

CERM-F

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

*ER 37-1-26

Regulation
No. 37-1-26


03 August 2020

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."
2. Applicability - This regulation applies to all HQUSACE elements and USACE Commands.
3. Distribution - Approved for public release; distribution is unlimited.
4. Records Management (Record Keeping) Requirements. Records management requirements for all record numbers, associated forms, and reports required by this regulation are included in the Army's Records Retention Schedule – Army (RRS-A). Detailed information for all record numbers, forms, and reports associated with this regulation are located in the RRS-A at <https://www.arims.army.mil>.

FOR THE COMMANDER:

Appendix


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*This regulation supersedes ER 37-1-26 dated 31 August 2001

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Summary of Change

ER 37-1-26

United States Army Corp of Engineers (USACE)

Financial Administration Issuance and Acceptance of Project Orders

This administrative revision, dated 3 August 2020—

- Provides further clarification that project orders must be limited to defense purposes and must be placed by a DoD entity and accepted for performance by a DoD-owned establishment. Additionally, a project order must be funded with military appropriations only (no civil).
- Requires that all project orders must be reviewed by local Counsel and Resource Management offices before being accepted. The reviews must be documented.
- Requires that all project orders sent to ERDC from other USACE districts/centers must be reviewed by the HQUSACE Finance & Accounting (CERM-F) before the order can be accepted.
- Provides further clarification that project orders generally are not appropriate for Real Estate work unless it is inseparable and an integral part of an engineering and construction related product or service.
- Revises requirement that project orders must be executed on Department of Treasury, Bureau of Fiscal Service (FS) Forms 7600A and 7600B. However, until such time as USACE stakeholders are able to transfer and USACE is able to accept funding within G-Invoicing using FS Form 7600B, USACE entities may use DD Form 448, Military Interdepartmental Purchase Request (MIPR) to transfer and accept funds under a project order. It is USACE preference to use both the FS Form 7600B and the DD Form 448, MIPR wherever possible.
- ENG Form 6125 located in Appendix A replaces previous checklist. ENG Form 6125 is designed to assist USACE Commanders with the issuance and acceptance of project orders.

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3. Distribution - Approved for public release; distribution is For Official Use Only (FOUO)
4. References
 - a. Section 6307 of Title 41, United States Code,
[https://uscode.house.gov/view.xhtml?req=\(title:41%20section:6307%20edition:prelim\)](https://uscode.house.gov/view.xhtml?req=(title:41%20section:6307%20edition:prelim))
 - b. Section 1501 of Title 31, United States Code,
[https://uscode.house.gov/view.xhtml?req=\(title:31%20section:1501%20edition:prelim\)](https://uscode.house.gov/view.xhtml?req=(title:31%20section:1501%20edition:prelim))
 - c. Section 1502(a) of Title 31, United State Code,
[https://uscode.house.gov/view.xhtml?req=\(title:31%20section:1502%20edition:prelim\)](https://uscode.house.gov/view.xhtml?req=(title:31%20section:1502%20edition:prelim))
 - d. DoD FMR Vol. 11A, Chapter 2,
https://comptroller.defense.gov/Portals/45/documents/fmr/Volume_11a.pdf
 - e. ER 5-1-11, USACE Business Process,
https://www.publications.usace.army.mil/Portals/76/ER_5-1-11.pdf?ver=2019-05-02-093141-910
 - f. CECC-G Memorandum, Subject: Use of Great Lakes Restoration Initiative Funding to Place Project Orders, (22 January 2019),
[https://cops.usace.army.mil/sites/RM/FAPolicy/Shared%20Documents/Policy%20Archive/FY%202019/2019-31%20Enclosure%20-%20CECC-G%20GLRI%20Project%20Order%20Legal%20Opinion%20\(22%20JAN%202019\).pdf](https://cops.usace.army.mil/sites/RM/FAPolicy/Shared%20Documents/Policy%20Archive/FY%202019/2019-31%20Enclosure%20-%20CECC-G%20GLRI%20Project%20Order%20Legal%20Opinion%20(22%20JAN%202019).pdf)
 - g. CERM-F (2015-03), USACE Project Order Authority, (10 March 2015),
<https://cops.usace.army.mil/sites/RM/FAPolicy/Shared%20Documents/Policy%20Archive/FY%202015/2015-03%20USACE%20Project%20Order%20Authority%2010Mar%202015.pdf>
 - h. CERM-F (2019-31), Customer and Purpose Requirements for Project Orders, (25 February 2019),
<https://cops.usace.army.mil/sites/RM/FAPolicy/Shared%20Documents/Policy%20Archive/FY%202019/2019-31%20Customer%20and%20Purpose%20Requirements%20for%20Project%20Orders%20.pdf>
 - i. CERM-F (2019-52), Termination of Corps-to-Corps (C2C) Military Interdepartmental Purchase Requests (MIPRs), (30 September 2019),
<https://cops.usace.army.mil/sites/RM/FAPolicy/Shared%20Documents/Policy%20Archive/FY%202019/2019-52%20Termination%20of%20C2C%20MIPRS.pdf>

