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

REPLY TO
ATTENTION OF:

08 FEB 2001

CEMP-N

MEMORANDUM FOR COMMANDERS, MAJOR SUBORDINATE COMMANDS

SUBJECT: Interim Guidance on Services for Federal Agencies and State and Local Governments

1. Section 211 of the Water Resources Development Act of 2000 modifies procedures for accepting requests for services under the Intergovernmental Cooperation Act. It was enacted in response to private sector concerns that USACE was competing for their business opportunities, most particularly regarding support to local communities. We are developing policy to respond to Section 211 and are striving to seek synergy among the agencies and governments that need our services and the interests of private business.

2. We are discussing our policy thoughts with the Army Secretariat, Congressional interests and private sector organizations. In the interim I am providing the following:

a. We will continue to apply our capabilities, within law and policy, to enhance our value to the Nation and the Army through service to others. We will do this primarily by supporting other Federal agencies. Private firms are the primary source of support to state and local governments.

b. We will focus on providing support that is appropriate for government. We will rely on the private sector to accomplish the majority of our reimbursable work. We will support U.S. business overseas wherever possible.

c. Existing work for Federal agencies should continue and new work under existing Memoranda of Agreement (MOA) may be undertaken without HQUSACE approval. HQUSACE (CEMP-N) approval is required before accepting any new Federal work not covered under existing MOAs or any new work that was formerly done by the private sector where the customer agency now wants to use the Corps. Requests for approval should be accompanied by applicable information from the worksheet at Appendix A.

d. No new work for state and local governments, to be done under the authority of the Intergovernmental Cooperation Act, may be accepted without HQUSACE approval through CEMP-N. Work for state and local governments under other specific authorities may be accepted under guidance applicable to those authorities. All discussions and MOA with state and local governments must include an exit strategy to withdraw USACE support within a period of 5 years or less.

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e. When considering work to be performed under the authority of 31 USC 6505, Intergovernmental Cooperation Act (ICA), there are requirements to prepare certifications that the services requested of USACE are not reasonably and quickly available through ordinary business channels and that the Corps is uniquely equipped to perform such services." Both certifications, the first to be accomplished by the customer and the second by Army, must be accompanied by adequate supporting facts. Supporting facts can be that the work involves some circumstance that requires USACE involvement and for which USACE is uniquely qualified. The facts must be clear and convincing that USACE providing the service has substantial superiority to private sector suppliers. The facts must be capable of withstanding reasonable public scrutiny.

f. The enclosed appendices provide instructions and a worksheet for applying criteria for accepting work (Appendix A) and the format for a quarterly report for work requests under 31 USC 6505, Intergovernmental Cooperation Act (Appendix B).

3. We are discussing the broader issue of Corps support to Federal agencies, state and local entities, and foreign governments under Section 211 and other authorities. We expect to issue additional guidance on non-DOD reimbursable support services generally. We hope to be able to delegate some level of decision making using appropriate criteria, to the MSCs.

Encl

ROBERT B. FLOWERS
Lieutenant General, USA
Commanding

APPENDIX A
GUIDANCE FOR EVALUATING REQUESTS FOR NON-DOD REIMBURSABLE SUPPORT SERVICES WORKSHEET INSTRUCTIONS

PURPOSE: The majority of the Corps non-DOD reimbursable support work is governmental function support to Federal agency customers. However, a certain percentage of opportunities involve new types of work or new customers, and may require a policy determination from higher authority before work may be accepted. In order to support the policy determination please complete the attached worksheet.

1. The object of this review is to cause serious and objective consideration of proposed work. At a minimum, proposed work must be consistent with the goals of the Administration, USACE must have the capability to provide the required support, and the execution of the work can be accomplished within regulatory rules. The worksheet serves as a reminder that state and local and international work are special categories of work and execution of such work must be within the parameter of regulation and policy.

2. The worksheet is used as a checklist prior to making any commitments to the requesting agency. Each question is to be answered.

3. If the MSC or Lab Director

- is unable to answer a question from the initial application of the criteria but feels further evaluation is warranted, or
- has some doubt concerning acceptance of the work, or
- believes there is potential to draw criticism to the Corps from the Administration, Congress, private sector, public interest groups, or
- is considering a request for work for a Federal agency that requires a new memorandum of agreement, for public schools, state and local work under the Intergovernmental Cooperation Act, work for foreign governments or any other work that HQUSACE has withdrawn MSC approval authority

the proposed case will be forwarded to HQUSACE (CEMP-N). E-mail contacts are encouraged to expedite responses. For such cases, all pertinent information should be forwarded to HQUSACE (CEMP-N). HQUSACE will make a decision on whether to proceed based upon analysis of this information, external factors and discussions with the MSC representative.

