

CERM-B

Regulation
No. 37-1-26

31 August 2001

Financial Administration
ISSUANCE AND ACCEPTANCE OF PROJECT ORDERS

1. Purpose. This regulation promulgates the conditions and terms upon which the U.S. Army Corps of Engineers (USACE) activities may issue and accept Project Orders. This regulation is not intended to replace or duplicate the policy contained in higher headquarters regulations, rather, it provides guidance which is unique to the Corps' project management practices.

2. Applicability. This regulation applies to all HQUSACE elements and USACE Commands.

3. Distribution. Approved for public release; distribution is unlimited.

4. References.

a. Title 41, United State Code, Section 23, *Public Contracts, Orders or Contracts for Material Placed with Government-Owned Establishments Deemed Obligations*.

b. Title 31, United State Code, Section 1502(a), *Money and Finance, Balances Available, Availability*.

c. Department of Defense Financial Management Regulation (DoDFMR), *DoD 7000.14-R*.

d. DFAS-IN 37-1, Defense Financial and Accounting Service (DFAS), *Finance and Accounting Policy Implementation*.

e. ER 5-1-11, *U.S. Army Corps of Engineers Business Process*.

f. ER 1140-1-211, *Support for Others: Reimbursable Work*.

g. ER 1140-3-1, *Support to Defense Departments and Agencies*.

h. Secretary of Defense (SECDEF), memorandum 17 Sep 1996, Subject: *Request for Waiver of DoDI 7220.1, "Regulation Governing the Use of Project Orders"*.

This regulation supersedes ER 37-1-26, dated 30 July 1993.

5. Background.

a. Reference 4a is the authority for Project Orders. It provides that, "All orders or contracts for work or material or for the manufacture of material pertaining to approved projects placed with government-owned establishments shall be considered as obligations in the same manner as provided for similar orders or contracts placed with commercial manufacturers, and the appropriations shall remain available for the payment of the obligations so created as in the case of contracts or orders with commercial manufacturers." These orders are commonly called "Project Orders". A project order can be a useful tool for the delivery of a product or service in cases where the accepting activity (performer) of the order will use its own in-house forces instead of a contractor or other forces outside the immediate command.

b. Project orders are contractual in nature and pertain only to products and services for Department of Defense (DoD) missions. The principles of a contractual relationship, i.e., offer, acceptance, and consideration, apply to project orders as well. Once the performer accepts a project order, USACE considers the issuer to have certain rights and obligations that will be enforced upon the performer.

c. Reference 4b is the "Bona Fide Needs" statute, which mandates that a requirement (service or product) must exist in the same fiscal year as the appropriation or fund being used for its payment.

d. References 4c and 4d furnish higher headquarters basic definitions and command guidance on reimbursable orders in general and project orders specifically.

e. Reference 4e provides guidance for command and control of the work performed. Also, references 4f and 4g include Corps guidance on the Support for Others Programs.

f. Reference 4h, issued by the Secretary of Defense, modified the definition of "Government Owned, Government Operated (GOGO) establishment" to include Corps activities. In addition, this waiver also expanded the use of project orders to include such Corps engineering and construction-related products & services as plans and specifications, dam safety studies, terrorism/protective designs, seismic studies, environment assessments and materials testing.

g. This regulation is the result of legal and administrative reviews of past actions and precedents. There are various other authorities under which USACE activities can and do receive funds. Regulatory guidance on those other authorities is not contained in this regulation.

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6. Accepting Project Orders. USACE activities shall accept Project Orders under the conditions set forth in this regulation and using the appendix hereto as a guide. Once accepted, a project order will remain active until the work is completed and final payments received. Project orders will not be used merely to extend the availability of an appropriation and/or accepted from non-DoD establishments.

a. It is essential that the Project Managers discuss with the customers the manner in which a project will be financed before developing a Project Management Plan (PMP) in accordance with ER 5-1-11 and prior to acceptance of the project order from the customer.

b. Project orders may be received on a DD Form 448 "Military Interdepartmental Purchase Request" (MIPR) or other official project order form (i.e., Air Force). The carrier appropriations can be Military Construction - 21_2050, Operation and Maintenance, Army - 21_2020, or Research, Development, Test and Evaluation Army - 21_2040.

c. Corps activities may only accept a project order where all of the substantive work is being performed using in-house USACE resources. The DoDFMR, volume 11A, chapter 2, paragraph 020515, advises that a project order recipient should incur costs of not less than 51 percent of the total costs attributable to rendering the work or services ordered. It is USACE policy that this minimum standard will be met by the Corps activity accepting the project order. For example, if District "A" receives a project order for \$100,000 to produce an environment assessment of parcel located on Camp Swampy it must incur costs of \$51,000 in the employment of district personnel in its efforts to execute the project. If desired, District "A" may choose to accomplish the remaining 49% or \$49,000 of the project order by requesting support from another Corps activity, private industry, its own in-house forces or any combination thereof. If the above conditions are met, this order can be accepted as a project order.

d. Project orders solely for the review of Architect-Engineer Design services or solely for Supervision and Administration (S&A) of construction cannot be financed as Project Orders.

e. A project order accepted by one Corps activity cannot be brokered to another Corps activity except as noted in paragraph 6c above. This is because a contractual relationship cannot exist within the chain of command (i.e., between a MSC and a district, etc.). When production of a product or service needed to fulfill the terms of a project order makes it necessary for some work (not substantial) to be transferred to other USACE activities, then other legitimate means (i.e., Economy Act) must be used for handling the distribution of funds.

