

**DEPARTMENT OF THE ARMY
U.S. ARMY CORPS OF ENGINEERS
INMATE LABOR PROGRAM FOR FEDERAL AND STATE/LOCAL INMATE LABOR
AT ARMY CIVIL WORKS PROJECTS**

1. Purpose. This memorandum establishes guidelines for the Department of the Army, U.S. Army Corps of Engineers (USACE) Civilian Inmate Labor Program and prescribes policies, procedures, and responsibilities for using civilian inmate labor at Army Civil Works projects.

2. References.

- a. 18 U.S.C. 4125(a)
- b. 33 U.S.C. 2325
- c. 28 C.F.R. Part 301
- d. Secretary of the Army memorandum, subject: Delegation of Authority to Establish Civilian Inmate Labor Programs at Army Civil Works Projects, dated 5 February 2020.
- e. ER 1130-2-500, Ch. 11, Project Operations—Partners and Support, Contributions Program (27 December 1996).
- f. EP 1130-2-500, Ch. 11, Project Operations—Partners and Support, Contributions Program (27 December 1996).

3. General.

a. The Secretary of the Army has delegated to the Assistant Secretary of the Army for Civil Works (ASA(CW)) the authority to establish civilian inmate labor programs for use of Federal and state/local inmate labor at Army Civil Works projects and the responsibility for providing overall program direction (reference 2.d.).

b. Title 18 U.S.C. 4125(a) provides that the services of U.S. civilian inmates may be made available to perform work set forth under terms, conditions, and rates mutually agreed upon, for constructing or repairing roads, clearing, maintaining and reforesting public lands, building levees, and constructing or repairing any other public ways or works financed wholly or in major part by funds appropriated by Congress.

c. Title 33 U.S.C. 2325 authorizes the Secretary of the Army to accept contributions of services from persons, including governmental entities but excluding the project sponsor, in connection with carrying out a water resources project for environmental protection and restoration of a water resources project for recreation. The acceptance of civilian inmate labor services from state and local correction facilities meets the statutory requirements of 33 U.S.C. 2325.

d. Inmates will perform services acceptable under 18 U.S.C. 4125(a) or 33 U.S.C. 2325, as applicable. Typical work projects civilian inmates may perform pursuant to 18 U.S.C. 4125(a) or 33 U.S.C. 2325 may include, but not be limited to, providing repair and maintenance work such as mowing, painting, carpentry, cutting trees, landscaping, planting, trash pickup, custodial work, and other similar type work.

e. Civilian inmates will perform tasks for which funding is not available and therefore would not normally be performed. Civilian inmate labor will not replace authorized civilian positions, nor impair service contracts. Civilian inmates will not interfere nor conflict with projects for which resources have been allocated and funds made available for accomplishment by contract or civilian labor force.

f. Federal civilian employees will not be displaced by civilian inmates or inmate labor details.

g. Only minimum security community custody inmates are authorized to perform tasks at Army Civil Works projects. These inmates are those convicted of nonviolent crimes who have been judged by the established correction facility standards to represent no threat to the population at the project and who are not considered escape risks.

h. Civilian inmates will not be used in any manner inconsistent with this plan or any other law and regulation. All laws of the United States and rules of the corrections facility relating to, or in any way affecting, the imprisonment, transfer, control, discipline, escape, or release of inmates shall apply to all inmates selected.

i. The civilian inmate labor program will operate in such a manner that it will not interfere with the operation and/or mission of the project, as determined by the District Commander.

j. District Commanders will ensure that the provisions of this memorandum are followed by personnel within their respective organizations.

4. Governing provisions.

a. Execution of civilian inmate labor programs will be limited to designated work, latrine, eating, and vending areas.

(1) District Commanders will establish areas where civilian inmates are prohibited from entering, and any other restrictions that are deemed necessary. These areas will be outlined in the memorandum of agreement between the Army and the corrections facility. The intent is to preclude fraternization between inmates and civilians and to ensure safety at all times.

(2) Civilian inmates will not work in recreation centers or similar facilities except when these facilities are closed to the public or when the likelihood of inmate contact with the general public is remote.

(3) Inmates will not work in areas where medical supplies (drugs, syringes, etc.) are stored unless the medical supplies are secured and the inmates are under constant supervision.

b. Nominal costs. The program must be without direct labor cost (for inmate labor itself) or expense to the Army except for nominal costs for equipment, materials, and supplies used in inmate labor details, program administration, and other similar costs.

(1) Inmates are not Army employees and are not regarded as such. Inmates must not be referred to as employees. They will not be paid from Army funds nor receive any personal or private gratuity for work accomplished or services rendered.

(2) District Commanders have authority to determine and absorb nominal costs associated with their civilian inmate labor programs for equipment, materials, and supplies used in inmate labor details, program administration, and other similar costs.

