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CEMP-CN

**Support for Others
REIMBURSABLE SERVICES**

FOR THE COMMANDER:

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Purpose. This regulation provides guidance on USACE providing reimbursable services to Department of Defense (DoD) and non-DoD entities, with the exception of services or other support arrangements described under paragraph 6.

Applicability. This regulation applies to HQUSACE elements, major subordinate commands, districts, and centers.

Distribution Statement. Approved for public release. Distribution unlimited.

Proponent and Exception Authority. The proponent of this regulation is the Chief, Interagency and International Services, CEMP-CN. The proponent has the authority to approve exceptions or waivers to this regulation that are consistent with controlling law and regulations. Only the proponent of a publication or form may modify it by officially revising or rescinding it.

*This regulation supersedes ER 1140-1-211, date 10 September 2020.

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Summary of Change

1. Purpose.

This regulation provides guidance on U.S. Army Corps of Engineers (USACE) providing reimbursable services to Department of Defense (DoD) and non-DoD entities, with the exception of services or other support arrangements described under paragraph 7. The USACE Homepage contains a web site for the Interagency and International Services (IIS) program, which is located at: <http://www.usace.army.mil/Missions/Military-Missions/Interagency-International-Support/> . Included at this site is policy and guidance on IIS, a listing of program authorities, partners and services, model memoranda of agreement (MOAs), Interagency Agreements, and a database for existing national level agreements.

2. Applicability.

This regulation applies to Headquarters U.S. Army Corps of Engineers (HQUSACE) elements, major subordinate commands, districts, and centers.

3. Distribution Statement.

Approved for public release. Distribution unlimited.

4. References.

References are at Appendix A.

5. Records Management (Recordkeeping) Requirements.

The records management requirement for all record numbers, associated forms and reports required by this regulation are addressed in the Army Records Retention Schedule—Army (RRS–A). Detailed information for all related record numbers, forms and reports are located in ARIMS/RRS–A at <https://www.arims.army.mil>. If any record numbers, forms, and reports are not current, addressed and/or published correctly in ARIMS/RRS–A, see DA Pam 25–403 for guidance.

6. Definitions.

a. IIS. Those activities which USACE undertakes to provides services from its organic technical capability in support of projects, missions, and interests of other agencies or nations. The services may involve the application of enabling functions such as Counsel, Resource Management, Human Resources, and Contracting as necessary to enable USACE to provide the service; but the enabling functions will not be used independently for the services. IIS are services performed by USACE as the servicing agency under applicable federal law and funded by non-DoD federal agencies, states, commonwealths, territories, and local governments of the United States; Indian Tribes, private firms, other nations, and international organizations. For purposes of this regulation, the term "states" includes any of the 50 States of the United States, plus the District of Columbia; Indian tribes and Alaska Native entities; the Commonwealths of Puerto Rico and Northern Mariana Islands; and the Territories of the U.S. Virgin Islands, Guam and American Samoa. At the Major Subordinate Commands (MSC) and HQUSACE levels, such services will be managed as a program for policy, process, and reporting purposes regardless of the nature of the service or

the source of funding.

b. General, Terms and Conditions (GT&C) Agreements. GT&C agreements are the base agreements between a requesting agency and a servicing agency. GT&C agreements cover the following: authority for the agreement; general terms and conditions governing the relationship between the requesting agency and servicing agency; the range of services that may be provided; roles and responsibilities for both partners; and period of the agreement. Previously, GT&C agreements have been concluded using a number of different formats, including: MOA; Treasury Fiscal Service (FS) Forms 7600A, and DD Forms 1144; however, as discussed further in paragraph 9, DoD policy currently requires use of a FS Form 7600A for all reimbursable agreements. No fiscal obligations are created through the execution of GT&C agreements; therefore, no services may be performed and no goods may be delivered until an accompanying order is executed as outlined below.

c. Orders. Reimbursable funding agreements for a servicing agency to provide specific, clearly defined goods and services to a requesting agency. Orders are fund obligation documents for the requesting agency that are placed under GT&C agreements and incorporate the provisions of the GT&C agreement by reference. Depending on the circumstances, orders may be placed on FS Forms 7600B, DD Form 448 (Military Interdepartmental Purchase Request (MIPR)), or similar forms containing the same information as FS Form 7600B (see paragraph 9 for further guidance).

d. G-Invoicing. Government-Invoicing (G-Invoicing) is a Treasury owned system which all federal agencies must use to process GT&C agreements and orders (or intergovernmental transactions) beginning 01 October 2022. HQUSACE Resource Management (RM) will issue further guidance covering the implementation of the CEFMS II/G-Invoicing interface for processing orders, including schedule updates and training.

e. Memorandum of Understanding (MOU). A non-binding written understanding between two or more parties that does not require reimbursement. In performing any activities under an MOU, each party must operate fully within the limits of its existing programmatic authority. MOUs represent cooperative arrangements between organizations, with no commitment of resources by either party.

