DEPARTMENT OF THE ARMY
U.S. Army Corps of Engineers
Washington D.C. 20314-1000

EC 11-2-203
Change 1

CECW-I

Circular
No. 11-2-203

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Program Management
EXECUTION OF THE ANNUAL CIVIL WORKS PROGRAM

1. This Change 1 to EC 11-2-203, 28 February 2012 consists of clarifications in the main document and Appendix N.

2. The changed information is annotated as follows:

Page(s)	Paragraph(s)
15-16	7.j., 7.k. & 7.1.
19-21	9.b
N-1	1

FOR THE COMMANDER:

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

(8) Other annual appropriations (Expenses, Regulatory Program, and Flood Control and Coastal Emergencies (FC&CE)) do not have limits on reprogramming. Further, there are no PPAs in these accounts, other than statutory earmarks, which are subject to paragraph 7.c.(1).

g. Permanent Appropriations. Maintenance and Operation of Dams and the other permanent appropriations do not receive appropriations through Title I of Energy and Water Development Appropriations Acts. Reprogrammings of funds in these appropriations are not subject to the prohibitions or restrictions on reprogramming in Section 101 of Public Law 112-74.

h. Bonneville Power Administration Funds. Within the Operation and Maintenance account, funds with category-class-subclass 390 to 396 are derived from the Bonneville Power Administration and are not appropriated in Title I of Energy and Water Development Appropriations Acts. These funds are not included in the O&M baseline, and reprogrammings of these funds are not subject to the restrictions on reprogramming in Section 101 of Public Law 112-74.

i. Reprogramming Limitations for Safety of Dams Funds.

(1) Any proposed reprogramming from an Action Class I, II, or III safety of dams project (dam safety assurance, seepage control, or static instability correction) must be coordinated with the District and Division Dam Safety Officers (DSO), and the Division DSO must concur that the funds are excess.

(2) If the proposed reprogramming requires Congressional notification, the Division DSO must notify CECW-EC by e-mail of the proposed reprogramming, concurrent with Division coordination with the RIT. The Chief, CECW-CE, will advise the Chief, CECW-I, if there is another potential use of those funds that would mitigate a serious life, property or other risk at another USACE project. They will jointly determine whether to reprogram as recommended by the Division or to propose reprogramming to a higher national need. Any such decision will be coordinated with the Division.

(3) The Construction appropriation manager, after consultation with CECW-EC, will approve or disapprove any reprogramming from a dam safety project (Construction CCS 240, 241, 242, 540, 541, 542, 640, 641, or 642).

j. Projects Eligible for Deauthorization. In the case of any authorized construction project or separable element on which no obligations have been made in the preceding five fiscal years, no funds may be reprogrammed to the project or element unless SACW first concurs in the reprogramming. The MSC should refer any proposed reprogramming to such a project or element to the HQUSACE account manager for prior coordination with SACW.

k. Other Policy Limitations for Reprogrammings. The following limitations are reflected in P2:

(1) The MSC and HQUSACE Appropriation Manager must approve any reprogramming of Maintenance and Operation of Dams (M&O Dams, 96X5125) funds. M&O Dams funds that are surplus to the requirement for which they were provided should be offered for revocation.

(2) The MSC and the HQUSACE Appropriation Manager, after coordination with the manager of Inspection of Completed Works (ICW) funds, must approve any reprogramming of funds from ICW (O&M CCS 221) to another CCS. MSCs should offer surplus ICW funds for revocation.

(3) The MSC and HQUSACE Appropriation Manager must approve any reprogramming of funds coded as supplemental. This is to ensure that the recipient project qualifies for the funds and is competitive compared to other unfunded work nationwide that also qualifies.

(4) If a reprogramming to a recipient uses the EMR code, an offsetting reprogramming from a donor must use the EMR code.

(5) If a reprogramming to a recipient uses the CLM code, an offsetting reprogramming from a donor must use the CLM code.

(6) If the funds reprogrammed from a donor are supplemental funds with a CCS of 706, 707, 708, 70A, 70B, 70C, 70D, or 70E, the funds reprogrammed to a recipient in an offsetting reprogramming must use the same CCS as the funds from the donor.