(3) District Commanders will not reimburse the corrections facility in any form for inmate labor.

(4) Inmates will not operate Army vehicles.

(5) The Army will not transport inmates to and/or from corrections facilities or work sites. Corrections facility personnel are responsible for all inmate transportation.

(6) Army personnel will provide all necessary equipment, tools, materials, and supplies to the corrections facility supervisors. The corrections facility supervisors will enforce inventory and control of equipment, tools, materials, and supplies provided by the Army that are not consumed in the work performed by inmates.

5. Participants. Only inmates classified as minimum level security will participate in the inmate labor program. Corrections facilities will be responsible for ensuring that only minimum level security inmates participate in the inmate labor program and for selecting inmate participants. Inmates selected for participation on inmate labor details will be suitable for work projects to be accomplished on Army work sites, giving due regard to their safe custody, their mental and physical competence, and their suitability for work programs within the Army.

a. The corrections facility Warden/Administrator/Sheriff will make inmate labor detail assignments in coordination with the District Commander. The number of inmates and inmate labor details may be increased or decreased as determined necessary by the District Commander.

b. Memorandums of agreement with the corrections facility will state that the District Commander will direct the removal of any inmate deemed undesirable or detrimental in any way to the mission, civilian employees, or the public. Inmates who do not perform to the satisfaction of Army personnel while participating in inmate labor

details will be reported to the corrections facility and removed from the inmate labor program.

c. Under no circumstances will the following types of inmates be permitted in the inmate labor program:

(1) A person in whom there is significant public interest as determined by the corrections facility in coordination with the District Commander.

(2) A person who is or has been a significant management problem in their current corrections facility or in another corrections facilities.

(3) A principal organized crime figure.

(4) An inmate convicted of a sex offense or whose criminal history includes such conduct.

(5) An inmate convicted of a violent crime or whose criminal history includes such conduct.

(6) An inmate convicted of the sale of or intent to distribute illegal drugs who held a leadership position in any drug conspiracy or has been involved with drugs within the last three years while incarcerated.

(7) An escape risk.

(8) An inmate who poses a threat to the general public as determined by the corrections facility in coordination with the District Commander.

(9) An inmate convicted of arson.

(10) An inmate declared or found insane or mentally incompetent by a court, administrative proceeding, physician, or under treatment for a mental disease or disorder.

d. Inmates will be medically cleared for labor detail status with no medical or psychological restrictions.

e. Inmates will be satisfactorily participating in or have completed financial obligations under the Inmate Financial Responsibility Program.

f. Inmates will have no detainers or pending charges.

g. Inmates will receive Central Inmate Monitoring clearance from the corrections facility, if necessary.

h. Inmates will have no prior personal or contractual relationship with the Army or Army personnel.

i. The Warden and/or Administrator of the corrections facility is charged with the responsibility and accountability for the control and custody of inmates on labor details at all times. Any use of Army personnel to guard, control, discipline, or otherwise exercise custodial supervision is prohibited.

j. Army personnel will not become involved directly with the control and custody aspects of the correction facility's operation of inmate labor details, and in no event will Army personnel act as, nor for, corrections facility supervisors of inmates. Army district personnel, in coordination with corrections facility supervisors, will be responsible for the daily technical oversight of inmates. These oversight functions include training inmates to perform assigned tasks and performing quality assurance checks. Army personnel will communicate any observations, recommendations, or technical oversight to the inmates or to the corrections facility supervisors.

k. Inmates may purchase soft drinks, food stuffs, and candy bars from designated vending areas. However, inmates will not be given gifts, food stuffs, or money in any amount by any Army personnel or the general public.

6. Property Damage. Generally, any interference with or damage to property under control of the Army, incident to the execution of inmate labor details, will be promptly corrected by the corrections facility as directed by the District Commander or his delegate. However, the District Commander has the prerogative to decide first to thoroughly investigate the incident prior to directing the corrections facility to correct the situation; if the District Commander opts to first investigate the incident, both Army and corrections facility personnel will participate in the investigation.

a. If it is determined that the damage or interference resulting in a loss was caused by an inmate or corrections facility personnel, both the District Commander and the corrections facility superintendent will be briefed on the findings, and the District Commander may—

(1) Request the corrections facility to promptly correct the situation.

(2) Direct that the inmates and/or corrections personnel be removed from the property;

(3) Direct that the inmate labor program with the corrections facility be discontinued; or

(4) Decide on any combination of these options. This does not include damages, breakage, or breakdowns occurring to equipment or other property due to normal use, or poor/unsafe operating condition.

b. District Commanders should resolve property damage issues on a case-by-case basis.