7. Work not covered by this regulation.

This regulation does not apply to military functions that are not funded on a reimbursable basis (e.g., direct funded military construction); to services provided to other stakeholders and agencies related to, or affecting, authorized Civil Works studies and projects; to Research & Development projects authorized and executed via Cooperative Research and Development Agreements or with Research Development Test and Evaluation funds; or the following activities:

a. Activities for which USACE receives appropriated funds directly from Congress.

b. Emergency work.

(1) Emergency work requested by the Federal Emergency Management Agency under the provisions of Public Law 93-288 and performed in accordance with ER 500-1-1.

(2) Emergency dredging work performed under the provisions of Public Law 95-269.

c. Foreign military sales and security assistance programs.

d. Non-reimbursable activities under Section 234 of the Water Resources Development Act 1996 (33 U.S.C. 2323a). This regulation still applies to reimbursable activities under Section 234.

8. Guidance for Assessment of Reimbursable Services.

a. General. Providing reimbursable services to DoD and non-DoD organizations is beneficial to USACE, the Army, and DoD engineer capability when the program/project provides professionally valuable and broadening work which sustains and develops USACE core capability and capacity; and when it complements the mission performance of both agencies. Within the guidelines listed below, USACE policy supports the provision of services to other organizations where:

(1) The requested services are compatible with USACE competencies, capabilities, and ability to generate capacity. The services should enhance USACE competencies and ability to perform its assigned missions or enhance USACE capability to respond to new challenges consistent with USACE's purpose.

(2) The provision of the service will serve to sustain or advance USACE capabilities for its assigned Defense or Civil Works missions.

(3) The service from USACE will assist the receiving agency in engineering, construction, real estate, environmental, and natural resources fields which are outside the agency's primary mission and competency.

(4) The service and working arrangements permit the application of USACE policies, procedures, and systems under USACE leadership oversight in execution of the service.

(5) For non-DoD support, the service and interagency relationship will advance the federal interest in interagency collaboration, national security, and public service.

b. Other Considerations. Generally, projects and services are not good candidates for USACE support in the absence of the above conditions or when:

(1) The nature of the work is likely to bring reputational risk/disrepute to USACE (or the Army or DoD).

(2) The service or conditions do not permit application of USACE policies, systems, professional standards, or supervision.

(3) The services only require the award of a contract without pre-award and post award services.

(4) The requesting agency is requesting services for the purpose of circumventing internal policies or offices of the requesting agency.

c. Accountability. When a DoD or non-DoD organization seeks to obtain reimbursable services from USACE, the two agencies are entering into a voluntary working relationship which must recognize the respective role and accountability of each. The role of a requesting agency is to define its requirement, objectives, and the conditions of the requirement. The role of USACE is to determine applicable manner and standards for the service. By providing a service from its capability, USACE will treat the service (or project) like a USACE mission to be executed pursuant to USACE policies and leadership. USACE will coordinate with the requesting agency to ensure the scope of work complies with prevailing laws, regulations and policy guidance; to ensure the appropriate funding source and authorities are used. Establishing how both parties view their respective accountability for the outcome is important to enabling effective expectations, relationships, and organizational performance.

(1) Agencies being served will be referred to as partners, stakeholders, requesting agencies, resourcing agencies, or similar (but not as “customers”) in order to set a baseline for a shared understanding of the working relationship.

(2) Given its breadth of responsibility in the Nation’s civil and military sectors, USACE activities are regularly observed and reported to industry groups, the Administration, to Congressional leaders, and the public with expectations for high standards of performance. This attention and trust can be beneficial but requires recognition of the USACE equity in the results of the service or project.

(3) USACE can be expected to be accountable in the view of the Nation’s leaders and in the Public eye for the results of its service, regardless of the resourcing agency being served.

