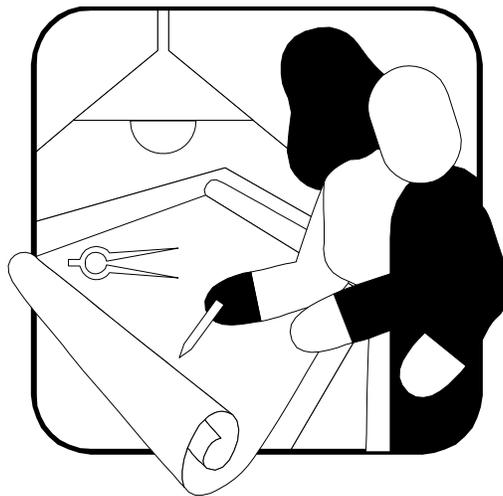




**US Army Corps
of Engineers.**

**EP 715-1-7
22 May 2007**

ARCHITECT-ENGINEER CONTRACTING



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**NOTABLE CHANGES IN OCT 2006 EDITION OF EP 715-1-7
COMPARED TO 31 JUL 2002 EDITION**

General:

1. Changed SF 255 and SF 254 to SF 330 Part I and SF 330 Part II, respectively, throughout.
2. Update of regulatory citations as needed throughout.
3. Update of Internet website addresses throughout.

Foreword:

- Para. 1.b: Added statement that EFARS 36.601-3 (S-101) requires compliance with EP 715-1-7.

Chapter 1:

- Added paragraph 1-3.e., Contractor Performance Assessment Reporting System (CPARS).
- Added paragraph 1-4.b., training courses for CPARS.

Chapter 2:

- Para. 2-1.b: Included counsel in PDT for acquisition planning.
- Para. 2-3.b: Added statement that an A-E firm is usually ineligible for participation in a design-build contract if the firm prepared the RFP.
- Para. 2-4: Updated NAICS size standards for 541320, 541410 and 541620. Clarified language regarding A-E services.

Chapter 3:

- General: Incorporated Defense Procedures, Guidance and Instructions (PGI), which includes guidance eliminated from the DFARS.
- Para.3-4.e: Indicated that counsel should be regularly included in the review of A-E synopses.
- Para. 3-5: Deleted sentence indicating that ACASS is the only authorized automated system for A-E information since A-E evaluations are now available in PPIRS and A-E qualifications in ORCA.
- Para. 3-6.a: Added statement that a contract specialist should assist A-E evaluation boards to ensure regulatory compliance.
- Para. 3-6.b: Added statement that all board members from Engineering and Construction Divisions will be registered. (See ECB 2004-2)
- Para. 3-8.e: Added new paragraph about effective conduct of board members.
- Para. 3-8.f: Added statements about protecting personal worksheets used in A-E evaluation boards and indicating that board members must not discuss the evaluation results with anyone who does not have a need to know.
- Para. 3-10.e: Added a statement and footnote (#12) concerning the ranking of firms in a selection for a multiple award contract.

Chapter 4:

- General: Changed Prenegotiation Memorandum (PnM) to Prenegotiation Objective Memorandum (POM) to be consistent with FARAS language.

- Para. 4-9: Indicated that the wage determination for location of the performing office of both the prime contractor and any subcontractors will be used.
- Para. 4-13.c(2) and 4-14.d: Indicated that profit should be allowed on all costs.
- Para. 4-14.a(2): Added statement about negotiating rates for option periods of ID contracts.
- Para. 4-18.b: Changed “minimum guarantee” to “minimum quantity” for ID contracts.
- Para. 4-20: Updated and expanded coverage on the Continuing Contract Clauses consistent with EFARS 32.705-100.

Chapter 6:

- Para. 6.1.c: Updated to reflect that evaluations should be prepared in ACASS. Firms receive automatic e-mail notification. Evaluations submitted to ACASS as “completed evaluations” still require manual notification of the firm. Evaluations may be retrieved from PPIRS.
- Para. 6.1.d: removed reference to ACASS using the 1992 version of the DD 2631.
- Para. 6-4.b: Added statement that an after-construction evaluation of an A-E that prepared a design-build RFP is not appropriate.
- Para. 6.4.c.1: added link to draft ACASS Policy Manual.
- Para. 6-4.c(2): Added a statement that the performance evaluation should not be delayed until fiscal close-out of the contract.
- Para. 6.6.b: Added statement that “unsatisfactory” or “marginal” evaluations shall not be finalized until the dispute process has been completed.
- Para. 6.7.b and 6.8.b.2: Added statement that all evaluations shall be prepared and automatically routed within the ACASS sub-module of the CPARS system. Evaluations will be electronically signed.
- Para. 6.9.c.1, 2, and 3: Modified to include process for revising evaluations within the ACASS system.
- Para. 6-10.a: Added statement that rebuttal process for marginal and unsatisfactory performance evaluations applies only to final evaluations, not interims.
- Para. 6.10.c.2: Modified to include process for the firm submitting their rebuttal to a “marginal” or “unsatisfactory” rating within the ACASS system.
- Para. 6-10.d: Eliminated elevation of the rebuttal of an unsatisfactory evaluation to the MSC commander. The district or center commander is the final authority on all evaluations.

Chapter 7:

- Para. 7-6.e: Eliminated statement and related footnote that said that P&D funds could be used to investigate and pursue A-E liability on MILCON projects. This policy was not finally adopted by CEMP-M since all DoD customers would not unanimously agree on the concept.
- Paras. 7-7.h., 7-7.l and 7-7.m. Revised to indicate that interest is not assessable until a COD is issued per the Contracts Dispute Act and FAR 32.608 and 32.610.

Appendix F:

- Several websites added, and all verified and updated as needed.

Appendix G:

- Added new example 14 indicating that cost engineering is an A-E service and cost estimating is not.

Appendix H - Revised per comments from CEMP-CE as follows:

- Deleted “design of munitions and ordnance closures in accordance with RCRA” as example projects that are typically A-E services.
- Deleted “air quality management plans” as example projects that are not typically A-E services.
- Deleted “water resources management plans” as example projects that are not typically A-E services.
- Deleted “hazardous materials management plans” as example projects that are not typically A-E services.
- Deleted “testing and management plans required by RCRA” as example projects that are not typically A-E services.
- Added “remedial design of ordnance and munitions disposal projects” as example projects that are not typically A-E services.

