

CHAPTER 8

PROGRAMMING, BUDGETING AND APPROPRIATIONS

8-1. Program Development.

a. General. The Corps of Engineers' annual recommendation for the Civil Works Program is submitted by the Assistant Secretary of the Army for Civil Works (ASA(CW)) to the Office of Management and Budget (OMB) for review in behalf of the President. The recommendation is prepared in HQUSACE in consultation with the ASA(CW) after review and analysis of recommendations of the division commanders. Submissions are based on principles and requirements outlined in the annual program guidance and OMB circulars. OMB places specific ceilings on overall funding, associated employment strength, and spending for the Civil Works program .

b. Agency Submission. Agencies of the Executive Branch of Government develop recommendations for the President's Program and Budget in compliance with the guidelines set forth in OMB Circular A-11, and within overall funding and spending ceilings set by OMB. The Corps publishes its own annual program guidance incorporating requirements of OMB Circular A-11 and policy and related guidance of HQUSACE and ASA(CW). Existing activities (projects, studies, programs) are reexamined to determine their validity and necessity. Each activity is rejustified as to funding, manpower requirements, and spending each time a program is prepared. The process involves assigning a priority to individual studies and projects.

c. OMB Passback. The Corps of Engineers recommended Civil Works Program is defended by ASA(CW) and HQUSACE at hearings before OMB. Following the hearings, OMB reviews and revises the recommended program in accordance with then prevailing objectives and criteria of the Administration. The program is evaluated against recommended programs of other agencies to determine its relative performance in meeting the Administration's requirements. OMB "passes back", through ASA(CW), tentative overall funding, employment, and spending allowances for programs, studies, and projects; and other guidance, as conditions warrant. ASA(CW), together with HQUSACE, reviews the OMB passback and submits one or more appeals, as warranted. Subsequently, the President's Program and Budget are prepared and submitted to the Congress, usually in February.

d. Program Defense and Congressional Hearings. Following establishment of the President's Program and Budget, the Corps prepares supporting data and defends the President's Program and Budget at hearings before the House and Senate Appropriations Committees. The Corps fully supports the President's Program and Budget. Testifying Officers do not encourage appropriations in amounts different than budgeted. Congress reviews and revises the President's Program and Budget based on then prevailing objectives of the Congress. The Congress has established a budget process and timetable for completing specific activities towards establishing the annual appropriation and revenue amounts. The Congressional Budget and Impoundment Control Act of 1974 (Public Law 93-344), as amended, principally by Title XIII (Budget Enforcement Act) of the Omnibus Budget Reconciliation Act of 1990 (Public Law 101-508), establishes these requirements.

e. Capabilities.

(1) The capability for any specific project or study is the maximum amount of funding that could be used efficiently in the fiscal year if that project or study were the first added increment over the recommended program for a given district. The capability amount does not reflect budgeting or fiscal constraints, but does reflect manpower constraints, sound engineering practice and the timing of funds availability. If a district has the capability to initiate or increase funding for any study or project in addition to the basic program, it normally would have a capability to initiate or increase any other study or project, unless there are specific factors justifying a zero capability or lack of increase.

(2) Capability amounts may be released to anyone but only in response to a specific request. Capability amounts are not volunteered. They are expressed in accordance with formally specified language. Part of that language notes that while the Corps can use additional funds on individual projects and studies, offsetting reductions would be required to maintain overall budgeting objectives. (ER 11-2-240, ER 11-2-220)

f. Disclosure of Budgetary Information. All budgetary data, such as the budget recommendations of the district commanders, the division commanders, the Chief of Engineers, and the Secretary of the Army are of a confidential nature. These data are not to be released outside of the Department of the Army, except in response to specific questions from Congressional Committee members and staff during official testimony on the President's Budget requests. When all hearings on the President's Program and Budget have been completed by the Appropriations Committees of Congress, disclosure is then only in response to a written request from a Member of Congress to the Director of Civil Works. The President's Budget amounts are not disclosed until after the budget message is presented to the Congress. In those cases where OMB releases budget amounts to congressional committees prior to presentation of the budget message, those amounts may be discussed with members and staff of those committees only. Budgetary records may be disclosed to the public, if otherwise appropriate, upon request pursuant to the Freedom of Information Act following the end of the fiscal year to which such information pertains. (ER 11-2-240, ER 11-2-220, ER 360-1-1)