(4) The professional cadre, best practices, and operating principles which form the foundation of USACE competencies and reputation are not to be compromised by the conditions of providing the service.

d. Relationship Management. Working relationships and agreements will be established at equivalent organizational echelons between USACE and requesting or partner agencies. HQUSACE will identify partner agencies considered to be of national strategic importance and will assign senior leaders the role of Executive Liaison (ELs) with those partners. MSCs and Districts are to establish open lines of communication with local and regional counterparts of other agencies to further the federal interest for collaboration and unity. USACE will not seek to market or advertise its capability to other agencies, but may advise other agencies of the breadth of the USACE mission and capability by normal association. When an agency has expressed interest for service, the following factors are to be considered:

(1) Other agencies often initially view USACE as a federal architect-engineer firm, and naturally approach the relationship with that perspective. It is important to avoid that perception as it frequently results in undue pressure and a contentious relationship at the project level. USACE leaders must ensure that members of the USACE team, as well as staff of the requesting agency, understand the working relationship as one of parity between partners; more collegial, not contractual.

(2) Other agencies often approach USACE with preconceptions for how they intend USACE to deliver the requested service. It is important that the requesting agency be advised to identify its purpose, objective, and conditions for the requested service; and permit USACE to determine the best means and methods by which it may achieve the objective under the conditions.

e. Management objectives. Agencies seeking services should be advised that reimbursable work will be managed following the program and project delivery policies and procedures specified in ER 5-1-11, as applicable, including assignment of a project manager and other functional leads within a Project Delivery Team (PDT), monitoring and accountability for costs and schedules, and utilization of USACE information systems. While the primary objective is to provide a partnered agency quality service, on time, and within the established budget, other equally important objectives of which the potential partner should be cognizant include:

(1) Use of the full breadth of USACE technical and project management skills and review procedures at the appropriate level.

(2) Alternative use of the design and construction capability of the private sector where feasible.

(3) Recognition of responsibility for all costs associated with budgetary justification, and legal liability incurred by USACE in performing the work. This includes timely reimbursement of validated customer order billings submitted by USACE to the stakeholder.

f. USACE responsibilities to partner agencies include:

(1) Providing professional level services, best practices, and leader supervision pursuant to the USACE project delivery business process.

(2) Maintaining open communications to include updates on work progress, budget status, and setting realistic expectations.

(3) Establishing a working relationship based on principles and practices of Partnering.

(4) Supporting annual audits in accordance with USACE procedures set up for all serviced agencies.

(5) Including the partner in all applicable PDT meetings.

(6) Ensuring meaningful participation by the partner in decisions about all aspects of the work scheduling, development, project planning, standards, acquisition strategy and execution.

(7) Ensuring quality technical, managerial, and administrative work and products.

(8) Fostering creativity and flexibility; and

(9) Being accountable for the appropriate and efficient use of stakeholder funds.

g. Competitive proposals. USACE activities will not respond to Requests for Proposals or requests for assistance when an agency is in the process of negotiating with a private firm or with other governmental agencies for the same services without specific approval from HQUSACE. USACE activities should contact CEMP-CN before accepting work previously performed by a private firm.

9. Work Acceptance.

a. Work acceptance authorities will vary depending upon the nature and conditions of the work and services required. Generally, work may be accepted at the appropriate level and location within USACE relative to the scope of the services requested and at equivalent agency levels. MSCs and Districts will establish policies to accept work and to communicate acceptance of reimbursable work. Work acceptance authority refers to a USACE activity's general authority or assigned mission to accept and perform work in a particular geographic region and/or area of expertise.

b. Area of Responsibility. Military programs boundaries shall govern responsibility for accepting and executing non-DoD reimbursable work. However, if the work is of a water resources management nature (i.e., of a civil works nature), the work will be referred for acceptance and execution to the MSC and district having the civil works responsibility in the area of the work. Please note that this policy does not eliminate the ability for MSCs to collaborate with their neighboring MSCs in the work. Non-DoD Real Estate work shall follow military boundaries. Environmental support for non-DoD stakeholders shall follow military boundaries and EPA Superfund support shall follow civil work boundaries.

c. MSC Commanders may accept work when the work location, or delivery of products, is within the MSC geographic boundaries applicable to the nature of the work,

and when the requesting agency is at a respective regional level, or the work is regional in nature. MSC Commanders may delegate their authority for work acceptance to MSC SES personnel. MSC's may establish work acceptance procedures that apply to their subordinate districts to govern work acceptance within their Region under the Regional Business Center (RBC) concept.

d. District Commanders are authorized to accept work when the district has relevant experience and capability to provide the service and when the work location, or location of services, is within district's appropriate geographic boundary in accordance with the nature of the work described above. Districts would adhere to established MSC procedures governing work acceptance in accordance with the RBC concept. While a project may be executed using military boundaries, there may be a field or project office in the vicinity of the project location from a civil works district. In such cases, geographic districts are encouraged to include these assets on their PDT, if the appropriate technical capability exists, to support oversight, contract administration, quality assurance, or other field-based activities.