5. Background

a. Section 6307 of Title 41 United States Code provides that, “An order or contract with a Federal Government-owned establishment for work, material, or the manufacture of material pertaining to an approved project is deemed to be an obligation in the same manner that a similar order or contract placed with a commercial manufacturer or private contractor is an obligation. Appropriations remain available to pay an obligation to a Federal Government-owned establishment just as appropriations remain available to pay an obligation to a commercial manufacturer or private contractor.” Orders under this authority are commonly called “project orders”. A project order, when appropriate, can be a useful tool for the delivery of a product or service when all of the requirements in this ER and Reference 4.d. are met.

b. Project orders must be limited to defense purposes and must be placed by a Department of Defense (DoD) entity and accepted for performance by a DoD-owned establishment that has been given the authority to operate a reimbursable program. Project orders must utilize military appropriations only.

c. The project order must serve a bona fide need that exists in the fiscal year in which the project order is issued and be for work that is not severable between fiscal years. The work must result in an identifiable engineering and construction related entire, non-severable end-product such as a design, survey, or report; not a level of effort. Project orders generally are not appropriate for Real Estate work unless it is inseparable and an integral part of an engineering and construction related product or service. Refer to paragraph 020509 of Reference 4.d. for a further explanation of work that is and is not appropriate under a project order.

d. Just like contracts with a private entity, project orders must have a definitive scope of work, a definitive time for completion, and funds to cover all costs associated with the delivery of the entire, non-severable end-item ordered, including fixed-price orders. In particular, the scope of work under a project order must be specific, definite, and certain so as to satisfy the obligation recording requirements of Reference 4.b. Orders containing vague or generic scopes of work or scopes of work that are contingent on a future event and/or further input from the stakeholder are not permissible as they do not satisfy basic fund obligation requirements.

e. Project orders are subject to the same fiscal limitations that are contained within the appropriation from which they are funded and performance dates must not extend beyond the cancellation period of the issuing source appropriation used. Project orders may be modified to accommodate new or additional work so long as proper funding is available and the new work otherwise meets the general conditions governing issuance and acceptance of project orders. Originally cited appropriations that have expired are available only for increases caused by within-scope changes to the original order and legitimate price changes requiring obligation adjustments. Any out-of-scope modifications must be funded with appropriate funding available for new obligation at the time the modification is executed.

f. Project orders must be executed on Department of Treasury, Bureau of Fiscal Service (FS) Forms 7600A and 7600B. However, until such time as USACE stakeholders are able to transfer and USACE is able to accept funding within G-Invoicing using FS Form 7600B, USACE entities may use DD Form 448, Military Interdepartmental Purchase Request (MIPR) to transfer and accept funds under a project order. It is USACE preference to use both the FS Form 7600B and the DD Form 448 MIPR wherever possible. The parties still must complete FS Form 7600A as required under Reference 4.d.