Appendix J – Major update by CESB, especially sections on:

- Small Business Competitiveness Demonstration Program
- Veteran-Owned Small Business and Service-Disabled Veteran-Owned Small Business Programs
- Central Contractor Registration and Dynamic Small Business Search
- Order of Precedence

Appendix M:

- Deleted example of expedited award letter.

Appendix O:

- Replaced “ACASS” with “DUNS”.
- Deleted “For ACASS Information call 503-808-4590”. There is no need to contact the ACASS center at this point in the process.

Appendix P:

- Revised page P-3 from “ACASS and other sources” to PPIRS and other sources”.
- Changed references to ACASS number to “DUNS number”.
- Deleted “For ACASS Information call 503-808-4590”. There is no need to contact the ACASS center at this point in the process.

Appendix Q:

- Revised introduction to indicate ACASS is a sub-component of the Navy’s Contractor Performance Assessment Reporting System (CPARS).
- Revised reference to other Federal agencies transmitting evaluations to ACASS to indicate other Federal agencies may use ACASS to prepare evaluations.

- Revised to indicate the ACASS number was replaced by the DUNS number, effective October 2005.
- Revised paragraph 3.b discussion of data flow in the old system, and reference to the modernized system. Inserted explanation of data flow in the modernized ACASS system. Included information about OMB mandate for source selection officials to use PPIRS when retrieving evaluations to be used for source selection purposes.
- Revised paragraph 3.c to indicate how the SF 330 part II is submitted to ORCA and transferred to ACASS.
- Revised paragraph 3.d to remove reference to DCADS and the modernized ACASS system. Inserted reference to DIOR.
- Revised paragraph 3.e to more accurately explain the content of the ACASS consolidated report.
- Revised paragraph 3.f to more accurately summarize the type of data included in “Other Reports” in ACASS.
- Revised paragraph 4.b to accurately summarize “Access and Release of Information” in ACASS, and use of information within the Federal Government.

Appendix R:

- Revised paragraph 3 to indicate PPIRS is primary source of prime contractor performance ratings for source selection.

Appendix X:

- Added a statement that an IGE for a task order (or modification to a task order) will use the contract rates in effect at the time the order (or modification to a task order) is issued.

Procurement
ARCHITECT-ENGINEER CONTRACTING

1. Purpose.

a. This pamphlet provides guidance and procedures for contracting for architect-engineer (A-E) services in accordance with the Brooks Architect-Engineer Act and the acquisition regulations referenced below. The guidance and procedures in this pamphlet are intended to promote fair, efficient and consistent A-E contracting practices throughout the US Army Corps of Engineers (USACE).

b. Compliance with this pamphlet is required by Engineer Federal Acquisition Regulation Supplement (EFARS) 36.601-3 (S-101). Adherence to the guidance and procedures herein will ensure proper compliance with the acquisition regulations, and any variations therefrom must be documented in the contract file (provided the variations do not violate the acquisition regulations).

c. This pamphlet provides guidance and procedures for implementing certain key portions of the acquisition regulations relevant to A-E contracting. However, it is not intended to cover all aspects of the A-E contracting process and should not be used as a substitute for the current acquisition regulations (the FAR system) which provide procurement policy. If a conflict arises between this pamphlet and the acquisition regulations, the acquisition regulations govern.

2. Applicability. This pamphlet applies to all USACE commands authorized to procure A-E services, and to all USACE programs.

3. Distribution Statement. Approved for public release. Distribution is unlimited.

4. References.

a. Brooks Architect-Engineer Act; Public Law 92-582, as amended; 40 United States Code (U.S.C.) 541-544 (Appendix A).

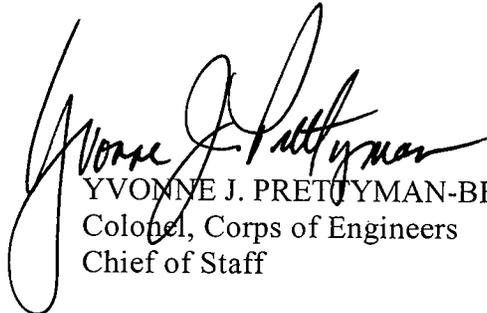
b. Federal Acquisition Regulation (FAR), and the Defense (DFARS), Army (AFARS) and Corps of Engineers (EFARS) supplements thereto.

c. Army Regulation (AR) 25-55, The Department of the Army Freedom of Information Act Program.

- d. AR 215-4, Nonappropriated Fund Contracting.
 - e. Engineer Regulation (ER) 5-1-11, US Army Corps of Engineers Business Process.
 - f. ER 1105-2-100, Planning Guidance Notebook.
 - g. ER 1110-1-12, Engineering and Design Quality Management.
 - h. ER 1110-1-8152, Professional Registration.
 - i. ER 1180-1-9, Design-Build Contracting.
 - j. Engineer Pamphlet (EP) 715-1-4, Architect-Engineer Contracts: Competing for Architect-Engineer Contracts Awarded by the US Army Corps of Engineers.
 - k. Engineer Manual (EM) 1110-1-1000, Photogrammetric Mapping.
 - l. DFARS Procedures, Guidance and Information.
5. Acronyms. Appendix B contains a list of acronyms used in this pamphlet.

FOR THE COMMANDER:

31 Appendices
(See Table of Contents)



YVONNE J. PRETTYMAN-BECK
Colonel, Corps of Engineers
Chief of Staff

Procurement
ARCHITECT-ENGINEER CONTRACTING

TABLE OF CONTENTS

	Paragraph	Page
CHAPTER 1.	INTRODUCTION	
	Scope	1-1 1-1
	Background	1-2 1-1
	Responsibilities	1-3 1-1
	Training	1-4 1-2
	Internet Addresses	1-5 1-2
CHAPTER 2.	ACQUISITION PLANNING	
	Principles	2-1 2-1
	Responsibilities	2-2 2-1
	Definition of A-E Services	2-3 2-1
	North American Industry Classification System (NAICS)	2-4 2-2
	General Considerations	2-5 2-2
	Small Business Considerations	2-6 2-2
	Acquisition Plans	2-7 2-3
	Contract Types	2-8 2-3
	Selection of Contract Type	2-9 2-4
	A-E Contracting Process	2-10 2-5
	Time Standards	2-11 2-5
	Streamlining Techniques	2-12 2-6
CHAPTER 3.	ANNOUNCEMENT AND SELECTION	
	Principles	3-1 3-1
	General	3-2 3-1
	Responsibilities	3-3 3-1
	Public Announcement	3-4 3-2
	ACASS	3-5 3-4
	Board Membership	3-6 3-4

