funding to PPAs prosecuted by contracts that include the DFARS “alternate” (incremental funding) clause at DFARS Part 252.232-7007 (reference 3.e.), Divisions 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 funding.

(5) Risk of Over-Allotment; “Lesser Of” Rule.

(a) CR funding should be allotted only to the extent it can be obligated, or must be available for contract solicitations, during the period of the CR, thereby minimizing potential reconciliation or reprogramming problems.

(b) In the event that there is a Statement of Managers for a final enacted FY 2012 appropriations act providing funding for energy and water development, it is possible that the amount of CR funding that will have been allotted and obligated on a PPA prior to the date of enactment of that act exceeds the amount for that PPA in the Statement of Managers. In the event that there is a USACE-prepared work plan for FY 2012, the work plan would be subject to review and approval by higher authority, and may not cover the amount allotted and obligated prior to such date of enactment. In either case, the Division or FOA must recognize that there is a risk that it would be required to provide a source of funding for a reconciliation, that is, it might be required to provide a positive “REC” work allowance to the receiving PPA equal to the excess obligations made prior to such date of enactment, offset by a negative REC work allowance from the source PPA. The Division or FOA also will be required to reprogram funding to cover excess obligations that take place on or after such date of enactment.

Consequently, the Division or FOA should identify funding that would be available for future reconciliation or reprogramming as necessary.

(c) To help mitigate the risk of overallotment in the event there is a Statement of Managers, the “lesser of” rule should be followed, namely, no CR funding may be allotted to a PPA that exceeds the lesser of the amount provided in the House Committee Report (Reference 3.m.) or the amount provided in the Senate Committee Report (Reference 3.n.) for FY 2012. Any amount in excess of the “lesser of” amount must be provided through a reprogramming to the PPA, subject to the normal Congressional notification and approval requirements. The MSC or FOA may seek a waiver from CECW-I to allot CR funding above the “lesser of” amount if: 1) funding reprogrammed to the PPA already has reached the Congressional notification limit; 2) the “lesser of” amount would be insufficient to fund the costs of high bids, within-scope modifications, claims, and contract management; and 3) the MSC or FOA has identified a PPA that would be used as a source for a reconciliation (see paragraph 4.g.) after enactment of annual or full-year appropriations. CECW-I also may provide blanket waivers if conditions change.

(6) Specifically Authorized Studies, Projects, and Programs.

(a) No previously unfunded feasibility phase or PED phase of a specifically authorized study will be initiated with CR funding, even if the previous phase received funding under Title IV of the Full-Year Continuing Appropriations Act for FY 2011.

(b) CR funding may be allotted and obligated for only the following purposes, and subject to the limitations above (including the “lesser of” rule).

- The specific work that both was recommended for funding in the President’s FY 2012 Budget and can be executed in FY 2012.
- FY 2012 earnings on contracts that were awarded prior to FY 2012 and that use the “true” continuing contract clause (EFARS Part 252.232-5001) (reference 3.f.) or the “primary” (special) continuing contract clause approved by DOD for DFARS 232.705-70 (reference 3.d.).
- FY 2012 obligations for engineering and design during construction; supervision, administration, and inspection; within-scope modifications; and claims, for contracts awarded prior to FY 2012.
- Actions necessary in FY 2012 to meet statutory and regulatory requirements applicable to ongoing construction and maintenance projects.
- Actions necessary in FY 2012 to keep ongoing construction project sites in safe condition.

- Other actions necessary in FY 2012 to respond to an emergency. However, do not allot CR funding in the O&M or MR&T account to repair a flood control project damaged in the 2011 historic floods in the greater Mississippi basin, as HQUSACE plans to use funding from the FC&CE account for that project repair. From EC 11-2-201, an emergency is an actual or imminent natural disaster, storm event, other act of God, accident, act of terrorism, or failure event for a key project component, that damages or would damage project functions such that substantial and immediate health, safety, economic, or environmental risks or impacts are or would be created. An emergency is an actual or imminent event of significance. A gradually or incrementally developing condition is not an emergency.

CECW-I may provide a blanket waiver of some or all of the above limitations on purpose if conditions change.