g. To ensure compliance with all project order requirements, multiple project orders cannot be included on the same FS Form 7600B/DD Form 448. Each FS Form 7600B/DD Form 448 must only contain one entire, non-severable end-item. If a stakeholder desires to order multiple entire, non-severable end-items under the project order authority, a FS Form 7600B/DD Form 448 should be prepared for each such end-item and the parties must ensure that each order satisfies all project order requirements.

h. Project orders must be financed fully with funding current (available for new obligation) at the time the project order is issued and accepted.

i. The carrier appropriations must be Military Construction, Army – 21_2050, Operation and Maintenance, Army – 21_2020, or Research, Development, Test and Evaluation, Army – 21_2040.

j. Project orders may only be accepted on a reimbursable basis. Accepting project orders on a direct fund cite basis is prohibited.

k. All project orders must be reviewed by local Counsel and Resource Management offices. The reviews must be documented.

6. Accepting Project Orders. USACE activities will accept project orders under the conditions set forth in this regulation and Reference 4.d. using the below appendix as a guide. Once accepted, a project order will remain active until the work is completed and final payments are received. Project orders will not be used merely to extend the availability of an appropriation.

a. It is essential that the performing activity responsible employee discuss with the stakeholder/ordering activity the manner in which a project will be financed before developing a Project Management Plan (PMP) according to reference 4.e. and prior to acceptance of the project order from the stakeholder.

b. USACE activities may only accept a project order when the substantive work will be performed using that activity's in-house resources. Reference 4.d. explains "substantive" as meaning that the performing activity must incur in-house costs of not less than 51 percent of the total costs attributable to rendering the work or service ordered. This minimum standard must be met by the USACE activity accepting the project order. For example, if District "A" receives a

project order for \$100,000 to produce an environmental assessment of a parcel located on an installation, it must incur costs of at least \$51,000 in internal USACE district resources (i.e., in-house labor and overhead costs) in its efforts to execute the project. If desired, District "A" may choose to accomplish the remaining 49 percent, or \$49,000, of the project order by requesting support from another USACE activity, private industry, its own in-house resources or any combination thereof. If the above conditions are met, and the other requirements of this regulation and Reference 4.d. are otherwise satisfied, the order can be accepted as a project order. Cross charge labor from other USACE districts cannot be used to achieve the 51 percent requirement.

c. With the exception of the Engineer Research Development Center (ERDC), project orders can only be accepted by a performing district or center when requested from other DoD (non-USACE) activities. ERDC may accept project orders from other USACE districts and centers, but only for engineering research, development, test, and evaluation (RDT&E) services that are direct funded by the district/center (i.e. a district/center cannot execute a project order with ERDC using funding from a reimbursable agreement with a third party). Project orders sent to ERDC from other USACE districts/centers must be approved by the HQUSACE Finance & Accounting (CERM-F) before being accepted.

d. Orders accepted by ERDC will be limited to engineering RDT&E services. Orders accepted by the Army Geospatial Center will be limited to interpretation of geospatial data, development of geospatial systems and products, and direct geospatial support to warfighters. The Huntsville Engineering and Support Center (HNC) may only accept project orders for specialized technical engineering services performed within the purview of its specific mission assignments.

e. Reimbursable agreements solely for the review of Architect-Engineer Design services or solely for supervision and administration of construction cannot be financed as project orders.

f. A project order accepted by one USACE activity cannot be brokered to another USACE activity except if it goes toward the 49 percent requirement as noted in paragraph 6.b. above. This is because a contractual relationship cannot exist within the chain of command. When production of a product or service needed to fulfill the terms of a project order makes it necessary for a non-substantial portion of the work (i.e., no more than 49 percent of the total order cost) to be transferred to other USACE activities, the USACE activity originally receiving the order cannot use a project order to send such non-substantial portion of the funds to another USACE activity. Instead the activity originally receiving the order must use other legitimate means for handling distribution of funds such as cross charge labor or repositioning process. The repositioning process is described in Reference 4.i.

g. USACE activities may only accept a project order when they have the capability to initiate work promptly. The term "promptly" means initiating in-house effort within 90 days after acceptance of the order. Note that a contract obligation is not proper evidence of work being initiated. The stakeholder will be notified immediately and the order cancelled if work has not commenced within 90 days. A stakeholder can terminate a project order for non-execution or default at any time.