e. Centers and districts with approved programmatic assignments (versus geographic assignments) are authorized to accept work without regard to geographic location, but with requirements for coordination prior to acceptance. The coordination will be with the districts and MSCs with command responsibility at the location of the work for the purpose of determining: any unique special conditions at the locale of the work, unique USACE command interests at the locale of the work, the means of supervision and communication for the work, and the manner of participation of the local command in the Project Delivery Team. Where agreement is not reached among the respective centers, districts or MSCs, the matter will be elevated for guidance to the next higher level. The important objective is that there be collaboration for decision among the respective USACE organizations such that leadership accountability, unity of command, communication, capability, and other USACE equities are sustained. This concept applies to all USACE activities including use of USACE laboratory capability for other than R&D funded activities.

f. MSCs and districts aligned with a Geographical Combatant Command (GCC) are authorized to accept work within the supported GCC's AOR. Generally, all work OCONUS will be performed under the supervision of the geographically aligned MSC and district.

g. For non-DoD support, HQUSACE approval must be sought prior to acceptance of work if the proposed support has any of the following characteristics, irrespective of dollar value: high political sensitivity; high visibility; if the work will be in support of a national level agency; if the work is in support of an Inspector General or other investigative authority, if any portion of the work or work product will be used to represent a USACE position (i.e., an assessment of another agency's performance); if the work has a value of \$100M or greater; if there is a strong potential that the work performed will later be required outside of the region of the initial service. Requests for approval should be directed to HQUSACE IIS (CEMP-CN), which will coordinate with other HQUSACE offices and leadership to make a determination. Work requiring HQUSACE IIS approval may also involve a HQ level Enterprise Program Management Plan (EPgMP), funding allocation through HQUSACE, use of the Directive Network

System, and periodic HQUSACE level reviews and or Program reviews which will be outlined in the EPgMP.

h. Additional requirements for accepting work are as follows:

(1) The work can be accomplished within the existing MSC resource allocations until the next Corps of Engineers Manpower Requirements System (CEMRS) cycle without compromising any goals or otherwise creating delays in the USACE civil works or military programs functions.

(2) The work aligns with USACE core competencies.

(3) MSC should consult with CEMP-CN if there is potential for the support to expand beyond the MSC boundary (including the supported GCC AOR). In these situations, the establishment of a national agreement may be appropriate.

i. In some cases, the requirement may involve new types of work or new stakeholders and may require a policy review and determination from higher authority before work may be accepted. MSCs should consult with CEMP-CN to determine whether a HQUSACE determination is required. The review of the proposed work is to ensure:

(1) The proposed work is consistent with the goals of the Administration.

(2) USACE has the capability to provide the required support; and

(3) Execution of the work can be accomplished within regulatory rules.

j. To support the determination for new types of work or stakeholders, MSCs, Districts, and Centers should consider the following:

(1) Estimated Magnitude of USACE Effort – dollar value and number of Full Time Equivalent personnel.

(2) Nature of Work.

(a) What are the expected services?

(b) Previous experience with this kind of work.

(c) Previous experience with this stakeholder.

(d) How the work sustains or enhances USACE core competencies.

(e) Potential for any significant interest group opposition.

(f) Whether the work adversely impacts other USACE missions. If there could be an impact, how will this be mitigated?

10. Procedures for Agreements for Reimbursable Support to DoD and Non-DoD Agencies

a. Prior to developing an agreement to provide reimbursable support, Districts should consult with their MSC to determine the most appropriate approach for the agreement. For example, a national or regional GT&C agreement may already exist that covers the proposed support (Note: CEMP-CN maintains a database of these agreements and this is located at:

<https://cops.usace.army.mil/sites/iis/MOA/Forms/dbgrouporg.aspx>). Alternatively, the requested support may warrant the establishment of a national or regional GT&C agreement. MSC and Centers should consult with CEMP-CN to discuss the options, including use or development of national level agreements.