(7) Remaining Items. CR funding may be allotted and obligated subject to the limitations above and the following limitations.

(a) Continuing Authorities Program (CAP).

- CR funding may not be allotted to CAP projects, as the “lesser of” amount is zero. During the CR period, the HQUSACE Program Manager, Steve Coker, will fund priority requirements through reallocations of carried-in funding.

- MSCs will offer to HQUSACE for revocation all funding carried over unobligated from FY 2011, except funding needed in FY 2012 for the costs of contracts solicited or awarded in FY 2011, including the costs of contract management, within-scope modifications, and claims. The Program Manager will use the revoked funding first for projects that need funding for such costs, then for priority project phases.

(b) Floodplain Management Services (FPMS) Program and Planning Assistance to States (PAS) Program. Allotments of CR funding within each MSC must not exceed the “ceiling” for that MSC that has been provided by the HQUSACE POC, Ken Hall.

(c) Safety of Dams. Allotments of CR funding to each project must not exceed the amount identified in the allocation plan provided by the HQUSACE POC, Travis Tutka.

(d) Estuary Restoration Program. No CR funding should be allotted to projects under the Estuary Restoration Program in Construction in anticipation of work allowances.

(e) Funding Pots. Allotments of CR funding to PPAs in anticipation of work allowances from “funding pots” are subject to approval by the program managers, as follows:

- Independent External Peer Review (Investigations): Stuart McLean.

- FERC Hydropower Coordination (O&M): Kyle Jones.
- National Natural Resources Management Program (O&M): Mary Coulombe.
- Protection, Clearing, and Straightening of Channels (O&M): Jeff McKee.
- Removal of Sunken Vessels (O&M): Jeff McKee.

(f) Multiple-EROC Programs. Allotments of CR funding to remaining items that are executed by multiple organizations are subject to approval by the program managers, as follows:

- Hydrologic Studies (Investigations): John Hunter.
- International Water Studies (Investigations): John Hunter.
- Other Coordination Programs – Coordination with Other Agencies (Investigations): Rennie Sherman.
- Other Coordination Programs – Interagency Water Resources Development (Investigations): Rennie Sherman.
- Other Coordination Programs – Inventory of Dams (Investigations): Travis Tutka.
- Other Coordination Programs – Special Investigations (other than FERC Hydropower Coordination work) (Investigations): Ken Hall.
- Other Coordination Programs – Special Investigations (FERC Hydropower Coordination work) (Investigations): John Hunter.
- Tribal Partnership Program (Investigations): Georgeie Reynolds.
- Inland Waterway Navigation Charts (O&M): Robert Mann.
- Inspection of Completed Federal Flood Control Projects (O&M): Tammy Conforti.

(8) Subject to the above limitations, CR funding may be allotted among PPAs disproportionately, that is, a higher percentage of funding available under the CR may be allotted for a PPA with confirmed high funding requirements (e.g., award of a fully funded contract) during the CR period and a smaller percentage of funding available under the CR may be allotted for a PPA that will have very limited or unlikely funding needs during the CR period. However, the sum of allotments to PPAs in each Division may not exceed the amount allotted to that Division by FAD.

(9) Flood Control and Coastal Emergencies Appropriation. No CR funding will be automatically apportioned or allotted to activities in the Flood Control and Coastal Emergencies (FC&CE) appropriation, since no regular FC&CE funding was appropriated for FY 2011. FC&CE-funded activities will be resourced by CECW-HS during the CR period through work allowances and normal FADs using available FC&CE funding, including any supplemental FC&CE funding that the CR might make available separately.

c. Obligation and Execution of FY 2012 CR Funding.

(1) New Contracts. New contracts may be awarded with CR funding for any PPA, subject to the limitations in paragraph 4.b. and reference 3.c.

(2) Continuing Contracts. The following guidance applies to any existing or new contract that employs the "true" continuing contract clause (EFARS Part 252.232-5001) (reference 3.f.) or the "primary" (special) continuing contract clause approved by DOD for DFARS 232.705-70 (reference 3.d.).

(a) To the extent that CR funding allotted by the Division to the District is available to the applicable PPA consistent with paragraph 4.b., CR funding may be obligated on a contract employing either clause sufficient to cover earnings beyond the CR period.