TABLE OF CONTENTS (Continued)

	Paragraph	Page
CHAPTER 3. ANNOUNCEMENT AND SELECTION		
Selection Criteria	3-7	3-5
General Procedures for Evaluation Boards	3-8	3-7
Preselection Board	3-9	3-9
Selection Board	3-10	3-9
Approval of Selections	3-11	3-11
Notifications	3-12	3-12
Debriefings	3-13	3-12
Disposition of SFs 330	3-14	3-13
Special Cases	3-15	3-13
EP 715-1-4	3-16	3-15
CHAPTER 4. NEGOTIATION AND AWARD		
Principles	4-1	4-1
Responsibilities	4-2	4-1
Regulatory Basis	4-3	4-1
Negotiation Team	4-4	4-1
Statement of Work	4-5	4-2
Request for Price Proposal	4-6	4-2
Preproposal Conference	4-7	4-3
Partnering	4-8	4-4
Service Contract Act	4-9	4-4
Independent Government Estimate	4-10	4-4
Fact-Finding Sessions	4-11	4-4
Proposal Analysis and Prenegotiation Objectives	4-12	4-5
Negotiation of FFP Contracts	4-13	4-6
Negotiation of ID Contracts	4-14	4-8
Subcontracting Plan	4-15	4-10
Price Negotiation Memorandum	4-16	4-10
Preaward Survey	4-17	4-10
Contract Preparation and Award	4-18	4-10
Task Order Issuance	4-19	4-11
NAF Contracts	4-20	4-11
Continuing Contract Clauses	4-21	4-11
CHAPTER 5. CONTRACT ADMINISTRATION AND MANAGEMENT		
Introduction	5-1	5-1
Principles	5-2	5-1

TABLE OF CONTENTS (Continued)

	Paragraph	Page
CHAPTER 5.	CONTRACT ADMINISTRATION AND MANAGEMENT	
General	5-3	5-1
Contracting Officer's Representative	5-4	5-1
Quality Management	5-5	5-2
ID Contracts	5-6	5-2
Payments	5-7	5-3
Subcontract Reporting	5-8	5-4
Resolving Performance Problems	5-9	5-4
Contract Closeout	5-10	5-5
CHAPTER 6.	PERFORMANCE EVALUATION	
Principles	6-1	6-1
Responsibilities	6-2	6-1
Regulatory Background	6-3	6-1
General Procedures	6-4	6-2
Monitoring Performance	6-5	6-5
Interim Evaluations	6-6	6-5
Evaluation of A-E Performance after Completion of Design or Engineering Services	6-7	6-6
Evaluation of A-E Performance after Completion of Construction	6-8	6-7
Approval, Distribution and Revision of Evaluations	6-9	6-8
Marginal and Unsatisfactory Performance	6-10	6-8
CHAPTER 7.	A-E RESPONSIBILITY MANAGEMENT PROGRAM	
Introduction	7-1	7-1
Principles	7-2	7-1
Responsibilities	7-3	7-2
Legal and Regulatory Background	7-4	7-2
Implementation	7-5	7-4
Funding	7-6	7-5
Notification, Investigation and Recovery Procedures	7-7	7-6
A-E Performance Evaluation and Contract Closeout	7-8	7-10
Reporting	7-9	7-11

TABLE OF CONTENTS (Continued)

	Page	
APPENDICES		
APPENDIX A	BROOKS ARCHITECT-ENGINEER ACT	A-1
APPENDIX B	ACRONYMS	B-1
APPENDIX C	A-E CONTRACTING PROGRAM CHECKLIST	C-1
APPENDIX D	A-E CONTRACT CHECKLIST	D-1
APPENDIX E	A-E TASK ORDER CHECKLIST	E-1
APPENDIX F	INTERNET ADDRESSES FOR A-E CONTRACTING	F-1
APPENDIX G	CLASSIFICATION OF CONTRACTS AS A-E SERVICES	G-1
APPENDIX H	ENVIRONMENTAL SERVICES	H-1
APPENDIX I	SURVEYING, MAPPING AND GEOSPATIAL SERVICES	I-1
APPENDIX J	SMALL BUSINESS PROGRAM	J-1
APPENDIX K	A-E CONTRACTING PROCESS	K-1
APPENDIX L	TYPICAL DURATIONS FOR A-E CONTRACTING ACTIVITIES	L-1
APPENDIX M	STREAMLINING TECHNIQUES FOR A-E CONTRACTS AND TASK ORDERS	M-1
APPENDIX N	STANDARD SYNOPSIS FORMAT FOR A-E SERVICES	N-1
APPENDIX O	EXAMPLE SYNOPSIS FOR FIRM-FIXED-PRICE CONTRACT	O-1
APPENDIX P	EXAMPLE SYNOPSIS FOR INDEFINITE-DELIVERY CONTRACT	P-1
APPENDIX Q	A-E CONTRACT ADMINISTRATION SUPPORT SYSTEM (ACASS)	Q-1

TABLE OF CONTENTS (Continued)

	Page	
APPENDIX R	CONSIDERATION OF PAST PERFORMANCE IN A-E SELECTIONS	R-1
APPENDIX S	EXAMPLE PRESELECTION BOARD REPORT	S-1
APPENDIX T	EXAMPLE SELECTION BOARD REPORT	T-1
APPENDIX U	ADVANCE SELECTION PROCESS	U-1
APPENDIX V	EXAMPLE STATEMENT OF WORK	V-1
APPENDIX W	REQUEST FOR PRICE PROPOSAL INSTRUCTIONS	W-1
APPENDIX X	INDEPENDENT GOVERNMENT ESTIMATES	X-1
APPENDIX Y	A-E COST INFORMATION	Y-1
APPENDIX Z	A-E PRICE PROPOSAL ANALYSIS	Z-1
APPENDIX AA	INSTRUCTIONS FOR DD FORM 2631	AA-1
APPENDIX BB	A-E LIABILITY ACTION FLOWCHART	BB-1
APPENDIX CC	DETERMINATION OF A-E LIABILITY DAMAGES	CC-1
APPENDIX DD	A-E LIABILITY COLLECTION AND SETTLEMENT	DD-1
APPENDIX EE	AERMP REPORTS	EE-1
LIST OF FIGURES		
FIGURE EE-1	ENG FORM 4858-R, ANNUAL AERMP REPORT	EE-2
FIGURE EE-2	ENG FORM 4858A-R, QUARTERLY A-E LIABILITY CASE REPORT	EE-4

CHAPTER 1 INTRODUCTION

1-1. Scope. This pamphlet is generally applicable to all types of A-E contracts. However, certain aspects of Chapter 4 on price negotiation and Chapter 5 on contract administration are not relevant to cost-reimbursement (CR) contracts. See FAR 15.4, 16.3, 16.4, 31, 32, and 42 for specific guidance on CR contracts.