b. DoD has mandated the use of G-Invoicing for new GT&C agreements. Further, from 01 October 2022, a GT&C agreement using FS Form 7600A must be established in G-Invoicing before reimbursable orders can be accepted. Prior to the mandatory

date, USACE policy is to continue to establish GT&C agreements in G-Invoicing when possible. Where the other agency is not using G-Invoicing, and, consequently, not able to develop a FS Form 7600A within the G-Invoicing system, a hard copy FS Form 7600A should be used for the GT&C agreement and uploaded to G-Invoicing by USACE. DD Form 1144 may no longer be used for new GT&C agreements. Whether the GT&C is created in G-Invoicing or on a hard copy FS Form 7600A, it shall either incorporate by reference the terms and conditions of an existing MOA between the parties or, if an MOA does not exist, include USACE's standard terms and conditions as an appendix to the FS Form 7600A. Current versions of USACE model templates for FS Forms 7600A, appendices to FS Forms 7600A containing USACE's standard terms and conditions, and MOAs can be found at:

<https://cops.usace.army.mil/sites/IIS/pages/ModelAgreements.aspx>.

c. If a national level GT&C agreement (either in G-Invoicing or hard copy FS Form 7600A is in place, MSC/Districts/Centers can develop an order that defines the specific support requested, basis for reimbursement, the billing and funding information, and other terms and conditions of the agreement. USACE preference is to use both FS Form 7600B and or the DD Form 448 (MIPR) wherever possible. However, the OSD Comptroller has clarified that using only the DD Form 448 is permissible until G-Invoicing accommodates on-line orders in the FS Form 7600B format. For situations where the DD Form 448 is used, goods and services must be discretely defined on each order and the order must include a clear reference to the GT&C number for tracking purposes. For orders with non-DoD stakeholders, every effort should be made to encourage the use of FS Form 7600B, however alternative forms may be used if G-Invoicing 7600B Order functionality has not yet been implemented or it is prior to the mandatory Treasury deadline of 01 October 2022. Alternative forms must include the same information that is mandatory for the FS Form 7600B.

d. If a national level GT&C agreement does not exist, a GT&C will need to be developed for the order(s) (these may be in hard copy or in G-Invoicing when it is fully implemented). If a national level MOA is in place, the GT&C shall incorporate the terms and conditions of such MOA by reference. CEMP-CN can provide guidance on the appropriate approach for a new agreement. This guidance will depend on factors such as expected future support from the partner agency and whether that may involve multiple MSCs.

e. G-Invoicing Approvals: The officials authorized to accept work are not required to perform the electronic approvals in G-Invoicing or CEFMS II. In such cases, the authorized official may sign a pdf version of the GT&C or Order, which should then be uploaded to the corresponding version in G-Invoicing. The approvals within G-Invoicing or CEFMS II may then be executed by staff assigned to perform this role by their respective organizations.

11. Work for Non-DoD Federal Agencies.

a. The Economy Act (31 U.S.C. 1535) is the primary authority utilized by USACE for providing support to federal agencies, but is only available when a more specific authority does not apply. An ordering agency may use 31 U.S.C. 1535 to place an order with USACE and USACE may use 31 U.S.C. 1535 to accept orders to provide goods or services. Work performed using 31 U.S.C. 1535 may be contracted out and

performed on a reimbursable or advance of funds basis. See DoD Financial Management Regulation (DoD FMR) Volume 11A, Chapter 3, for further guidance.

b. Two other authorities that allow USACE to support other federal agencies are 10 U.S.C. 7036(e) (formerly codified at 10 U.S.C. 3036(e)) and 33 U.S.C. 2323a. Since these authorities only apply to USACE, the ordering agency must use an authority other than 31 U.S.C. 1535 to place an order with USACE. Work performed using 10 U.S.C. 7036(e) may be contracted out and can be performed on a reimbursable or advance of funds basis. 33 U.S.C. 2323a (“Section 234”) provides USACE authority to support other federal agencies on issues of national significance related to infrastructure development, water resources or environmental protection.

c. These authorities require the requesting agency to reimburse USACE for all costs incurred in providing the requested support. In addition to costs at the District/Center level, such costs may include Executive Direction and Management costs for management at the MSC and HQ levels.

12. Work for other DoD Organizations.

There are two main authorities that are available for use for reimbursable support agreements between DoD organizations. The Economy Act (31 U.S.C. 1535) is the primary authority and is applied in the same manner as described in paragraph 10 above. In much more limited instances, DoD organizations might also be able to utilize the “project order statute” (41 U.S.C. § 6307) to enter into reimbursable support agreements. For requirements and restrictions for use of the project order authority, see DoD FMR Volume 11A, Chapter 2, and ER 37-1-26.

13. Work for State and Local Governments.

All decisions and agreements with state and local governments must include an exit strategy to end USACE support within a period of five years or less. The authorities listed under this paragraph (31 U.S.C. 6505 and 10 U.S.C. 7036(e)) may not be used to accept funds to undertake planning, engineering and design, construction, or other activities related to, or affecting, Civil Works projects.

a. Work NOT Involving Federal Funding Assistance.

