

CHAPTER 1

SCOPE

1-1. Purpose.

a. This regulation prescribes policies, procedures and responsibilities for managing and carrying out the Commercial Activities (CA) Program. It implements Office of Management and Budget (OMB) Circular A-76 for civil works-funded activities. It is to be read in conjunction with the Federal Acquisition Regulation (FAR), which establishes uniform policies and procedures for acquisition/contract matters for use by all Federal agencies.

b. This regulation does not provide authority to enter into contracts, nor does it provide authority to justify a conversion to contract solely to meet personnel ceilings or to avoid salary limitations.

1-2. Applicability. This regulation applies to all U.S. Army Corps of Engineers (USACE) civil works-funded activities performed within the United States and its territories and possessions. AR 5-20 applies to activities funded in whole or in part with DOD appropriations, with the following exceptions: required and related publications listed in Appendix A cover all Corps activities; the descriptions of excluded, excepted and exempted activities in Appendix B apply to all Corps activities; the general functional area (GFA) codes in Appendix C are the only codes to be used by USACE activities regardless of funding; the tables, figures and forms included in Appendix D apply to all Corps activities; the instructions in Appendixes E, F, G and H apply to the entire USACE; and the definitions of terms in the Glossary will be used throughout the Corps. This regulation is consistent with the principles and requirements of the AR.

1-3. References. Required and related publications and referenced forms are listed in Appendix A.

1-4. Explanation of Abbreviations and Terms. Abbreviations and special terms used in this regulation are defined in the Glossary.

1-5. Program Objective. The objective of the Corps CA Program is to improve the management of Corps resources.

This objective is achieved by first determining if performance of an ongoing in-house CA by a private sector enterprise may be feasible, and if it is, then determining if it may be less costly to the Government to obtain those services from the private sector. This objective is also achieved by determining when it may be less costly to the Government to bring an existing contract back in-house. When either of these conditions exists, the cost of contracting the activity will be compared to the cost of in-house performance to determine who will do the work. This comparison is done to provide competition, achieve economies, and enhance productivity.

1-6. Policy. It is USACE policy to:

a. Rely on competitive private enterprise to supply the products and services needed by the USACE. This policy is stated in OMB Circular A-76 and reaffirmed in this regulation. This policy also recognizes that Governmental functions must be performed by Government personnel, that some functions must be performed by the Government to support national defense, that in some instances there may be no satisfactory private commercial source available, and that proper attention must be given to the relative cost of performing the work in-house versus performing the work by contract.

b. Conform to AR 5-20 and its established procedures for civil works-funded activities except as specifically noted in this regulation.

c. Use products or services available from other Government agencies if technically or economically justified (see paragraph 3-8).

d. Approve the establishment or expansion of an in-house activity to provide commercially available products or services to Army, DOD or other Federal agencies when operational factors or costs justify such establishment or expansion according to this regulation. See paragraph 3-11.

1-7. Program Suspension during Mobilization. Upon mobilization, the CA Program will be suspended from all requirements to obtain approval to establish, expand, continue, convert, or transfer CAs. Reporting and other administrative requirements also will be suspended when a Presidential or other official directive is issued to mobilize the armed services.

1-8. CA Study Process. CA studies consist of the following steps, which are covered in the specified areas of this regulation:

- a. Identify CAs (paragraphs 2-1 through 2-3).
- b. Review CAs (paragraph 2-7).
- c. Conduct annual inventory (paragraph 2-8 and Appendix G).
- d. Submit request to declare an activity a Governmental function or request approval of an exception to the CA Program (paragraph 2-3), or submit a Decision Summary (RCS CSCOA-111), Figure 2-3, to request an exemption (paragraphs 2-5 and 2-6), or submit a Direct Conversion Decision/Request (RCS CSCOA-128), Figure 3-1, to obtain approval/provide information on direct conversion actions (paragraph 3-3), or, if the activity will be studied, submit a Commercial Activities Proposed Action Summary (CPAS) (RCS CSCOA-112), (paragraph 3-10 and Figure 2-2), or Commercial Activities Transfer (or New Requirement) CA Study Proposal (RCS CSCOA-115), Figure 3-2 (paragraph 3-11).
- e. Receive CPAS approval (paragraph 3-12).
- f. Write performance work statement (PWS) (paragraph 3-19).
- g. Conduct management study (Chapter 3, Section VI).
- h. Issue solicitation (paragraph 3-21).
- i. Prepare Government in-house estimate (paragraph 3-39 and Appendix E).
- j. Obtain independent review from audit entity (paragraph 3-40).

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k. Conduct bid opening/make initial decision (paragraph 3-41).

l. Hold appeals period/public review period (Chapter 3, Section VIII).

m. Submit Final Decision Report (RCS CSCOA-113), Figure 3-3 (paragraph 3-55).

n. Obtain approval to implement final decision (paragraph 3-55).

o. Implement decision (paragraph 3-55).

p. Five years from the previous review date, repeat the entire process beginning with item b.