1-2. Background. The Brooks A-E Act (Appendix A) defines A-E services and specifies the Federal policy for procuring A-E services. The Brooks A-E Act requires the public announcement of requirements for A-E services, selection of the most highly qualified firms based on demonstrated competence and professional qualifications, and the negotiation of a fair and reasonable price. FAR Part 36, and the supplements thereto, implement the Brooks A-E Act.

1-3. Responsibilities*.

a. Commanders should regularly evaluate the A-E contracting process in their command to ensure it is efficient and effective. Appendices C, D, and E are checklists that may be used for this purpose.

b. The Principal Assistant Responsible for Contracting (PARC), Headquarters USACE (HQUSACE) (CEPR-ZA):

(1) Is the senior staff official responsible for execution, oversight and administration of the contracting function.

(2) Carries out delegable authorities of the Head of the Contracting Authority as described in the FAR, DFARS, AFARS, and EFARS.

c. The Engineering and Construction Community of Practice, Directorate of Civil Works, HQUSACE (CECW-CE):

(1) Is responsible for USACE technical guidance and procedures for A-E contracting, including maintenance of this pamphlet. CECW-CE, in coordination with the PARC and other HQUSACE elements, will identify and implement regulatory and procedural changes to improve the A-E contracting process throughout USACE.

(2) Supports the PARC in monitoring the compliance of USACE commands with A-E procurement regulations and this pamphlet through staff assistance visits, automated and special reports, informal coordination, conferences, and other appropriate methods.

(3) Is the proponent for the Architect-Engineer Contract Administration Support System (ACASS) and is responsible for ACASS policy and general management oversight. This office is also the principal interface on ACASS with other Federal agencies.

d. The Contracting Division, Portland District (CENWP-CT) is responsible for management of ACASS in accordance with HQUSACE policy and direction. CENWP-CT will issue instructions on ACASS and respond to inquiries from users and A-E firms.

e. The United States Navy (NSLC DET Portsmouth, NH) operates and maintains the Contractor Performance Assessment Reporting System (CPARS) and the ACASS sub-component. This office is also the point of contact for users experiencing technical difficulties with the ACASS system.

1-4. Training.

a. The following courses provide valuable training regarding A-E contracting.

(1) "Architect-Engineer Contracting", USACE Proponent Sponsored Engineer Corps Training (PROSPECT) Course Number 004.

(2) "Architect-Engineer Contracting," Defense Acquisition University (DAU) Course Number CON 243.

b. The following courses provide valuable training regarding functional use of the ACASS system.

(1) "ACASS / CCASS Overview", CPARS web site.

(2) "Focal Point Functions", CPARS web site.

(3) "Contractor Overview"

1-5. Internet Addresses. Appendix F is a list of useful Internet addresses pertinent to A-E contracting, and contracting in general.

CHAPTER 2 ACQUISITION PLANNING

2-1. Principles.

a. Proposed contracts for A-E services will be structured to maximize competition, provide contract opportunities for many firms, and maximize small business (SB) and small disadvantaged business (SDB) participation, while satisfying the needs of the Government in the most effective, economical, and timely manner.

b. Acquisition planning for A-E services will be accomplished by the project delivery team (PDT) under the leadership of the project manager (PM), and will include team members from engineering, construction, contracting, counsel and other appropriate personnel, as well as the Deputy for Small Business (DSB).

2-2. Responsibilities.

a. General. The Deputy District Engineer for Program and Project Management (DPM), the Chief of Engineering¹, the Chief of Contracting, the DSB, and the chiefs of other functional elements as appropriate, in each operating command (center, district or laboratory) having A-E contracting authority are responsible for acquisition planning for A-E services.

b. Time Standards. Commanders should regularly review the A-E contracting process in their command to ensure that A-E contracts and task orders (issued under indefinite-delivery (ID) contracts) are procured in accordance with the time standards in paragraph 2-11 to the maximum extent possible.

2-3. Definition of A-E Services.

a. General. A-E services are defined in FAR 36.102 and 36.601-4. Appendix G provides guidance to assist the contracting officer (KO) in determining if a particular contract should be procured as A-E services in accordance with FAR Subpart 36.6. Appendix H provides further guidance on which types of environmental services should typically be procured as A-E services. Appendix I provides specific guidance on the procurement of surveying, mapping and geospatial services.

¹ Engineering Division and Chief of Engineering (or Chief, Engineering Division) is used generically in this EP to refer to the division and its chief responsible for the engineering function at a district or center. Likewise for Construction Division and Chief of Construction (or Chief, Construction Division).

b. Design-Build and TERC. A design-build contract is procured as a construction contract in accordance with FAR Part 36, and not as an A-E contract, since the A-E services are a minor part of a design-build contract. Similarly, a Total Environmental Restoration

Contract (TERC) is procured as a service contract under the source selection procedures in FAR 15.3, and not as an A-E contract, since the A-E services are a minor part of a TERC contract. If an A-E firm is used to prepare a Request for Proposal for a design-build contract, the firm will typically be ineligible for participation in the design-build contract due to the conflict of interest and unfair competitive advantage (FAR Subpart 9.5).

2-4. North American Industry Classification System (NAICS). The NAICS classifies various businesses and industries. The Small Business Administration (SBA) establishes a small business size standard for each NAICS code. Work principally defined by the following NAICS are typically procured as A-E services.

Industry	NAICS Code	Small Business Size Standard
Architectural Services	541310	\$4.0 M
Landscape Architectural Services	541320	\$6.0 M
Engineering Services (procured under Brooks A-E Act)	541330	\$4.0 M
Geophysical Surveying and Mapping Services	541360	\$4.0 M
Surveying and Mapping (except Geophysical) Services, and Mapmaking	541370	\$4.0 M
Interior Design Services	541410	\$6.0 M
Environmental Consulting Services (except Environmental Engineering Services under 541330)	541620	\$6.0 M

2-5. General Considerations. See FAR Part 7 and the supplements thereto for general requirements for acquisition planning, and EFARS 16.501 for specific requirements for ID contracts. Thorough acquisition planning (informal or formal) will determine the nature, type, scope and number of contracts required for a project or program, including contracts for A-E services. Acquisition planning will consider the nature, complexity and dollar value of the anticipated work; schedule and urgency; budget and funding stream; industry capabilities; and small business opportunities. Unrelated or dissimilar work shall not be bundled in the same contract.