(1) The Intergovernmental Cooperation Act (31 U.S.C. 6505) is the primary authority for providing support to state and local governments (Support to Indian Tribes is not authorized under 31 U.S.C. 6505) when there is no federal funding assistance involved. However, use of the authority is limited to the provision of certain technical services. OMB Circular A-97 and DoD FMR Volume 11A Chapter 11 provide general guidance and define the scope of technical services that may be provided. This includes studies and planning activities, engineering and design (including plans and specifications), construction management assistance and training. Under this authority, USACE may not enter into contracts to provide the necessary service. It can, however, provide labor support from in-house subject matter experts, limited to technical advice to improve State and local management capability in contract preparation, negotiating, and evaluation; contract administration; quality assurance; and supervision and inspection. Commanders must concur in the certification required by paragraph 7.c. of OMB Circular A-97. USACE activities may not acquire real estate for a State or local government under 31 U.S.C. 6505. Questionable cases should be referred to HQUSACE (CEMP-CN) for resolution.

(2) Section 211 of the Water Resources Development Act (WRDA) 2000 (Public Law 106-541) places additional requirements on USACE before USACE can provide technical assistance to a State or local government under 31 U.S.C. 6505. Pursuant to section 211, the state or local government requesting services must submit: (1) a written request describing the scope of the services to be performed and agreeing to reimburse USACE for all costs associated with the performance of the services; and (2) a certification that includes adequate facts to establish that the services requested are not reasonably and quickly available through ordinary business channels. Section 211 further requires that the Assistant Secretary of the Army for Civil Works (ASA (CW)) must ensure that requests satisfy the requirements of 31 U.S.C 6505 and execute a certification that includes adequate facts to establish that USACE is uniquely equipped to perform the services. Section 211 does not apply to the Engineer Research and Development Center. See Pub. L. 107-66, title I, § 109 (2001).

(3) USACE Districts and Centers in receipt of requests for technical services under 31 U.S.C. 6505 from state or local government entities should submit to CEMP-CN a request for ASA (CW) approval that includes: the written request for technical services from the state or local government; the applicable Commander's concurrence with the state/local government certification; adequate facts to establish that the Corps is uniquely equipped to perform such services; and validation of compliance with all requirements of the 31 U.S.C. 6505, Section 211 of WRDA 2000, and OMB Circular A-97.

b. Work Involving Federal Funding Assistance. 10 U.S.C. 7036(e) provides authority for USACE to provide support to State, local, or Tribal government, provided the work involves federal funding assistance and the department or agency providing the federal funding does not object to the provision of these services by USACE. The funding assistance must be monetary and USACE-supplied funding assistance does not qualify. ASA (CW) and HQUSACE concurrence is not required as long as the above requirements are met.

14. Work in Other Countries.

USACE may under various authorities provide support in other countries. A summary of requirements is provided below. All work in other countries is to be coordinated with the appropriate stakeholders. Also, any foreign government requests for USACE assistance must be directed to the appropriate MSC or HQUSACE IIS staff. More information may be obtained from CEMP-CN.

a. Special Requirements. In addition to the general guidance provided elsewhere in this regulation there are special requirements that pertain to work in other countries.

(1) Privileges and Immunities. DoD military and civilian personnel are not permitted to undertake work in their official capacity in another country unless they have been granted sufficient privileges and immunities from host nation legal jurisdiction. Typically, this grant of immunity is found in a Status of Forces Agreement (SOFA) or other international agreement between the United States and the host nation covering the work in question. If there is no existing SOFA or other agreement, immunities at least equal to that of administrative and technical staff of the U.S. Embassy in the host nation must be obtained. This prohibition does not prevent work from taking place outside of

the host nation. The required grant of immunity can often be effectuated through an exchange of diplomatic notes between the U.S. Embassy and the Foreign Ministry of the host nation. This action must be coordinated through the embassy, as well as the GCC, and often with the component command, responsible for the region. This coordination will be accomplished through HQUSACE or the MSC/District aligned with the GCC and region. Some SOFAs are classified documents, and thus the embassy should be contacted to determine if USACE personnel will be covered by an agreement that is not generally available for review.

(2) U.S. Embassy Approval. USACE will undertake no work in another country without the concurrence of the U.S. Embassy. In many instances this concurrence is obtained by our partner agencies or as part of the normal approval process. In cases where this has not occurred, the USACE office providing the support should contact the U.S. military group at the Embassy.