1-9. Responsibilities.

a. The CA Program Directors are:

(1) For civil works funded CA, the Assistant Secretary of the Army (Civil Works) (ASA(CW));

(2) For DOD-funded CA, the Assistant Secretary of the Army (Installations and Logistics) (ASA(I&L));

(3) For mixed civil works and DOD-funded activities, the ASA(CW) and the ASA(I&L);

b. The Commander, USACE, will:

(1) Be the USACE CA Program proponent;

(2) Approve or disapprove requests from either HQUSACE staff elements or field operating activities (FOA) to exclude any function as Governmental;

(3) Approve or disapprove requests from either HQUSACE staff elements or FOA to except a function (except those described in paragraph 2-2a(2)(b) through (e) from the CA Program;

(4) Determine the USACE position of FOA requests for in-house performance of CAs for noncost reasons that require ASA-level approval;

c. The Director of Resource Management will:

- (1) Serve as the overall manager of the Corps CA Program
- (2) Publish guidance on Corps CA policies and procedures.
- (3) Be the primary point of contact within HQUSACE for CA matters.
- (4) Respond, in coordination with functional proponents, to Congressional and secretariat correspondence pertaining to CA studies that are the responsibility of more than one functional proponent.
- (5) Develop and maintain the Corps CA Inventory (Appendix G).
- (6) Notify Congress, through secretariat channels, of decisions to initiate CA studies and decisions resulting from CA studies as appropriate.
- (7) Coordinate Corps staff review of proposals submitted by divisions and USACE staff proponents of FOA for the conduct and termination of CA studies of either existing in-house activities or contracted activities for possible change in method of performance, and for CA studies of possible in-house performance of proposed new activities.
- (8) Develop and prepare, in coordination with HQUSACE functional proponents, USACE position on proposed GFA codes for incorporation in Appendix C.
- (9) Prepare and maintain Corps instructions for implementing OMB Circular A-76. Issue guidance consistent with AR 5-20.
- (10) Publish procedures for incorporating CA budget actions into the normal manpower programming and budget cycle.
- (11) Maintain and audit trail on CA manpower programming and CA study decision results and ensure that necessary adjustments are made in a timely manner.

d. HQUSACE staff elements assigned functional proponency for the CA functions in Appendix B and

Appendix C, and HQUSACE staff proponents of laboratories and separate FOA will:

(1) Designate a single office within their staff element as the point of contact (POC) for all CA matters.

(2) Provide functional guidance, in coordination with CERM-MC, on the CA Program to divisions, laboratories and separate FOA for the conduct of CA studies in their assigned functional areas to include:

(a) Developing positions on CA study proposals submitted by FOA.

(b) Identifying Corps administrative and reporting requirements that detract from the productivity of activities subject to a CA study and initiating appropriate action to revise Corps guidance or obtain relief from requirements imposed by higher authorities.

(c) Organizing activities into multifunctional and/or regional packages for CA study.

(d) Developing prototype PWS. Monitoring adaptation of prototype PWS by FOA to specific activities.

(e) Providing guidance to FOA, in coordination with CERM-MC, on improvement of methods of operation, acquisition of productivity enhancing equipment, staffing and organizational structures, and other actions to obtain an efficient and cost effective in-house organization.

(f) Monitoring the execution of CA studies, in coordination with CERM-MC, and responding to Congressional and other inquiries.

(3) Develop, in coordination with CERM-MC, the Corps staff position on recommendations for continued in-house performance of CA for reasons other than cost, and submit recommendations to the USACE Commander or Deputy, or to ASA(I&L) through ASA(CW) as appropriate for approval.

(4) Designate lead divisions, laboratories or separate FOA for CA studies involving more than one division, laboratory or separate FOA.

(5) Designate FOA responsible for CA pilot studies of functions not previously studied under the CA Program.

(6) Provide functional expertise on proposed GFA codes for incorporation in Appendix C.

e. The Principal Assistant Responsible for Contracting (PARC) will:

(1) Ensure, in coordination with the Chief Counsel, that CA policies and procedures are consistent with the provisions of the FAR and its supplements as CA studies are conducted and implemented.

(2) Assist the Director of Resource Management in developing guidance on procurement aspects of the CA Program, and in resolving procurement-related problems at all FOA levels.

(3) Assist, in coordination with the Director of Resource Management, HQUSACE staff elements in developing PWSs for their functional areas, and in responding to questions on procurement-related CA issues.

f. The Chief Counsel will:

(1) Advise, in coordination with PARC, whether CA policies and procedures are legally consistent with the FAR and its supplements.

(2) Determine if application of this regulation to a CA is inconsistent with law and is excepted in accordance with paragraph 2-2a(2)(b) through (e).

(3) Advise the Commander, USACE, the Director of Resource Management, and other HQUSACE staff elements on all legal matters related to the CA Program.

g. The Small and Disadvantaged Business Utilization Officer will assist in ensuring that maximum consideration is given to small and small disadvantaged businesses in CA policies and procedures.

h. The Chief of Public Affairs, in coordination with the Director of Resource Management, will provide public affairs support and guidance for public announcements relating to CA actions.

i. The Engineer Inspector General will include provisions in inspections that will ensure that the CA Program is being carried out according to established policies.

j. The Director of Personnel (HQUSACE) will:

(1) Advise on whether CA program policies are consistent with civilian personnel statutes, policies and procedures, including reduction-in-force (RIF) procedures, contractual requirements, and recognized labor organization agreements.

