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# CERP Guidance Memorandum

South Florida Water Management District – Jacksonville District, U.S. Army Corps Of Engineers

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**CGM NUMBER-REVISION: 011.02**

**EFFECTIVE DATE: 04/28/2003**

**CATEGORY: General**

**SUBJECT: Federal Advisory Committee Act Requirements For CERP Teams**

## **DESCRIPTION:**

This memorandum provides guidance for conducting CERP Team meetings as further described herein that are open to the public to avoid any inconsistency with the requirements of the Federal Advisory Committee Act (FACA), Pub. L. No. 93-502, 88 Stat. 1561 (1974) (codified as amended at 5 U.S.C. S 552 (1994)). This memorandum supersedes any other guidance inconsistent herewith.

The Federal Advisory Committee Act defines an advisory committee as “any committee, board, commission, council, conference, panel, task force, or other similar group, or any subcommittee or other subgroup thereof . . . which is . . . established or utilized by one or more agencies, in the interest of obtaining advice or recommendations for the President or one or more agencies or officers of the Federal Government . . .”[ 5 U.S.C. App. II Section 3(2)(A)-(C)].

For the purpose of this guidance, the term "CERP Team" includes any Project Delivery Team (PDT), the Design Coordination Team (DCT), RECOVER teams, and any other intergovernmental or interagency CERP team. CERP Teams are not advisory or decision-making groups, nor do they make recommendations. CERP Teams are focused on implementation of policy, not the formulation of policy. CERP Team members support the Corps and Local Sponsor’s Program or Project Managers, as applicable, by performing technical staff functions such as: information and fact-finding consultation; identification of alternatives; evaluation and comparison of alternatives through identification of positive, neutral and negative impacts of each alternative. Interagency participation is encouraged to take advantage of the technical skills and knowledge of other agencies.

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This document provides working level guidance to assist Project Delivery Teams in the implementation of the Comprehensive Everglades Restoration Plan (CERP) program executed between the South Florida Water Management District and the U.S. Army Corps of Engineers. The guidance does not constitute policy for either agency nor does it create authority beyond that granted to any agency member carrying out their duties. Guidance reflecting agency policy on subjects listed in the guidance memoranda section of the programmatic regulations for CERP will be issued when the final programmatic regulations are adopted, using the process stated in the regulations.

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It is important to emphasize that any recommendations or decisions to be made under CERP are made by the Corps and Local Sponsor through their respective organizational chains of command. For example, Project Managers for the Corps and Local Sponsor report to their respective agencies and are responsible, with the support from the PDT, for the successful implementation of their assigned CERP project, including the development of design work products and the subsequent construction of the project. Similarly, Program Managers for the Corps and Local Sponsor report to their respective agencies and are responsible for the successful implementation of all CERP Projects with the support from the DCT.

Consequently, CERP Teams do not function as FACA committees.

## **GUIDANCE:**

Notwithstanding that CERP Teams do not function as FACA committees, this guidance is provided on conducting Team meetings in manner that meets a statutory exemption to FACA and to avoid creating a perception that the PDT is an advisory or decision-making body that would be subject to FACA, as follows:

- Make clear that the CERP Team members include only the federal officials and elected officers of State, local, and tribal governments (or their designated employees with authority to act on their behalf) acting in their official capacities.
  - Federal agencies shall be represented by their federal employees as opposed to contractors, as shall the local sponsor, though agencies may use contractors, as necessary. The federal agency employees and local sponsor employees, not their contractors, are the agency representatives at the meetings.
  - If any state, local or tribal elected officials intend to be represented by someone other than a full-time employee, the official shall indicate in writing that the representative is a designated employee with authority to act on their behalf. Project managers shall maintain records of representation.
- The CERP Team shall be physically distinct from the public attendants, by seating, nametags, or other measures. (Avoid a “roundtable” with members of the public

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participating as equals with agency officials.)

- The Project Managers shall avoid any verbal or written comments that imply that the CERP Team as a functional body, is providing advice or recommendations to the Corps or Local Sponsor. This is not the function of the CERP Team but rather the responsibility of individuals within each agency's chain of command.
- The CERP Team shall not engage in voting.
- Comments from the public shall be accepted in a forum that makes clear the comment is public input and not part of the interagency discussions.
- Attendance sheets shall be kept for all meetings and shall reflect whether attendees are present in their individual capacities or whether they represent an elected official, agency or organization.
- Comment periods shall be at specifically designated times, prefaced with an explanation that the group is entertaining public comment, and comment periods shall not occur with great frequency during meetings.
- Comments from the public must not turn into dialogue/Q&A with the team members.

## APPLICATION

This guidance applies to all CERP Teams operating under CERP. Further questions concerning FACA issues should be directed to the Jacksonville District, U.S. Army Corps of Engineers, Office of Counsel.

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**APPROVALS:**



**John R. (Jack) Maloy**  
Chief Executive Consultant, Water Resources  
South Florida Water Management District

DATE: 4/28/03



**Dennis R. Duke**  
CERP Program Manager,  
U.S. Army Corps of Engineers

DATE: 4/28/03

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