(3) Establishing Offices Overseas. USACE offices wishing to establish offices in another country must comply with National Security Decision Document 38. USACE office should consult with CEMP-CN for further guidance on establishing overseas offices. Generally, only MSCs and Districts aligned with a GCC, or elements acting pursuant to USACE Commander Operational Orders, are permitted to establish offices OCONUS.

(4) Foreign Travel. Travelers should consult the DoD Foreign Clearance Guide and Logistics Activity Center (LAC) concerning passport, visa, clearance, training, and personal data requirements needed for approval of travel orders. Additional guidance on foreign travel can be provided by CEMP-CN.

(5) Theater, Country and Special Areas Clearances. USACE travel to most countries requires Theater and Country Clearances. The DoD Foreign Clearance guide provides specific details of what is necessary for each country. The LAC will prepare and process clearance requests.

(6) Host Nation Capacity Development. To the extent possible our work overseas should contribute to the development of expertise of the host nation to reduce their dependency upon outside assistance.

b. Work for Other Nations. Section 607 of the Foreign Assistance Act (FAA) (22 U.S.C. 2357) and 33 U.S.C. 2323a are authorities used for providing civil works or non-military type support to other nations. The Arms Export Control Act provides authority for support of a military nature (Foreign Military Sales) and is beyond the scope of this regulation. Specific procedural guidance for use of the Foreign Military Sales mechanism for Foreign Assistance Action Section 607 requests may be found in Chapter 11 of the Security Assistance Management Manual. If Section 607 is used, the two options that can be used to process an agreement are: A Letter of Offer and Acceptance (LOA) through the Defense Security Cooperation Agency (DSCA) LOA process or a narrative form agreement. Further guidance and assistance with the development of an LOA can be provided by CEMP-CN. ER 550-1-1 details the policy and process for developing non-LOA international agreements. CECC-G will assist in developing the international agreement and CEMP-CN will assist in obtaining the required approval of OASA(CW) and consult with the State Department. Each of these options has advantages and disadvantages and MSCs and FOAs should consult with

CEMP-CN on the appropriate mechanism for the specific opportunity.

c. **Work for International Organizations.** Section 607 of the FAA and 33 U.S.C. 2323a provide authority to support international organizations on a reimbursable basis for non-military support. As stated above, there are two process options that can be used for Section 607 agreements. 33 U.S.C. 2323a provides no statutory definition of what constitutes an international organization. Generally, international organizations that are financially supported by the U.S. Government may qualify under section 2323a. These organizations include NATO, United Nations agencies, the World Bank Group, the five regional development banks (Inter-American Development Bank, Asian Development Bank, African Development Bank, European Bank for Reconstruction and Development, and the North American Development Bank), the World Meteorological Organization, the Intergovernmental Panel on Climate Change and others. Other international organizations include those within the meaning of the Federal Employees International Organization Service Act that designate the international organizations to which federal employees can be detailed or transferred with reemployment rights, as provided in 5 CFR 352.304. CEMP-CN, in coordination with CECC-G, will assist in determining USACE's ability to assist organizations not on the present list.

d. **Work for U.S. Firms in Other Countries.** 33 U.S.C. 2314a authorizes USACE to provide technical assistance to any United States firm that is competing for, or has been awarded, a contract for the planning, design, or construction of a project outside the United States. The firm must certify that such assistance is not otherwise reasonably and expeditiously available and the USACE office providing the support must obtain approval from the U.S. Embassy in the country where the firm's contract will be executed. Generally the assistance will be provided by, or coordinated through, the MSC/District aligned for the country, region, or locale which the work is to benefit. Contact CEMP-CN for further guidance and assistance with drafting a Technical Assistance Agreement.

15. Relationships with the Private Sector.

The USACE reimbursable work is accomplished in partnership, not in competition, with the private sector. USACE relies heavily on the talents of private firms to execute its missions. Private firms are the primary source of engineering services for state, local and tribal governments. USACE actions are not to displace or compete with private firms. The USACE role is to function as an extension of the stakeholder agency's staff providing federal presence and government oversight to protect taxpayer interests. This capability can assist the stakeholder agency where it lacks capability and experience of specialists to perform the governmental functions.

16. Personnel Resourcing.

Work initiated after staffing allocations have been made for the fiscal year will be resourced from within MSC staffing allocations. For subsequent fiscal years, the work must be included in the CEMRS submittals, as appropriate.