(2) Provide input, as necessary, to factors for personnel-related costs used in CA studies for items such as personnel fringe benefits, severance pay entitlement, homeowner's assistance, and pay rate determination. These factors are developed jointly by the Directorate of Resource Management and the functional proponent.

k. Commanders of divisions, districts, and separate FOA will:

(1) Direct and manage the Corps CA Program as required by this regulation.

(2) Appoint a CA Program Manager and an alternate to administer and coordinate the operation of the CA Program.

(3) Publish instructions as necessary. Guidance will ensure that day-to-day actions with CA implications are coordinated with the CA Program Manager.

(4) Approve direct to contract actions and submit Direct Conversion Decisions/Requests as provided in paragraph 3-3.

(5) Identify new requirements, expansions and transfers and ensure that new start or expansion approval is obtained for projects involving CA prior to, or concurrent with, any budgetary action to obtain funding.

(6) Obtain approval of the purchase of new equipment that does not constitute a new start or expansion during the course of a CA study but prior to the approval of the management study. This applies unless such approval depends on the approval of the management study of the outcome of the cost comparison.

(7) Ensure that entries made on either ENG Form 4843A-R, Cost Comparison of In-house and Contract Performance (RCS CSCOA-116), or ENG Form 4843B-R, Cost Comparison of Expansions, New Requirements and Conversions to In-house Performance (RCS CSCOA-116), are reviewed and verified for correctness by a qualified individual assigned to the FOA who is independent of the preparation of the Government's in-house cost estimate. See Appendix D for examples of these forms and instructions on completing them.

(8) Ensure that audit trails of costs and workyears of studied activities are maintained.

(9) Determine whether activities under their control are or are not CA, in accordance with OMB Circular A-76 and the guidance provided in this regulation in Chapter 2, Appendix B, Appendix C and Glossary. Requests for decisions on all questionable areas, including the declaration of any function to be a Governmental function, will be forwarded through channels to the HQUSACE proponent for that function for advice and possible approval by the Commander or Deputy Commander, USACE, or higher authority as appropriate. Perform CA studies.

(10) Request personnel ceiling and budget adjustments to support new requirements, expansions and transfers where in-house performance has been proven cost effective through a CA study.

(11) Ensure that the Personnel Officer and Equal Opportunity Officer are included in the planning for and conduct of CA studies from the beginning of the process.

(12) Use all reasonable means to minimize the number of separations of permanent employees from Federal employment by:

(a) Implementing selective hiring freezes for vacancies in activities not subject to CA studies. Those employees potentially affected by CA studies may then be considered for placement in those activities.

(b) Using temporary and other nonpermanent appointments for all positions in the activity under study and other positions at FOA filled by new hires. This consideration will provide placement opportunities for employees who may be affected by a RIF.

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(c) Implementing reasonable job re-engineering or training efforts to help potentially excess employees qualify for jobs in other fields.

(13) Monitor the performance of contractors under PWSs or of the in-house work force constituted in the most efficient organization (MEO) following the completion of CA studies.

(14) Prepare and submit inventory reports.

1. The Personnel Officer (FOA) will:

(1) Announce, in conjunction with the Public Affairs Officer and the Resource Management Officer/Comptroller, approved CA studies to the affected work force, and inform appropriate union officials of these approved CA studies. Union officials and employees will be kept informed of CA study actions from approval through study completion.

(2) Coordinate planned management actions related to CA studies with the Equal Opportunity Office, employees and unions representing the affected work force to minimize personnel turbulence and adverse effects on employees.

(3) Participate as team member in the CA management study by:

(a) Providing position management advisory services;

(b) Performing position classification audits;

(c) Developing position descriptions;

(d) Securing position management officer decisions as required by AR 690-500, Chapter 501;

(e) Evaluating and classifying positions in activities under CA study according to Office of Personnel Management (OPM) position classification standards, including civilian spaces established to replace military workyears;

(f) Scheduling position classification surveys and reorganization proposals to coincide with the planned management study schedule. This should be done to conserve management as well as Personnel Office resources.

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(4) Determine the requirements of CA-related provisions in agreements negotiated between the FOA and the union(s).

(5) Provide information to the CA Program Manager on, and monitor compliance with:

(a) The requirements of agreements between the FOA and union(s) impacting a CA study; and

(b) The specific actions required to fulfill those agreements and corresponding milestones for the CA study schedule.

(6) Plan and execute RIF actions.

(7) Participate in developing selection/training programs and position descriptions for contract administration and quality assurance evaluation (QAE) personnel.

(8) Monitor out-placement programs, including retraining, in accordance with AR 690-400, Chapter 410.

(9) Assist the contracting officer in monitoring contractor compliance with displaced employees' right of first refusal for jobs with the contractor.

(10) Help place personnel in other Federal jobs and in jobs with the contractor.

(11) Inform the FOA Commander of noncompliance with implementation of approved personnel actions in connection with the MEO.