7. Safety.

a. Inmate accident compensation procedures set forth at Section 301, Title 28, Code of Federal Regulations (28 C.F.R. Part 301) apply to work performed by federal civilian inmates. The Federal Bureau of Prisons shall be responsible for any federal actions required under part 301, unless otherwise required by law. The procedures set forth in 28 C.F.R. Part 301 do not apply to state or local corrections facilities.

b. Corrections facilities have their own safety program and must provide safety training to all civilian inmates participating in the inmate labor program. Inmate training must include safety instructions as required by the Occupational Safety and Health Administration (OSHA) in 29 C.F.R. Part 1910 which establishes specific training requirements and places the responsibility for such safety training on the employer (the corrections facility). Upon request by the corrections facility, the Army may assist the corrections facility in providing necessary OSHA training.

c. Corrections facilities will provide inmates routine medical care, regular standardized work clothing not resembling known military or civilian uniforms, safety shoes, and daily meals. The corrections facility is responsible for providing emergency medical care, including transportation, and first aid. In the case of a medical emergency, call 9-1-1.

d. The Army may provide necessary safety equipment for inmates such as goggles, hard hats and so forth or require that the corrections facility provide such equipment. Districts providing this equipment will ensure that the equipment is in safe and serviceable conditions and that proper accountability procedures are followed.

e. Army personnel will provide safety training to inmates and corrections facility personnel, in a group setting with corrections facility supervisors present, specific to the type of work being performed. Such safety training will also cover accident and/or hazardous working conditions reporting.

8. Security.

a. The corrections facility retains control and custody of the civilian inmates at all times. The corrections facility shall be responsible for inmate conduct and discipline.

b. Inmates will abide by the rules, regulations, and guidelines prescribed by the ASA(CW) unless otherwise directed by a corrections facility employee as may be necessary to protect the security, good order, and discipline of civilian inmates. This includes, but is not limited to, the general maintenance of law and order and rules concerning employee on-the-job performance and conduct, and safety rules.

c. The District Commander and corrections facility shall establish prohibited/sensitive areas from which inmates will be prohibited. Inmates working in areas where classified information, personnel records, medical records, or other confidential or sensitive data is locked or secured will be under constant view by Army personnel. Inmates will not be used in areas where classified information is discussed or is in plain view. Inmates will not enter or work in recreation centers or similar facilities, except when these facilities are closed to the public. Inmates will not work in areas where medical supplies (drugs, syringes, etc.) are stored unless the medical supplies are secured, and the inmates are under constant supervision by corrections facility personnel. Inmates will not have access to or use phone lines or fax machines, cell phones, computers/computer systems (and any other restrictions the corrections facility may place on inmate use).

d. Efforts will be made to avoid inmate contact with the visiting public. To the extent practicable, inmate labor will be limited to areas not currently occupied by the visiting public.

e. Army personnel, in coordination with the corrections facility supervisors, shall be responsible for the daily technical oversight of inmates. These oversight functions include training inmates to perform assigned tasks and performing quality assurance checks. Army personnel may check on the quality of work being performed by inmates and will communicate any observations, recommendations, or technical oversight to the inmates or to the corrections facility supervisors.

f. The District Commander shall ensure that Army personnel involved with inmates are of good integrity, have no known criminal record, have no known history of drug or alcohol abuse, and have no prior nor present social or other relationship with inmates.

g. Serious incidents, that is, walkaways, escapes, riots, disturbances, and any criminal action involving inmates participating in the civilian inmate labor program will be reported to the ASA(CW).

9. Training.

a. The corrections facility will provide training and indoctrination to Army personnel in corrections facility policies and procedures in such areas as inmate discipline, staff conduct, inmate accountability, corrections facility safety, and any other training which would further the purposes and terms of a Memorandum of Agreement between the parties under this guidance. Provision of such training will be at no cost or fee to the Army.

b. Army personnel will instruct inmates daily as a group, with the corrections facility supervisors present at all times, on work safety, work tasks, work materials and supplies, use of work tools and equipment, Army measures for control and accountability of tools and equipment, and quality of work to be performed. The Army will also instruct the corrections facility supervisors separately, as appropriate, and prepare them to oversee the inmate labor.

10. Public Affairs.

a. District Commanders will develop a public affairs plan that informs the surrounding local community of the program and work projects assigned to civilian inmate labor. This will mitigate potential negative repercussions from using and having inmates present on civil works properties.

b. Press releases involving inmates will be issued only by the corrections facility, in coordination with the USACE District Public Affairs Office, as corrections facility officials are responsible for protecting the privacy and other rights of inmates. Press releases regarding the civilian inmate labor program should be coordinated with the

corrections facility superintendent. One copy of the press release will be routed through command channels to the ASA(CW).

c. Media representatives should not be allowed to interview inmates nor take photographs of inmates without the corrections facility's and USACE District Public Affairs Office specific approval.

d. Requests for interviews or photographs of inmates should be referred to the corrections facility superintendent and the USACE District Public Affairs Office.