2-6. Small Business Considerations. See Appendix J for a discussion of the small business considerations for A-E contracts. As required by EFARS 19.201(c)(9)(B), each proposed synopsis for A-E services shall be coordinated with the DSB. The DSB will review the acquisition for possible set-aside for SB, emerging SB (ESB), Service-disabled Veteran-owned Small Business (SDVOSB), Historically Underutilized Business Zone (HUBZone) SB or the SBA 8a Program, in accordance with current laws and regulations. The DSB will

document the review using DD Form 2579. If a contract is not set-aside, it will still be structured to maximize the opportunities for SB.

For example: unrelated requirements will not be bundled into one contract; the scope and geographic area of an ID contract will not be unduly broad; the monetary limits of an ID contract will be set at the lowest reasonable levels; and overly restrictive technical requirements will not be included.

2-7. Acquisition Plans. Appropriate acquisition planning must be performed for each A-E contract and task order. An informal acquisition plan is suitable for most contracts (see EFARS 7.102(S-103)). The requirements for formal acquisition plans are contained in DFARS 207.103, AFARS 5107.103 and EFARS 7.102 and 7.103. A formal acquisition plan must follow the format in FAR 7.105 and be approved by the PARC. Acquisition plans must be fully coordinated among the concerned functional elements. Acquisition planning for a construction project must include both the design and construction phases, and be performed prior to the solicitation of an A-E contract, in order to allow the consideration of design-bid-build, design-build (see ER 1180-1-9) and other delivery methods.

2-8. Contract Types.

a. General. The KO is responsible for selecting the appropriate contract type in coordination with technical, contracting and legal specialists. FAR Subpart 16.1 provides general policies and guidance on selecting contract type.

b. Firm-Fixed-Price (FFP) Contract. A FFP contract (FAR 16.202) is appropriate when the statement of work (SOW) can be well defined and there is sufficient time to announce, select, negotiate and award a contract. A FFP contract minimizes the Government's risk and administrative burden. Other types of fixed-price (FP) contracts may be appropriate at times (see FAR 16.2).

c. Cost-Reimbursement Contract. A CR contract (FAR 16.3) is used when uncertainties in the SOW do not permit the costs of performance to be estimated with sufficient accuracy to use a FP contract. A CR contract shall not be used as a substitute for developing a detailed SOW or allowing adequate procurement lead-time. The most common CR contract types used for A-E services in USACE are cost-plus-award-fee (CPAF; FAR 16.305) where the contractor's fee (same as profit in a FP contract) is dependent on certain performance criteria, and cost-plus-fixed-fee (CPFF; FAR 16.306) where the contractor receives a fixed fee, independent of actual costs.

d. Labor-Hour (LH) Contracts. A LH contract or task order (FAR 16.601 and 16.602) compensates the contractor for actual hours worked at predetermined rates. This contract type does not provide a financial incentive for a contractor to perform efficiently, and hence, is one of the least preferred contract types. Somewhat similar to a CR contract, a LH contract may be applicable when the extent or duration of work or anticipated costs cannot be estimated with any reasonable degree of confidence.

A LH contract or task order might be appropriate for work such as dredging payment surveys where the duration of the survey work is dependent on the progress of the dredging contractor and is not within the direct control of the survey contractor.

e. Indefinite-Delivery Contracts. ID contracts are the predominant contract type used for A-E services in USACE. ID contracts must comply with FAR 16.5, and EFARS 16.5 and 36.601-3-90. ID contracts are generally used for recurring types of A-E services where procurement of these services individually by normal announcement, selection, negotiation and award procedures would not be economical or timely. Task orders for particular projects are negotiated and issued under the terms and conditions of the ID contract. Task order may be FP, CR or LH, as allowed by the ID contract.

f. Letter Contracts. A letter contract (FAR 16.603) is a preliminary contractual instrument that authorizes a contractor to begin work immediately. A definitive contract must then be negotiated within the time periods prescribed in FAR 16.603-2. It is appropriate for urgent requirements when there is not sufficient time to follow the normal A-E negotiation and award process. The use of a letter contract must be approved by CEPR-ZA in accordance with FAR 16.603-3 and DFARS 216.603-3 and 217.74, except USACE Division Commanders can approve letter contracts not exceeding \$3,000,000 for emergencies in accordance with EFARS 16.603-3 and 17.7404-1 (S-100).

g. Simplified Acquisition Procedures.

(1) Purchase Orders. Purchase orders (FAR 13.302) are an expedient method for purchasing services that do not exceed the simplified acquisition threshold (SAT), which is currently \$100,000 (FAR 2.101). Announcement and selection procedures are described in paragraph 3-15.a. Purchase orders are almost always negotiated as FFP.

(2) Purchase Card. A-E services that do not exceed the micro-purchase threshold of \$2,500 may be procured using the Government purchase card as described in paragraph 3-15.a(4).

2-9. Selection of Contract Type. Selection of the appropriate A-E contract type generally depends on the following factors (also see FAR 16.104):

a. Scope Certainty. Use a FFP contract, task order, or purchase order if the scope can be defined and the level of effort reasonably estimated. If not, use a CR or LH contract or task order.

b. Nature and Size of Work. Consider first a task order if the required services are within the scope and size limitations of an available ID contract. Or, consider using a contract awarded through the advance selection process (see paragraph 3-15.h) if the required services are within the type of work and size limitations of that selection. If neither of these methods is suitable, initiate a new announcement and selection process.

c. Schedule. A separate contract should be procured for a moderate or large project whenever possible. Consider use of a purchase card or purchase order for a very small project. Consider a task order for a time-sensitive, small or moderate size project. Consider using a contract awarded through the advance selection process for a time-sensitive project of the appropriate type and size. Consider limited competition (FAR 6.3) and/or a letter contract in the most urgent circumstances.

2-10. A-E Contracting Process. Appendix K is a generic network of the A-E contracting process in USACE based on the pertinent acquisition regulations.

2-11. Time Standards.

a. General. Prompt procurement of A-E services is essential to properly serve USACE customers. Prolonged contracting causes delays in project milestones, untimely obligation of funds, increased costs and is unfair to A-E firms. For these reasons, realistic time standards have been established for awarding A-E contracts and issuing A-E task orders in USACE. These standards should be followed to the maximum extent possible.

b. Standards.