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f. USACE activities must have the capability to do the work and initiate the project orders promptly. The term "promptly" means initiating in-house effort within 90 days after acceptance of the order. Note that a contract obligation (because any contract is incidental to the execution of the order) is not real evidence of work being initiated. Should work not have commenced within 90 days, the customer will be notified immediately and the order cancelled. Corps policy is that the customer can terminate a project order for non-execution or default.

g. Just like contracts with a private entity, project orders must have a definite time for completion, a definitive scope of work and funds to cover the entire product or service including fixed-price orders. The point in time for completion shall not extend beyond the cancellation period of the issuing source appropriation used. Refer to DoDFMR paragraph 020701 for fixed-price project orders use and limitations. Amendments to project orders that increase their scope or value may be made. Originally cited appropriations that have expired are available only for increases caused by in-scope changes to the original order and legitimate price changes causing obligation adjustments.

7. Issuing Project Orders.

a. MSC, District and Center Commanders may issue project orders to non-Corps DoD establishments for engineering products & services, and to ERDC but only for research, testing and development services. All of the terms and conditions set forth in this regulation, DoDFMR and DFAS-IN 37-1 must be met. Project orders must be issued on a DD Form 448 "Military Interdepartmental Purchase Request".

b. HQUSACE directors/chiefs may not issue project orders to other USACE activities.

c. The project order must specify whether it is on a cost reimbursement basis or fixed-price basis.

FOR THE COMMANDER:



1 APPENDIX
APP A - Project Order
Checklist

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APPENDIX A

ISSUANCE AND ACCEPTANCE OF PROJECT ORDERS

A-1. Purpose. This checklist should assist USACE Commanders with the issuance and acceptance of project orders between Corps activities and DoD owned establishments. It is not intended to cover all management controls.

A-2. Instructions. Before the issuance or acceptance of a project order, the test questions below will highlight some key management concerns for consideration to prevent misuse and/or a possible ADA violation.

A-3. Test Questions. Corps activities should answer each test question "YES, NO, or NA" and maintain this documentation to support all transactions in CEFMS. A "NO" response to any one checklist question will indicate the possibility that a particular project order cannot be accepted or issued. A "NA" response should be fully explained.

Acceptance of Project Orders

a. Has the responsible program manager discussed in-advance with the customer the scope, timing and costs of the work to be ordered?.

Response: YES _____ NO _____ NA _____

b. Has the PM prepared a PMP for the work being presented?

Response: YES _____ NO _____ NA _____

c. Is the project order documented on DD Form 448 or other official form?

Response: YES _____ NO _____ NA _____

d. Does the block (Scope of Work/Description of Services) of the DD Form 448 contain the following signed statement? "I (commander or designated representative) certify that this order represents a bona fide need of the current fiscal year in accordance with 31 USC 1502(a)."

Response: YES _____ NO _____ NA _____

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e. Has the acceptor verified that the purpose of the project order(s) is not for major new construction of real property?

Response: YES _____ NO _____ NA _____

f. Are all costs covering substantive work to be incurred by the district's/center's in-house forces?

Response: YES _____ NO _____ NA _____

g. Does the project order specify in definite and certain terms the conditions to be enforced, i.e., scope, completion date, costs?

Response: YES _____ NO _____ NA _____

h. Per the PMP, does the project order fully finance the entire project scope and cite funds current at the time of acceptance?

Response: YES _____ NO _____ NA _____

i. If the commencement of work is contingent upon the occurrence of a future event or authorizing action by the issuing component, will the project order be rejected?

Response: YES _____ NO _____ NA _____

j. Is the project order an independent action (i.e., not associated with another order placed under the Economy Act)?

Response: YES _____ NO _____ NA _____

Issuance of Project Orders

a. Can a contractual relationship exist between the customer and the performer, i.e., issued either to ERDC or a non-Corps entity/activity?

Response: YES _____ NO _____ NA _____

b. Is the work being ordered an engineering product or service?

Response: YES _____ NO _____ NA _____

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c. Does the block (Scope of Work/Description of Services) of the DD Form 448 contain the following statement or similar clause? "*I (commander or designated representative) certify that this order being issued represents a bona fide need of the current fiscal year in accordance with 31 USC 1502(a).*"

Response: YES _____ NO _____ NA _____

d. Does the project order specify in definite and certain terms the conditions to be enforced, i.e., scope, completion date, total costs?

Response: YES _____ NO _____ NA _____