(7) If the funds reprogrammed from a donor are supplemental funds appropriated for FY 2012 or thereafter, the funds reprogrammed to a recipient in an offsetting reprogramming must use the same Public Law code and Contingency (Event) code as the funds from the donor.

(8) Reprogramming funds into or out of a Continuing Authorities section (Construction CCS 216, 232, 420, 516, 517, 518, 722, 732, or 792), the Floodplain Management Services program (Investigations CCS 250), or the Planning Assistance to States program (Investigations CCS 186) must be approved by the program manager.

l. Documentation. Documentation of each field reprogramming action must be loaded into the Work Allowance Module in P2 to ensure that quarterly reports to Congress and other reports on reprogramming are accurate. Reallocations that move funds between EROCs, Type of Funds (CCS), or Program Codes / AMSCOs must also be loaded into P2. Accurate descriptions explaining the use of the funds on the gaining PPA and the reason the funds are excess to the source PPA must be included in the P2

(a) Developing a biddable and awardable contract, including consideration of appropriate contract scope and timing.

(b) Recognizing risks and uncertainties (e.g. escalating energy and material costs).

(a) Maintaining project schedules with available funds.

(b) Complying with the statutory requirements concerning continuing contracts (see below), and obtaining the necessary approvals where a continuing contract is required.

(c) Identifying the most cost-effective and awardable acquisition method, including consideration of fixed price contract, base plus options contract, indefinite delivery – indefinite quantity contract, and job order contract as well as continuing contract.

(2) In order to assure proper acquisition planning, several codes are required in P2. When any of the Contractual Services resources (AESVCS – Architect and Engineering, CONSTSVCS – Construction, OTHCONSVC – Other, ADV&ASTSVC – Advisory and Assistance, or O&MCONT – Operation and Maintenance of Facilities) are used, the activity must also contain a value for the activity codes Contracting Type, Contracting Method, and Set Aside Decision. As soon as contracts are scheduled in P2, a strategy must be entered using the above activity codes. The PM is highly encouraged to work with the Contracting and Small Business representatives of the Project Delivery Team to identify these data values. The strategy may change based on acquisition board guidance, at which time the codes will require updating.

b. Continuing Contracts.

(1) The Department of Defense has approved USACE's interim use of the "Primary" continuing contract clause (Reference 4.g.) and "Alternate" continuing contract clause (Reference 4.h.) while HQUSACE undergoes the notice and comment process and develops a final clauses for publication in the AFARS. Because the clause DoD approved is not substantively different from the clauses the Directorate of Contracting (DoC) has approved, DoD's approval of the clause does not affect any on-going contracts awarded with the DoC approved clauses. Until public comments are received and the final clause is published by HQUSACE, new contracts that must be awarded using the continuing contract authority shall use the clauses approved for use by DoD

(a) Under the Primary Clause, the Contractor is not allowed to work beyond the amount reserved on the contract for the fiscal year, the Contractor is expressly required to stop working when funds are exhausted, and the Government is responsible for all costs pursuant to the termination for convenience clause regardless of the amount reserved on the contract in the fiscal year.

(b) Under the Alternate Clause, the Contractor is not allowed to work beyond the amount reserved on the contract for the fiscal year, the Contractor is expressly required to stop working when funds are exhausted, and the Government's liability for termination costs is limited to the amount reserved on the contract.

(2) Guidance on Use of Continuing Contract Clauses.

(a) The Primary Clause may be used in the following circumstances.

- *The project is a specifically authorized water resources development project (which excludes Continuing Authorities projects and environmental infrastructure assistance programs) funded in the C or O&M account or the C or M sub-account of MR&T; and*

- *The project is not funded in whole or in part from the Inland Waterways Trust Fund; and*

- *The project is included in the President's budget for the forthcoming FY; and*

- *Funds available on the project or for reprogramming to the project within section 101 limits are not sufficient to fully fund the contract, including all contingencies and associated in-house costs; and*

- *Funds available for the contract are sufficient to fund mobilization and constructive work on the contract, including all contingencies and associated in-house costs.*

If the account is O&M or MR&T (M), and if amount in the President's Budget for the forthcoming FY, except as reduced in any House Report or Senate Report or superseded in any Conference Report if available, is sufficient to fully fund the remaining costs of the contract, including contingencies and associated in-house costs, and any other scheduled work on the project, the use of the Primary Clause may be approved by the MSC Commander based on a Request for Approval (see Appendix N) submitted by the District. If the account is C or MR&T (C), or if that amount is not sufficient to fully fund the remaining costs, the MSC should submit the Request for Approval (see Appendix N) to CECW-IF for coordination with SACW and approval by the ASA(CW).