8-2. Appropriations.

a. General. The Corps policy is to allocate and use appropriated funds as closely as practicable in accordance with the program presented to the Congress, including any modifications by the Congress in its action on the Appropriations bill. Allowances for surveys and projects agreed to by the conferees at the time of passage of the annual Energy and Water Development Appropriations Bills are referred to as appropriations, even though these amounts are subject to reductions when making final allocations to district commanders. The reduction is necessary to distribute an overall Appropriation Title reduction for "savings and slippage" and other undistributed reductions applied by Congress to the total of the individual allowances.

b. Deferral and Rescission Actions Under Public Law 93-344.

(1) Deferrals. Deferrals are the withholding or delaying of obligation or expenditure of budget authority provided for projects or activities. Deferrals also include any other type of Executive action or inaction which effectively precludes the obligation or expenditure of budget authority. Whenever the President, the Director of OMB, the head of any department or agency of the United States, or any other officer or employee of the United States proposes to defer any budget authority provided for a specific purpose or project, the President shall transmit to the House of Representatives and the Senate a special message. A deferral may not be proposed for any period of time extending beyond the end of the fiscal year in which the special message proposing the deferral is transmitted to the House and the Senate. Any amount of budget authority proposed to be deferred shall be made available for obligation if either House of Congress passes a resolution disapproving such proposed deferral. Otherwise, the funds proposed for deferral become available at the start of the next fiscal year or on the earlier date specified in the deferral message.

(2) Rescissions. Rescissions are the permanent withdrawal of funding authority because such authority is not required to carry out the full objectives and scope of the appropriations concerned. A rescission differs from a deferral in that there is no intent ever to spend the funds being proposed for rescission. In effect, it is a de-appropriation. A rescission message to Congress is required whenever the President determines that all or part of any budget authority will not be required to carry out the full objectives or scope of programs for which it is provided or that such budget authority should be rescinded for fiscal policy or other reasons (including the termination of authorized projects or activities for which budget authority has been provided), or whenever all or part of budget authority provided for only one fiscal year is to be reserved from obligation for such fiscal year. The President is required to transmit to both Houses of Congress a special message. Congress must pass a resolution within 45 days for a rescission to be implemented.

c. Reprogramming.

(1) The Appropriations Committees have delegated to the Chief of Engineers the authority to reprogram funds among projects in the construction category, not to exceed 15 percent of the amount available for obligation to a project for any fiscal year, including the Conference allowance plus the unobligated balance at the beginning of the fiscal year. An exception to the percent limitation permits the reprogramming of up to \$300,000 for projects on which the amount available for the fiscal year is \$2,000,000 or less. A second exception permits the reprogramming of up to \$5,000,000 for settled contractor claims, accelerated contractor earnings, or real estate deficiency judgments. Reprogramming beyond these limits must be coordinated with the Appropriations Committees. Funds cannot be reprogrammed from one appropriation account to another without an act of Congress such as a supplemental appropriation. (ER 11-2-201)

(a) Surveys and Preconstruction Engineering and Design reprogramming are approved on a different basis. The minimum reprogramming authority is \$25,000 in any case. Where existing allowances equal or exceed \$25,000, the reprogramming authority is 100 percent up to \$50,000 and 25 percent of the increment over \$50,000, not to exceed a total of \$150,000.

(b) Reprogramming within the above cited limits is made only to those projects and surveys which have previously received an approved allocation through the budgetary process.

(c) Unless specifically limited by Congress, reprogramming between operations and maintenance items is without limit and is approved on a case-by-case basis considering the urgency, justification, and availability of funds.