WORKSHEET FOR
ANALYSIS OF NON-DOD REIMBURSABLE SUPPORT SERVICES REQUEST

I. Major Subordinate Command:
II. Program Information:
A. Proposed Customer:
B. Brief Description of Proposed USACE Support:

C. Location of Project Sites:

D. Estimated Magnitude of USACE Effort (Over life Of Program):
1. Expected Average Annual Workload ($$$):_____

2. Estimated Average Annual Number of FTEs:_____

E. Evaluation Criteria:
1. Importance to the Nation (Federal Agencies Only).
A. Show amount of request in or reference to the program in the President's Budget Or
B. Show amount of appropriations allocated by OMB Or
C. Describe reference to program in other Administration/Presidential documents.

2. Nature of Work.
A. Describe previous experience with this kind of work.

B. Describe previous experience with this customer.

C. Describe how the work sustains or enhances USACE core competencies.

D. Ensure work does not solely involve procurement of equipment or provision of legal services.

E. Explain how work is not expected to receive significant interest group opposition.

F. Is customer a public school authority, foreign government or international organization? IF YES, SEEK HQUSACE APPROVAL FROM CEMP-N.

G. Does request for new work for a Federal agency require a new MOA? If yes, seek HQUSACE approval from CEMP-N.

H. Explain plans to use the private sector and if the private sector will not be involved, explain why.

3. Standard Procedures.

A. Describe deviations from model MOA provisions and show counsel approval.

B. Does the work conform to procedures in ER 1140-1-211 and ER 5-1-10.

4. Resources.

A. Describe resources required and ensure availability in 1st year.

B. Determine to what extent, if any, work adversely impacts traditional or on-going non-DOD reimbursable support services. If there could be an impact, how will this be mitigated?

5. State and Local Work.

A. Determine the authority for performing requested work.

(1) If the authority is 31 USC 6505 (Intergovernmental Cooperation Act (ICA)), obtain the written request describing the scope of the services to be performed and agreement for reimbursement of all costs and validate the certification with adequate facts to establish that the services requested are not reasonably and quickly available through ordinary business channels. The certification from the requesting government must contain the following statement: "The [name of requesting entity] certifies that it cannot obtain the requested services reasonably and quickly through ordinary business channels." Develop adequate facts to establish that the Corps is uniquely equipped to perform such services. Validate compliance with all requirements of the ICA, OMB Circular A-97 and Section 211 of WRDA 2000. Forward the request with customer certification to CEMP-N. If the request for support under the ICA is turned down by the MSC or Lab, inform CEMP-N of the request and reason for turn down using the quarterly report form at Appendix B.

(2) If the authority is 10USC 3036(d), confirm that the work involves Federal financial assistance and the non-Federal government entity has provided a written request and has certified that the services requested cannot be obtained reasonably and expeditiously through ordinary business channels. Show the Commanders concurrence in this certification. Provide evidence that the federal funding agency does not object to USACE support.

(3) Consult with your Office of Counsel if another authority is used, confirm that the guidance applicable to those authorities has been followed.

B. Describe the USACE exit strategy that was discussed with the customer.

6. International Work for Federal Agencies Only. (All other international work requires HQUSACE approval.)

A. Reference U.S. Foreign policy work supports.

B. Reference documentation that U.S. Embassy does not object to USACE involvement.

C. Who made the request for support. If from Washington-level, who at HQUSACE was involved?

D. What work has been performed in this country before.

E. How have privileges and immunities been addressed to protect USACE and its contractor personnel.

III. Completed By:_____ Office Symbol:_____ Date: / /

Printed Name

APPENDIX B
INITIAL/QUARTERLY REPORT FORM
INTERGOVERNMENTAL COOPERATION ACT WORK REQUESTS

On a quarterly basis (at the end of March, June, September, and December), all MSC and ERDC will provide HQUSACE (CEMP-N) a report on the requests for assistance under the Intergovernmental Cooperation Act (31 USC 6505). For each request, the following information will be provided on this form.

Is this the first submission for this request YES / / NO/ /

Is this the final submission for this request YES/ / NO/ /

Identify the state or local government and provide a description of the scope of services requested	
The written request describing the scope of the services to be performed and agreeing to reimburse the Corps for all costs associated with the performance of the services.	Attach copy of request
A certification that includes adequate facts to establish that the services requested are not reasonably and quickly available through ordinary business channels	Attach copy of certification
A written discussion that includes adequate facts to establish that the Corps is uniquely equipped to perform such services. These facts must be clear and convincing that USACE has substantial superiority to private sector suppliers. These facts must be capable of withstanding reasonable public scrutiny.	Send e-mail with written discussion
Status of request	
Estimated cost of the services	
Final cost of the services	