(b) If CR funding allotted by the Division to the District and available to the applicable PPA consistent with paragraph 4.b. is not sufficient to fund earnings for the remainder of FY 2012 on a contract employing either clause, it is critical to include the paragraph below in any new contract employing either clause awarded during the CR period or in contract notices during the CR period for any ongoing contract employing either clause.

"Until enactment of (specific FY) appropriations, we must reserve funds for your contract on a limited basis. The amount reserved for your contract thus far in (specific FY) is \$xxx,xxx,xxx. After annual funds have been allocated for (specific FY), you will be advised in writing of the funds reserved for your contract for the entire fiscal year ending September 30, 2012."

(3) Labor. Obligations of CR funding for labor should be limited to labor costs incurred during the CR period. Where the end of the CR period is sooner than the end of a pay period, CR funding should be obligated only for the portion of the pay period falling in the CR period.

(4) MIPR's. CR funding, having been allotted, may be used for orders via Military Interdepartmental Purchase Requests.

(5) Reprogramming.

(a) During the CR period and the period pending apportionment of annual energy and water development funding, a re-allotment of CR funding among PPAs (movement

in CEFMS from the project funding account of one PPA to that of another PPA) is a reprogramming, except in the case of the re-allotment of funding from a higher-level PPA to a lower-level PPA within that PPA.

(b) The baseline amount for each PPA as of 30 September 2011, as adjusted after 30 September for any appropriation reimbursements, supplemental funding, rescissions, transfers, and allocations of withheld funding will be used during the CR period for determining the reprogramming limits under the CR. The baseline amount will not be recalculated to include CR funding or reprogrammings.

(c) For each PPA, both reprogramming actions accomplished in FY 2011 and those accomplished during the CR period are to be included in determining the cumulative net amount of reprogrammings.

d. Power Marketing Administration (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.

e. Inland Waterway Projects.

(1) Inland waterway projects funded only from the general fund pursuant to the FY 2010 Act (reference 3.h.) were funded only from the general fund in FY 2011 pursuant to the Full-Year Continuing Appropriations Act for FY 2011 (reference 3.j.), and will be funded only from the general fund during the CR period. Likewise, inland waterway projects cost shared from the Inland Waterways Trust Fund (IWTF) pursuant to the FY 2010 Act were cost shared in FY 2011 and will be cost shared during the CR period.

(2) To ensure that allotments of IWTF funding remain within the amount available in the IWTF, CECW-I will include, in the "paper FADs" issued during the CR period, allotment limitations for projects funded from the IWTF.

(3) Limitations in reference 3.c. on contracts and financial commitments for inland waterway projects remain in effect.

f. Execution Following Enactment and Pending Apportionment of Annual Appropriations.

(1) After the President signs into law a final FY 2012 appropriations act providing funding for energy and water development, OMB automatic apportionment of CR funding 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 020504 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 CR period.

(2) Allotments of funding during the 30-day period pending apportionment should be consistent with the FY 2012 appropriations act and accompanying Statement of Managers, if any. Allotments during this time should not necessitate later reprogrammings.

(3) The other guidance in paragraphs 4.a. through 4.e. remains in effect during the period pending apportionment as during the CR period.

g. Reconciliation. Where funding allotted to a project in CEFMS differs from the initial work allowance, the Division, District, or FOA will reconcile the two, either by adjusting allotments or by adjusting work allowances using the REC, Reconciliation, code in P2-OFA.

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

a. Transfer appropriations pursuant to specific authority and recorded under agency symbol 96 (such as 96-69X8083 and 96-69X0500 from the Federal Highway Administration) 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 (such as under the Economy Act) may proceed to the extent that activities have received valid reimbursable orders from customers.

6. Points of Contact. Questions regarding this guidance should be directed to Evelyn Specht, CERM-BC, 202-761-1073 for Resource Management Directorate matters, Robin Baldwin, CECT, for Contracting matters, or Mark Mugler, CECW-IP, 202-761-4103 for Civil Works Program Integration matters. Questions particular to an appropriation or program should be addressed to the appropriation or program manager.