11. Procedures for Establishing and Maintaining Civilian Inmate Labor Programs.

a. The District Commander and corrections facility superintendent will prepare a proposed memorandum of agreement, using the model agreements included as Appendix A and B of this guidance. Approval of inmate labor agreements that do not substantively deviate from the model agreements is delegated to Headquarters, USACE with the authority to re-delegate to the Division Commanders. All agreements containing substantive deviations must be reviewed and approved by the ASA(CW). Signature authority may be delegated to the District Commander, once an agreement is approved. District Commanders shall provide a copy of all executed memorandums of agreement to the Office of the ASA(CW) (OASA(CW)). All amendments to memorandums of agreement require the approval of the ASA(CW). District Counsel shall periodically review the memorandums of agreement to determine if the conditions of the document are still current.

b. The District Commander will submit written requests to corrections facilities for inmate labor support that include the following:

(1) Work location

(2) Work period

(3) Duration of work required

(4) Number of inmates required

(5) Statement of work to be performed (comprehensive enough to show the physical requirements, expertise, training, qualifications, or any other knowledge/skills inmates must possess to perform the work).

(6) Points of contact

c. District Commanders shall submit an annual report containing the following information:

(1) Summary listing work projects utilizing civilian inmates, including project duration, number of civilian inmates used on the project, number of corrections facility personnel supervising inmates assigned to each project, and number of Army personnel involved in general oversight of the program.

(2) Determination of whether the value of the inmate labor program outweighs the cost to administer the program.

(3) Synopsis of incidents involving civilian inmate labor. This includes significant events and anticipated problems.

(4) Media inquiries and responses provided.

(5) Synopsis of any complaints and/or concerns from the surrounding community regarding inmate labor, together with any action taken to resolve the complaint.

d. Any media coverage involving inmates participating in the civilian inmate program will be reported immediately to OASA(CW) and HQDA, Office of the Chief of Public Affairs, Public Communications Division. The following information will be reported: the media source (website, newspaper, social media site, radio, television); date of coverage; synopsis of report; and copies of the article and/or script.

e. District Commanders shall submit requests for further guidance or clarification to the OASA(CW) as necessary.

12. Responsibilities:

a. USACE District Commanders will:

(1) Have overall responsibility for managing and coordinating action of the civilian inmate labor program within their District area of responsibility and will establish priorities for use of all inmate labor at Army Civil Works projects within their District area of responsibility.

(2) Maintain a current list of all Army personnel within their District who are trained and certified by applicable corrections facilities to check on the quality of inmate labor being performed, provide necessary daily training related to tasks, safety, and proper use of equipment, materials, tools, and supplies for inmates working at Army Civil Works projects.

(3) Ensure all media coverage is reported to the OASA(CW) and HQDA, Office of the Chief of Public Affairs, Public Communications Division.

(4) Coordinate training for Army personnel within their District on the applicable correction facility policies and procedures in such areas as inmate discipline, accountability, correction facility staff conduct and safety. This training will be required for personnel who will monitor inmate labor or have contact with inmates.

(5) Review and approve (or disapprove) each inmate labor work project request.

b. The relevant District Public Affairs Office (PAO) will develop a plan to inform the Civil Works project staff, recreating public, and surrounding communities of the

civilian inmate labor program, projects inmates will perform, and community training regarding the presence of inmates at applicable Army Civil Works projects.

c. The relevant District Office of Counsel will review each inmate labor work project request to ensure that the work projects are within the parameters of 18 U.S.C. 4125(a) or 33 U.S.C. 2325, as applicable, and any relevant implementing regulations/guidance.

d. Project Managers that use inmate labor will:

- (1) Identify designated break and restroom areas for use by inmates.
- (2) Develop written requests for inmate labor and send them to their District Commanders for approval.
- (3) Ensure that inmates are used in accordance with guidelines and instructions provided by officials of the applicable corrections facility, Army requirements, including this guidance document, and job safety.
- (4) Keep the District Commander informed of the following:
 - (a) Any walkaway, escape, riot, disturbances or similar incident involving inmates and/or the civilian inmate labor program.
 - (b) Any criminal act by an inmate against anyone traversing the Army Civil Works project.
 - (c) Any negative media coverage concerning inmates and/or the inmate labor program.
 - (d) Accidents/injuries
- (5) Provide all materials, supplies, equipment, tools, and protective equipment for inmates in a safe and serviceable condition.
- (6) Enforce inventory and control procedures for hand tools and other equipment provided to inmates. The Program Managers shall coordinate with corrections facility supervisors who have the responsibility of ensuring accountability over equipment used by inmates.
- (7) Ensure that personnel in their organization who will be involved in the inmate labor program are of good integrity, have no known criminal record, have no known history of drug or alcohol abuse, and have no prior nor present social or other relationship with inmates.