(2) District and Division Commanders Authority. Within the reprogramming authorities of the Commander, USACE, division and district commanders have been delegated authority to reprogram, within limits prescribed by HQUSACE, to optimize program progress within Administration and Congressional guidelines. (ER 11-2-201)

d. Overprogramming. Overprogramming is the establishment of progress goals slightly higher than possible by use of then available funds. For high priority activities, division commanders are encouraged to prepare advance plans for application of additional funds, should such funds become available for reprogramming due to unanticipated slippages in other similar activities. The purpose of overprogramming is to provide better utilization of current year funds and to reduce carryovers of unobligated and unexpended balances. Overprogramming of activities must be consistent with anticipated funding in the following fiscal year. (ER 11-2-240)

8-3. Budget Year New Starts. The Corps budget recommendation to OMB each year includes a separate section of the budget memorandum which identifies each new start in many subprograms. These include reconnaissance studies, preconstruction engineering and design, construction of specifically authorized projects, major rehabilitation of federally maintained projects, reconstruction of non-Federally maintained projects, and large Revolving Fund items, such as dredges. Also considered under the Other New Starts category are separable elements of continuing construction projects, deficiency corrections, resummptions of construction, and initiation of construction of previously funded new starts. Current budget procedures involve a joint effort of the staffs of the Chief of Engineers and ASA(CW) in developing criteria for selection of each category of new starts to be recommended to OMB for inclusion in the President's Budget. These criteria are published each year in the budget guidance for the year. The selection is made so as to fit, together with the continuing program, within the budget ceiling which OMB had established for the budget year.

8-4. Classification of Projects. The inventory of uncompleted authorized projects is divided into three categories, "Active," "Deferred," and "Inactive." (ER 11-2-240)

a. Classification Criteria.

(1) "Active" Category. Projects considered to be necessary and economically justified; engineeringly feasible without requiring modification of the authorized plan beyond the discretionary authority of the Chief of Engineers; generally supported by local interests; and with no anticipated major problems of compliance with requirements of local cooperation.

(2) "Deferred" Category.

(a) Projects for which a restudy is necessary to determine whether they are economically justified.

(b) Projects not opposed by local interests, but for which local interests are currently unable to furnish the required cooperation.

(c) Projects whose authorized plan could be significantly affected by an authorized survey investigation and, therefore, should not be undertaken pending the outcome of the survey and Congressional action based thereon.

(3) "Inactive" Category.

(a) Authorized projects with obvious lack of economic justification and for which it is apparent that a current restudy would not develop an economically justified plan;

(b) Projects which, as authorized, are not adequate to meet current and prospective needs, and which would require such substantial modifications and involve such increased costs to obtain an adequate improvement that they should not proceed without new authorization.

(c) Projects generally opposed by local interests, or for which there is no reasonable prospect that the required local cooperation will be forthcoming.

(d) Projects, or parts thereof, which have been accomplished by local interests, or another agency, or which have been superseded by another project, or for other reasons are no longer required.

b. Reclassification. Recommendations for reclassification of projects may be made by district commanders as the need develops. The division commander is the approval authority for all reclassifications to deferred or inactive. Requests for reclassification to active must be approved at HQUSACE (CECW-P). (ER 11-2-240)

8-5. Acceptance and Return of Contributed or Advanced Funds.

a. Categories.

(1) "Required Contributed Funds" are provided by non-Federal interests as specified in the authorizing project document and included in the terms of the project cooperation agreement, to be used in association with Federal funds, for the accomplishment of authorized Federal project construction work.

(2) "Non-required Contributed Funds" are gratuitously provided by non-Federal interests (i.e., there is no requirement to contribute, no repayment, and no credit) to be used, in association with Federal funds, for accomplishment of portions of an authorized Federal project (i.e., a project which has been authorized by a Water Resources Development Act or similar Act, or authorized for planning and design by House and Senate resolutions).

(3) "Contributed Funds, Other" are provided by non-Federal interests to be used, in association with appropriated Federal funds,

for constructing a special feature of an authorized Federal project desired by non-Federal interests, for locally desired betterments, or for improvements intended to be accomplished by non-Federal interests with their own resources.

(4) "Advanced Funds" are non-Federal funds contributed in the absence of Federal project funding to finance Federal construction of all or part of an authorized Federal project.