(1) Contracts should typically be awarded within 145 calendar days, measured from the date of the public announcement. (Additional time would be required before the issuance of the announcement to assess the requirement, determine an acquisition approach and prepare the announcement.) The typical durations of the activities required to award an A-E contract are shown in Appendix L.

(2) Task orders should typically be issued within 37 calendar days, measured from issue of the Request for Price Proposal (RFPP) to the appropriate ID contractor. The typical durations of the activities required to issue a task order under an ID contract are shown in Appendix L.

(3) Task orders for outside customers, such as Army installations, where the scope preparation and negotiations were done by the customer, should typically be issued by USACE in 6 calendar days, measured from receipt of proper negotiation documentation and funding from the customer. The relevant contracting activities and durations are shown in Appendix L.

(4) Contracts and task orders should be awarded in less time if needed to meet critical customer requirements. Similarly, longer durations may be appropriate for certain contracts and task orders, such as ID contracts for USACE use or for complex and/or very large contracts and task orders.

c. **Justifiable Delays.** The above standards exclude justifiable delays beyond the reasonable control of a USACE command, such as: scope uncertainties, delay in receiving funds, deferral or suspension of a project by a customer or higher authority, unsuccessful negotiations with the highest qualified firm, delaying the award of an ID contract for a reasonable period to coincide with issuance of the first task order, or a protest. Also, additional time would be required if an audit is considered necessary to determine a fair and reasonable price.

2-12. Streamlining Techniques. Appendix M provides some suggested techniques for streamlining A-E contracting. The timely award of A-E contracts and task orders is largely within the direct control of each USACE command, and requires very close cooperation and teamwork among engineering, project management, contracting, counsel, resource management, small business, audit and other functional elements.

CHAPTER 3 ANNOUNCEMENT AND SELECTION

3-1. Principles.

a. Public announcements for A-E services will reflect the minimum needs of the Government, not arbitrarily restrict eligible firms, and describe the work required and selection criteria in sufficient detail to facilitate a meaningful selection of the most highly qualified firm.

b. Public announcements for A-E services will be fully coordinated among all pertinent functional staff elements.

c. A-E selections will be conducted in a fair, rational and consistent manner, in strict accordance with the announced selection criteria, and in compliance with FAR 36.602 and its supplements.

d. A-E firms will be promptly notified of their selection status and offered a meaningful debriefing on the evaluation of their qualification submission.

3-2. General. The guidance and procedures in paragraphs 3-4 through 3-14 generally apply to all contracts for A-E services, except as otherwise noted in paragraph 3-15 for certain special cases.

3-3. Responsibilities.

a. The Chief of Engineering in each operating command is responsible for the A-E selection process, including the technical content of public announcements for A-E services (including those prepared by other functional elements), the conduct of A-E evaluation (preselection and selection) boards, participation by customers in evaluation boards, and liaison with the A-E community.

b. The Chief of Contracting in each operating command is responsible for the procurement-related content of public announcements for A-E services, and for general oversight of the A-E selection process to ensure regulatory compliance.

c. Commanders may appoint qualified professional personnel, by name and/or position, to:

(1) Serve as chairpersons and alternate chairpersons of A-E preselection and selection boards.

(2) Approve A-E selections consistent with delegated authorities (EFARS 36.602-4(a)).

d. Commanders may designate qualified professional personnel, by name and/or position, who are eligible to serve as members of A-E preselection and selection boards, as authorized by EFARS 36.602-2(a). Alternatively, commanders may establish appropriate qualifications for board members and delegate authority to the Chief of Engineering to designate specific personnel who satisfy those qualifications as board members.

e. Commanders of Major Subordinate Commands (MSC) are responsible for quality assurance of the A-E selection process in their subordinate districts. This can be done through the approval of selections for large or highly visible projects, evaluation of district standard operating procedures for selections, random review of completed selection reports, observing or participating in district selection boards, and/or other appropriate means.

3-4. Public Announcement.

a. Regulatory Requirements. In accordance with FAR 5.203(d), 5.205(d), and 36.601-1, all requirements for A-E services expected to exceed \$25,000 shall be publicized (synopsized) on the Federal Business Opportunities (FBO) website (<http://www.fedbizopps.gov>)², except when properly waived in accordance with FAR 5.202. A response period of at least 30 calendar days shall be allowed for contracts expected to exceed the SAT.

b. Authority to Synopsize. A synopsis for an A-E contract, which has the equivalent effect as a solicitation for other types of contracts, should not be issued unless the Government has a definite intention to award a contract. Proper authorization from higher authority or a customer and adequate funding should be received prior to synopsis. However, for high priority requirements, a synopsis may be issued prior to receiving formal authorization and/or funding when there is a high probability that the requirement will not be canceled and the synopsis indicates that funds are not presently available for the contract (AFARS 5101.602-2(a)(ii)).

c. Format. Instructions and the format for preparing synopses are given in FAR 5.207 and DFARS 205.207. Appendix N provides supplemental instructions for USACE synopses for A-E services. Appendix O is an example synopsis for a FFP contract. Appendix P is an example synopsis for an ID contract.

d. Content. A synopsis will describe the contract, project and required services, selection criteria, and submission instructions. The synopsis will describe the specific work required in sufficient detail to facilitate a meaningful selection of the most highly qualified firm. (See paragraph 3-1.a.) The relative importance of all selection criteria must be clearly stated. Do not include criteria that are not directly related to project requirements or that unnecessarily restrict competition, such as:

² The FBO website is also called the Government wide point of entry (GPE). USACE contracting offices are required to post public announcements on the Army Single Face to Industry (ASFI) website (see Appendix F), which is in turn linked to the FBO website.

- (1) Specifying the minimum number of personnel in a firm;
- (2) Specifying non-essential or secondary disciplines;
- (3) Specifying disciplines, capabilities or a percentage of work (except the prime firm in a small business set-aside as discussed in paragraph 3-8.c) that must be performed "in-house";
- (4) Requiring certification of personnel by a private organization³;
- (5) Requiring metric design experience⁴;
- (6) Restricting firms to a specific geographic area;
- (7) Specifying how the services should be performed (instead, describe the needed end products);
- (8) Requiring the submission of any cost-related data;
- (9) Requiring the submission of excessive qualification information;
- (10) Restricting a firm from being considered due to having another current contract with the same contracting office; or,
- (11) Requiring a security clearance to be considered for selection (however, eligibility for a clearance, such as U.S. citizenship, may be required).

e. Review and Transmittal. A synopsis will be prepared by appropriate technical, contracting and legal personnel, and be fully staffed, including the DSB (see paragraphs 2-6 and 3-1.b). If a formal acquisition plan or a waiver of standard ID contract limits is required, approval must be obtained prior to synopsis. Synopses will be transmitted to the GPE electronically as described in FAR 5.207.

f. Contact with Firms. Requests for clarification of a synopsis and/or for additional information will be carefully handled to avoid providing any information that would give, or appear to give, an advantage to a firm in submitting their qualifications. A synopsis will be amended if additional information was given to any one firm or if the synopsis is found to be defective, and the response date appropriately extended.