17. Funding.

USACE will recover all costs for all DoD and non-DoD reimbursable work. For non-federal reimbursable work, funds must be on deposit with the Treasury in advance of USACE activities incurring obligations for the work, unless there is specific statutory

authority to the contrary. In addition to the costs at Districts and Centers, if the scope of the support to another agency is extensive and requires executive direction and management at the MSC and HQUSACE, funding to cover those requirements may be required. Determination will be made in consultation with CEMP-CN.

18. Public Information.

In general, USACE should refer to the partner agency all requests for specific project information.

19. Additional Notification and Approval Procedures.

a. Work approved within MSC Commander's authority. Following acceptance of the work (within 30 days) USACE activities will provide information including the scope, estimated staffing requirements, and relevant certification and agreement documents to CEMP-CN).

b. Real estate work. In providing reimbursable real estate services, normal USACE policies and procedures will be followed (see ER 405-1-12). Any deviation must be approved by CEMP-CR.

c. Hazardous, toxic and radioactive wastes (HTRW). Acceptance and performance of HTRW work will be in accordance with ER 1110-2-500.

d. Other reimbursable opportunities. Nothing in this regulation is intended to change existing notification and approval procedures for reimbursable work not specifically addressed in this regulation.

Appendix A References

10 U.S.C. 7036(e), (formerly codified at 10 U.S.C. 3036(e)) “Chief’s” Economy Act.

Section 607 of the Foreign Assistance Act (FAA) (22 U.S.C. 2357).

31 U.S.C. 1535, Economy Act.

31 U.S.C. 6505, Intergovernmental Cooperation Act, to include USACE specific restrictions under the Water Resources Development Act of 2000, Pub. L. 106-541, § 211, 114 Stat. 2592 (2000), as amended by Pub. L. 107-66, title I, § 109 (2001).

33 U.S.C. 2314a, Technical Assistance Program.

33 U.S.C. 2323a, Interagency and International Support Authority.

41 U.S.C. 6307, Contracts with Federal Government-owned establishments and availability of appropriations (“Project Order Statute”).

42 U.S.C. 5121, et seq., Disaster Relief and Assistance Act.

OMB Circular A-76 Revised, Performance of Commercial Activities.

OMB Circular A-97 Revised, Rules and regulations permitting Federal agencies to provide specialized or technical services to State and local units of government under Title III of the Intergovernmental Cooperation Act of 1968.

Department of Defense Instruction (DoDI) 4000.19, Support Agreements, April 25, 2013.

DoD 7000.14-R, Department of Defense Financial Management Regulation (FMR), Volume 11A, Reimbursable Operations Policy.

Office of the Under Secretary of Defense Memorandum, Implementation Memorandum #1 for G-Invoicing Transition, dated 12 December 2019.

Office of the Under Secretary of Defense Memorandum, G-Invoicing Implementation

Memorandum #2, 13 July 2020

AR 550-51, International Agreements.

ER 5-1-10, Corps-wide Areas of Work Responsibility.

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

ER 37-1-26, Issuance and Acceptance of Project Orders.

ER 37-1-30, Financial Administration – Financial Management of Capital Investments.

ER 405-1-12, Real Estate Handbook.

ER 500-1-1, Natural Disaster Procedures.

ER 1110-2-500, Corps/EPA Superfund Program Funding and Reporting Requirements.

CEMP-ZB, DMP Policy Memorandum, Adherence to Mission Assignments and Alignment of Acquisitions with Mission (May 20, 2013).

DMP Memorandum, Implementation and Documentation of Interagency and Intra-agency Reimbursable Agreements, 07 Feb 2020.

USACE Interagency and International Services (IIS) website link:

<http://www.usace.army.mil/Missions/Military-Missions/Interagency-International-Support/>

CEMP-CN agreements database:

<https://cops.usace.army.mil/sites/iis/MOA/Forms/dbgrouporg.aspx>

Model Agreements website link:

<https://cops.usace.army.mil/sites/IIS/pages/ModelAgreements.aspx>

SUMMARY of CHANGE

ER 1140-1-211

United States Army Corps of Engineers (USACE)

Support for Others: REIMBURSABLE SERVICES

This administrative revision, dated 31 January 2023—

- Clarifies that this regulation does not apply to services provided to other stakeholders and agencies related to, or affecting, authorized Civil Works studies and projects
- Clarifies that certain authorities (31 U.S.C. 6505 and 10 U.S.C. 7036(e)) may not be used to accept funds to undertake planning, engineering and design, construction, or other activities related to, or affecting, Civil Works projects
- Updates the boundaries applicable to Environmental Services support to others.
- Provides additional guidance for approvals of General Terms and Conditions agreements in G-Invoicing.