



DEPARTMENT OF THE ARMY

U.S. Army Corps of Engineers
WASHINGTON, D.C. 20314-1000

REPLY TO
ATTENTION OF:

CERM-M (5-20)

25 JUN 2001

MEMORANDUM FOR COMMANDERS/DIRECTORS, USACE COMMANDS

SUBJECT: ER 5-1-3, Commercial Activities Program, 1 Dec 87

1. The Assistant Chief of Staff for Installation Management (ACSIM) is updating AR 5-20, Commercial Activities Program, 1 Oct 97 and DA Pamphlet 5-20, Commercial Activities Study Guide, 31 Jul 98. Review and comment on the draft updates will begin soon. We will coordinate with HQUSACE staff and provide ACSIM a consolidated USACE response.
2. The Army regulation historically deferred to ER 5-1-3 for policy on the performance of civil works and mixed funded commercial activities. The update is an opportunity to resolve concerns about CA Program and Federal Activities Inventory Reform (FAIR) Act application to USACE civil works functions. Working with the Office of Chief Counsel (CECC-C) and the Directorate of Civil Works (CECW-BA) we proposed language for the updated Army regulation. The Deputy Commander approved our recommendations and asked the Office of the Assistant Secretary of the Army for Civil Works (ASA(CW)) for an endorsement.
3. The ASA(CW) endorsed the proposal, deleted the paragraph in the Army regulation that defers to ER 5-1-3, and strengthened the language on the legislative and administrative exclusions. The ASA(CW) proposed inherently governmental and exempted functions are pending approval by Assistant Secretary of the Army for Manpower and Reserve Affairs. The enclosure from the ASA(CW) letter to the ACSIM is attached for your reference.
4. ER 5-1-3 is suspended and will be rescinded when the updated AR 5-20 is published. Please remember that HQUSACE must first approve a Commercial Activities Proposed Action Summary (CPAS) before you can begin any cost competition or direct conversion (in-house to contract or contract to in-house).

FOR THE COMMANDER:

Encl


STEPHEN COAKLEY
Director of Resource Management

RECOMMENDED CHANGES TO AR 5-20 (26 OCTOBER 2000 VERSION)

1. Revise paragraph 1-4 to add the following sub-paragraph:

"Assistant Secretary of the Army for Civil Works (ASA(CW)). Represents the Army on Civil Works CA Program issues with the ASA(M&RA), ASA(IL&E), the Office of the Secretary of Defense (OSD), other services, other Federal agencies, the Office of Management and Budget, and the Congress, except as designated. Provides broad oversight for CA Program policies and exceptions to policy for purely civil works funded activities and the civil works portion of activities funded through a mix of civil works and defense appropriations."

2. Replace existing paragraph 1-6.f. with the following:

"f. For activities funded entirely by Civil Works appropriations or for the Civil Works portion of activities funded through a mix of civil works and defense appropriations:

"(1) Engineering and design, for which Architect-Engineer services are acquired in accordance with 10 U.S.C. Section 4540.

"(2) Activities performed by in-house personnel as of 23 November 1990 in connection with the operation and maintenance of hydroelectric power generating facilities at Corps of Engineers water resources projects, other than major maintenance, in accordance with Public Law 101-640, Section 314.

"(3) Operation of the Minimum Dredge Fleet, which is necessary, in accordance with 33 U.S.C. 622, to ensure the capability of the Federal Government and private industry together to carry out projects for improvements of rivers and harbors.

"(4) Functions, activities, and tasks approved by the ASA(M&RA) in specific decisions as inherently governmental functions or as commercial activities that are suitable for Government performance."

3. Delete language following paragraph 2-2.e. or modify the language so that the described criteria are no more restrictive than those in paragraph 8, OMB Circular A-76 and Part 1, paragraph C of the OMB Circular A-76 Revised Supplemental Handbook.

Enclosure

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