³ Certifications can still be considered when comparing personnel qualifications, in the same manner that advanced degrees, relevant training, experience and longevity with the firm are considered.

⁴ Metric design is still not a common practice in the US. commercial market.

3-5. ACASS. ACASS is an automated database of A-E qualifications, Department of Defense (DoD) A-E contract awards, and performance evaluations of A-E contractors. Appendix Q provides additional information on the background, regulatory authority, contents and use of ACASS. ACASS is managed by the Contractor Appraisal Information Center (CAIC) at the Portland District.

3-6. Board Membership. A-E evaluation boards should be constituted as follows based on the requirements in FAR 36.602-2(a) and EFARS 36.602-2(a).

a. General Requirements. The chairperson will appoint members with appropriate expertise from the approved list of eligible personnel, or who meet the qualifications for board members established by the commander. Each board must have at least three members. A majority of the members must be USACE personnel. Appropriately qualified technical personnel from the functional element requesting the services should be represented. A contract specialist should assist the board to ensure regulatory compliance. Where practical, a representative from the cognizant Construction Division will participate on an evaluation board for an A-E contract for the design of a specific construction project. There is no regulatory restriction on a Government employee serving on an evaluation board for an A-E contract and later participating in the negotiation and/or administration of that contract. However, the KO may impose such restrictions if necessary to ensure the integrity of the system of checks and balances.

b. Member Qualifications. Evaluation boards will be composed of highly qualified professional employees having collective experience in architecture, engineering, construction, and acquisition, as well as the specific type of work being contracted. A board will consist primarily of architects, engineers and/or land surveyors, as appropriate for the type of work. However, personnel in other disciplines may be members to provide specialized expertise when needed. The chairperson will be a USACE Engineering Division employee, and be a registered or licensed engineer, architect or land surveyor, as appropriate for the type of work. All board members from the Engineering and Construction Division(s) will be registered⁵. Professional registration of all other board members is encouraged. A board report will indicate which board members are registered. See Appendix I for guidance on board membership requirements for surveying and mapping contracts. All board members will comply with the procurement integrity requirements of FAR 3.104. Additional board membership requirements are:

(1) Preselection Board. A chairperson will be at least GS-13 or have equivalent technical experience, and have considerable experience on A-E evaluation boards. A majority of the members will have experience on A-E evaluation boards.

(2) Selection Board. A chairperson will be at least GS-14 or have equivalent technical experience, and have extensive experience on A-E evaluation boards. A majority of the

⁵ Until 31 January 2007, the Chief of Engineering may waive the requirement for registration on a case-by-case basis if necessary to obtain an adequate number of appropriately qualified board members. Any waiver should be attached to the board report.

members will have experience on A-E evaluation boards. A person may serve as a member on both the preselection and selection boards for the same contract.

(3) Partner/Customer Representative(s). In accordance with EFARS 36.602-2(a), Federal and non-Federal partners/customers will be invited to nominate qualified representatives as members of the A-E evaluation boards for their projects, when practical. Representative(s) shall be submitted to the respective evaluation board chairperson for approval, and must meet the same qualifications as USACE personnel. Specifically, they must have the appropriate background to knowledgeably evaluate the experience and qualifications of A-E firms in the required type of work.

3-7. Selection Criteria.

a. Regulatory Requirements. FAR 36.602-1(a) and the Defense PGI 236.602-1(a)(6) specify the general A-E selection criteria. Defense PGI 236.602-1(a)(6) emphasizes that "the primary factor in A-E selection is the determination of the most highly qualified firm," and that secondary factors should not be given greater significance than technical qualifications and past performance.

b. Specific Project Criteria. DFARS 236.602-1(a)(i) requires that a synopsis state the order of importance of the selection criteria and Defense PGI 236.602-1(a) requires that the criteria be project specific. Specific project criteria should be stated in the context of the general FAR and DFARS criteria, as illustrated in Appendices O and P. Include only selection criteria that will be true discriminators in determining the most highly qualified firms.

c. Application of Selection Criteria. Boards will evaluate firms' qualifications strictly on the basis of the announced selection criteria and their stated order of importance. The criteria will be applied as follows:

(1) Primary Selection Criteria. The following criteria are primary and will be applied by a preselection board to determine the highly qualified firms and by a selection board to determine the most highly qualified firms. The primary criteria are listed in the order of importance which is usually most appropriate, however they may be ordered differently as warranted for specific contracts.

(a) Specialized Experience and Technical Competence (FAR 36.602-1(a)(2)). A board will evaluate the specialized experience on similar projects⁶ and the technical capabilities (such as design quality management procedures, CADD, equipment resources, and laboratory requirements) of the prime firm and any subcontractors. Evaluate, where appropriate,

⁶ General experience working for certain customers, such as DoD, Army, Air Force, or USACE, is not an appropriate selection criterion. Instead, the selection criteria should address experience in certain types of projects or work, and knowledge of essential laws, regulations and/or criteria.

experience in energy conservation, pollution prevention, waste reduction, and the use of recovered materials. The effectiveness of the proposed project team (including management structure; coordination of disciplines, offices and/or subcontractors; and prior working relationships) will also be examined.

(b) Professional Qualifications (FAR 36.602-1(a)(1)). A board will evaluate, as appropriate, the education, training, registration, certifications (see paragraph 3-4.d(4)), overall and relevant experience, and longevity with the firm of the key management and technical personnel. This criterion is primarily concerned with the qualifications of the key personnel and not the number of personnel, which is addressed under the capacity criterion. The lead designer in each discipline must be registered as required by FAR 36.609-4 and 52.236-25, but does not have to be registered in the particular state where the project is located.

(c) Past Performance (FAR 36.602-1(a)(4)). See Appendix R for guidance in considering past performance in A-E selections.