7. Issuing Project Orders

a. District and Center Commanders may issue project orders only to DoD (non-USACE) establishments that are authorized to operate reimbursable programs, for engineering and construction products and services, or to ERDC but only for RDT&E services. All of the terms and conditions set forth in this regulation and Reference 4.d. must be met. Project orders must be issued on appropriate forms, as described in paragraph 5.f.

b. HQUSACE and MSC Directors/Chiefs may not issue project orders.

c. ERDC may use its direct funds to issue project orders for RDT&E services to DoD (non-USACE) establishments that are authorized to operate reimbursable programs.

d. Each project order must specify whether it is on a cost reimbursement basis or fixed-price basis. Refer to paragraph 020702 of Reference 4.d. for fixed-price and cost reimbursement requirements.

APPENDIX A

ISSUANCE AND ACCEPTANCE OF PROJECT ORDERS (ENG FORM 6215)

A-1. Purpose – ENG Form 6215 is a checklist designed to assist USACE Commanders with the issuance and acceptance of project orders. It is not intended to cover all management controls or alleviate USACE employees from referring to and being familiar with project order requirements and regulations. This appendix offers guidance for a checklist but districts may use their own version so long as it covers the necessary questions stated below and otherwise complies with project order requirements. ENG Form 6215 can be found at:

<https://www.publications.usace.army.mil/USACE-Publications/Engineer-Forms/>

A-2. Instructions - Before the issuance or acceptance of a project order, the test questions in ENG FORM 6215 will highlight some key management concerns for consideration to prevent misuse and/or a possible Antideficiency Act violations.

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

Print Form

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U.S. Army Corps of Engineers (USACE)
ISSUANCE AND ACCEPTANCE OF PROJECT ORDERS CHECKLIST
 For use of this form, see ER 37-1-26; the proponent agency is CERM-F.

Requirement Control Symbol
USACE-RCS-CERM-F-20-0001
AR 25-98, 6-5t

Purpose Statement: This form is designed to assist USACE Commanders with the issuance and acceptance of project orders.

Project Order Acceptance/Issuance Checklist	YES	NO	NA
1. Can a contractual relationship exist between the requestor and performer (e.g., for orders placed by USACE activities, is the order being issued either to ERDC for engineering RDT&E services only (approved by CERM-F) or to a non-USACE DoD establishment)?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
2. Is the work being ordered an entire, non-severable engineering and construction end-product?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
3. Does the project order specify in definite and certain terms the work encompassed by the order and the terms of the order (e.g., scope of work, completion date, costs)?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
4. For orders accepted by USACE activities, has the responsible employee discussed and documented the scope, timing, and costs of the work to be ordered with the stakeholder in advance?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
5. For orders accepted by USACE activities, has the responsible employee prepared a PMP for the work being presented?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
6. Does the project order fully finance the entire scope of the order and cite funds current at the time of acceptance?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
7. Is commencement of work under the order NOT contingent upon the occurrence of a future event or authorizing action by the issuing component?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
8. Is work under the order expected to commence within 90 days of execution?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
9. Will the work be substantially performed (at least 51 percent) by the accepting component's in-house resources (e.g., in-house labor)?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
10. Is the project order documented on FS Forms 7600A and 7600B (or DD Form 448 if needed) and is there only one entire, non-severable end-product per FS Form 7600B?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
11. Does the FS Form 7600B/DD Form 448 contain the following or similar certification from the issuing component: "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)"?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
12. Has the accepting component verified that the purpose of the project order(s) is not for major new construction of real property?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
13. Have the local Counsel and RM offices reviewed and concurred with the project order?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

For answers NO or NA, please provide explanation on page 2

Print Form

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Please provide explanation of either No or NA answers

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