(5) "Other Non-Federal Funds" are non-Federal funds received for acquiring lands, easements, and rights-of-way or performing relocations required to be provided by and which are the obligation of non-Federal interests pursuant to the terms of project cooperation agreements (PCAs), or for design and/or construction of facilities physically related to the authorized Federal project and desired by the non-Federal sponsor, including betterments.

b. Acceptance. District commanders are authorized to accept "Required Contributed Funds" once a PCA has been executed. District commanders are authorized to accept "Other Non-Federal Funds" pursuant to the terms of relocation agreements or agreements with non-Federal interests as provided in PCAs. Action by ASA(CW) is required prior to acceptance of "Non-required Contributed Funds," "Contributed Funds, Other," and "Advanced Funds." "Non-required Contributed Funds" and "Contributed Funds, Other" cannot be accepted until Federal funds have been appropriated for the work to which they relate and until informing the Appropriations Committees of the Congress of such proposed action. The authority to accept "Non-required Contributed Funds" and "Contributed Funds, Other" in the amount of \$2,000,000 or less may be exercised by district commanders for certain actions under the Operations and Maintenance (O&M) Program (See paragraph 10 of ER 1165-2-30). The authority to accept "Advanced Funds" shall be exercised by district commanders only after prior approval by HQUSACE, the ASA(CW), OMB, and notification of the Appropriations Committees of the Congress prior to negotiation of the agreement for advanced funds. (See paragraph 11 and Appendix A of ER 1165-2-30)

c. Return. Action by ASA(CW) is required for the return (refund or repayment) of all "Advanced Funds" contingent upon availability of the funds. Authority for return of excess or unused portions of contributed funds is normally granted concurrently with approval for acceptance. District commanders are authorized to return unused portions of "Required Contributed Funds", "Non-required Contributed Funds," "Contributed Funds, Other," and "Other Non-Federal Funds" as part of the final settlements of non-Federal cooperation requirements and relocation agreements. (ER 1165-2-30, ER 37-2-10)

d. Time and Manner of Payment. Unless otherwise specifically set out in authorizing documents or general legislation, contributions will be received prior to initiation of construction of facilities to which they apply. In the event the project is programmed for accomplishment over a considerable period of time, escrow arrangements may be established. In addition, Section 40 of the Water Resources Development Act of 1974 authorized annual installment payments of "Required Contributed Funds" during the construction period. When escrow accounts are established, sufficient funds are deposited in the Federal Treasury to cover the non-Federal share of the work prior to obligation of funds. (ER 1165-2-30)

8-6. Credit or Reimbursement for Non-Federal Work on Projects. Pursuant to Section 215 of the Flood Control Act of 1968 (Public Law 90-483), as amended, ASA(CW) may execute agreements providing for credit or reimbursement to states or political subdivisions thereof for construction work undertaken at authorized projects. As provided in Section 215, reimbursement may take the form of cash repayment or crediting the non-Federal sponsor for an equivalent reduction in the project contributions the local sponsor would otherwise be required to make pursuant to a PCA for the project. In practice, the non-Federal interests will be initially compensated by crediting the value of their work against the local contributions toward the Federal project required by the governing legislation (credit cannot, however, be given against the minimum 5 percent cash contribution required for structural flood control projects). Reimbursement by a cash payment will be allowed only to the extent the value of their work exceeds the total of required non-Federal contributions against which credit may be given. (ER 1165-2-18)

a. Limits. The Section 215 authority will not be used in connection with projects authorized under continuing authorities. Use is limited to projects specifically authorized by Congress and cases that meet all of the following conditions:

(1) The work, even if the Federal Government does not complete the authorized project, will be separately useful or will be an integral part of a larger non-Federal undertaking that is separately useful;

(2) The work done by the non-Federal entity will not create a potential hazard;

(3) Approval of the proposal will be in the general public interest;

(4) Only work commenced after project authorization and execution of a Section 215 agreement is eligible for reimbursement or credit;

(5) Proposed reimbursement (credit and/or repayment) will not exceed the greater of \$5 million or 1 percent of total project costs and is limited to the amount that the district commander considers a reasonable estimate of the reduction in Federal project expenditures resulting from the construction of the project component by the non-Federal entity. (The \$5 million limitation is set by Section 224, WRDA 1996, Public Law 104-303, and the 1-percent limitation is set by Section 12, WRDA 1988, Public Law 100-676.)

b. Congressional Notification. Before negotiation of an agreement under Section 215 begins, the ASA(CW) will inform the Chairman (Senate and House), Subcommittee on Energy and Water Development, Committee on Appropriations of the proposed arrangements.

c. Timing of Reimbursement. Any reimbursement shall depend upon appropriation of funds applicable to the project and shall not take precedence over other pending projects of higher priority. (ER 1165-2-18)