(b) The Alternate Clause may be used in the following circumstances, subject to approval by the District Commander.

- *The project is a specifically authorized water resources development project (which excludes Continuing Authorities projects and environmental infrastructure*

assistance programs) funded in the C or O&M account or the C or M sub-account of MR&T; and

- *The project is not funded in whole or in part from the Inland Waterways Trust Fund; and*

- *The project is not included in the President's Budget for the forthcoming FY; and*

- *Funds available on the project or for reprogramming to the project within section 101 limits are not sufficient to fully fund the contract, including all contingencies and associated in-house costs; and*

- *Funds available for the contract are sufficient to fully fund mobilization and a useful increment of work (increment of work that produces benefits or outputs, and will remain in a safe condition) or navigation reach, including all contingencies and associated in-house costs.*

(c) Section 103 of Public Law 112-74 states: "None of the funds in this Act, or in previous Acts, making funds available for Energy and Water Development, shall be used to award any continuing contract that commits additional funding from the Inland Waterways Trust Fund unless or until such time that a long term mechanism to enhance revenues in this Fund sufficient to meet the cost sharing authorized in the Water Resources Development Act of 1986 (Public Law 99-662) is enacted." This prohibition applies to the true clause, the Primary Clause, and the Alternate clause, as all clauses are authorized under the USACE continuing contract authority (Public Law 67-362, 33 U.S.C. 621).

c. Availability of Funding for Contract Solicitation. Funds must be available prior to solicitation for the entire contract amount for fully funded contracts, for the base contract amount on fully funded base plus option contracts, and for the amount to be reserved in the fiscal year for new continuing contracts. When the Resource Manager cannot certify that sufficient funds are available at the time of solicitation, Army Federal Acquisition Regulation Supplement (AFARS) 5101.602-2(a) (ii) permits the Contracting Officer to solicit for the contract so long as the Chief of Resource Management indicates in writing that there "is a high probability that the requirement will not be canceled." In any case the funds must be available at the time of bid opening or proposal receipt.

d. Contractual Commitments on Inland Waterway Construction and Rehabilitation Projects. Until the ASA(CW) determines that sufficient revenues are projected for the IWTF, prior ASA(CW) approval is required for additional contractual commitments on inland waterway construction and rehabilitation projects, including solicitation or award of any contract, an additional financial obligation under any existing incrementally funded contract, execution of any relocation agreement, or award of any option or task

APPENDIX N

Format for Request to Award a Continuing Contract Using the Primary Clause

Requests for approval to award continuing contracts shall be consistent with the format in the following example. Requests should be developed at the time of the Acquisition Plan and submitted 60 days prior to the proposed solicitation date.

BUSINESS CASE FOR USE OF CONTINUING CONTRACT

1. Availability of Full Funding. Demonstrate that funds available on the project or for reprogramming to the project within section 101 limits are insufficient to fully fund the contract, including all contingencies and associated in-house costs.

2. Description of Contract Acquisition Strategy. Provide a comprehensive multi-year acquisition plan with an overall description of the project to include biddable and awardable scope, the schedule for award, contract duration, and estimated cost for each year of construction. Include a description of the benefits that would be achieved through awarding the construction contract.

3. Contract Earnings and Expected Funding Stream.

a. Provide a funding table showing the required funding stream by fiscal year for the contract, and the funding sources by fiscal year (e.g. included in PY appropriations, President's Budget request for PY+1).

b. Discuss the timing of contract award.

c. Discuss likelihood of follow-on funding.

d. Describe cost growth risks and controls (material cost growth trends, recent bid climate, potential for changed conditions, opportunities value engineering savings, opportunities for technology driven savings, etc).

4. Evaluation of Contract Alternatives. Provide analysis of various contracting options, including pros and cons for each option investigated. Contracting vehicles to be investigated should include, but not limited to:

a. Multiple Fully Funded Contracts Awarded Sequentially

b. Delaying Contract Award until Sufficient Funding Is Available.

c. Fully Funded Contract with Base Bid, and Option(s)