(d) Capacity (FAR 36.602-1(a)(3)). A board will consider a firm's experience with similar size projects and the available capacity of key disciplines when evaluating the capacity of a firm to perform the work in the required time. Consider the full potential value of any current ID contracts that a firm has been awarded when evaluating capacity.

(e) Knowledge of the Locality (FAR 36.602-1(a)(5)). Consider knowledge of the locality separately from geographic proximity, since the latter is a secondary criterion in accordance with Defense PGI 236.602-1(a)(6). (A firm may not be located close to a project but still be familiar with certain site conditions.) Examples include knowledge of geological features, climatic conditions or local construction methods that are unusual or unique.

(2) Secondary Selection Criteria. The secondary criteria will not be applied by a preselection board, and will only be used by a selection board as a "tie-breaker" (see paragraph 3-10.e), if necessary, in ranking the most highly qualified firms. The secondary criteria will not be commingled with the primary criteria in the evaluation system⁷. The secondary criteria are listed in the order of importance which is usually most appropriate for USACE contracts.

⁷ If the criteria were commingled, a firm could be selected that was not the best qualified technically, but received high consideration on the secondary criteria. This outcome would be contrary to the intent of the Brooks A-E Act.

(a) SB and SDB Participation (Defense PGI 236.602-1(a)(6)(C)). The extent of participation of SB, SDB, historically black colleges and universities (HBCU), and minority institutions (MI) will be measured as a percentage of the total anticipated contract effort, regardless of whether the SB, SDB, HBCU or MI is a prime contractor, subcontractor, or joint venture partner; the greater the participation, the greater the consideration⁸.

(b) Geographic Proximity (FAR 36.602-1(a)(5)). Proximity is simply the physical location of a firm⁹ in relation to the location of a project, and has very little to do with the technical ability of a firm to perform the project. Hence, proximity should normally only be used as a selection criterion for small or routine projects or ID contracts in support of a specific installation(s).

(c) Volume of DoD Contract Awards (Defense PGI 236.602-1(a)(6)(A)).

- The Defense PGI states "do not reject the overall most highly qualified firm solely in the interest of equitable distribution of contracts." Hence, equitable distribution of DoD contracts must be treated as a secondary criterion. DoD A-E contract awards can be obtained from ACASS, and verified and updated during the interviews with the most highly qualified firms. Only consider awards of A-E contracts. Include awards to all branch offices of a company, except as indicated in Defense PGI 236.602-1(a)(6)(A)(2).

- For ID contracts, consider the total value of task orders actually issued by agencies in the last 12 months, and not the potential value of the contracts. For all types of contracts, do not consider options that have not been exercised.

3-8. General Procedures for Evaluation Boards.

a. Information Used by Boards. Boards will only consider the following information: SF330 Parts I and II; any required supplemental information; documented performance evaluations, such as from ACASS; DoD contract award data; and the results of interviews of the most highly qualified firms. A board will not assume qualifications which are not clearly stated in a firm's submission or available from ACASS. A board will review the entire submission of each firm and not excerpts or summaries. A firm will not be contacted to

⁸ A subcontracting plan, in accordance with FAR 19.704 and 52.219-9, should not be requested from each firm that responds to a synopsis. This would be burdensome, as well as impractical since the firms do not have a complete statement of work at this point. Prime A-E firms can, however, be asked to indicate the estimated percentage involvement of each SB and SDB firm on the team. A formal subcontracting plan is only required from the firm selected for negotiations.

⁹ When multiple offices of the prime firm and/or subcontractors will be involved in the performance of a project, consider the weighted distance from the project based on the relative amount of participation of each performing office.

clarify or supplement its submission, except during the interviews with the most highly qualified firms (see paragraph 3-10.d). Boards shall not consider any cost factors.

b. A-E Submissions.

(1) A-E submissions shall be handled by the Government in accordance with FAR 15.207 and 15.208, including the late proposal rules in FAR 15.208. A firm will not be considered if it's SF 330 Part I is not signed, unless the SF 330 Part I is accompanied with a signed cover letter or a current signed SF 330 Part II. If a firm does not submit a SF 330 Part II with its SF 330 Part I, or have one on file¹⁰, it will not be considered (FAR 36.603(b)).

(2) Although firms are encouraged to update their SF 330 Part II (see footnote 9) at least annually (FAR 36.603(d)(1)), older ones (up to 3 years old in accordance with FAR 36.603(d)(5)) must still be considered by a board. A firm may not be eliminated simply for failing to submit certain information or for altering the format of a SF 330. However, a firm may be recommended as not qualified or ranked low if missing, confusing, conflicting, obsolete or obscure information prevents a board from reasonably determining that a firm demonstrates certain required qualifications.

c. Small Business Status. If a contract has been set aside for small business in accordance with FAR 19.5, the preselection board must check that each prime firm has certified itself as a small business on the SF 330 Part II. The board must also be aware that there is a limitation on subcontracting whereby "at least 50% of the cost of contract performance incurred for personnel" must be expended for employees of the prime firm as required by FAR 19.508(e) and 52.219-14. Any questions will be referred to the DSB and the Contracting Division.

d. Evaluation Method. A board can use any qualitative method¹¹, such as adjectival or color coding, to evaluate and compare the qualifications of the firms relevant to each selection criterion.

e. Conduct of Board Meetings. Board meetings should be held in conference rooms or other areas isolated as much as possible from distractions, rather than in one of the board member's office. Sufficient time should be set aside for the meetings to proceed continuously until they are finished. Board members should schedule their other activities so that interruptions of the board meetings are held to an absolute minimum.

f. Reports. The documentation must reflect the final consensus of a board. If preliminary (such as prior to board discussions or interviews) or individual evaluations are included, the report must discuss how any significant differences among the evaluations were resolved. A board must retain documents and worksheets generated during its evaluation so that

¹⁰ Through the Federal-wide Online Representations and Certifications Application. See Appendix F for the website.

¹¹ Numerical scoring is prohibited by AFARS 5115.304(b)(2)(iv).

the evaluation is sufficiently documented and allows review of the merits of a potential bid protest. Failure to retain evaluation documents will leave the KO susceptible to the risk during bid protest of presenting a record with inadequate supporting rationale for the Comptroller General or court to find the selection decision reasonable. Handwritten worksheets are acceptable. The cover and each page of the report containing source selection information will be labeled "SOURCE SELECTION INFORMATION - SEE FAR 2.101 AND 3.104" and be protected as required by FAR 3.104-5. Personal worksheets must be similarly protected. Board members must not discuss the evaluation results with anyone who does not have a specific reason to know.

3-9. Preselection Board.

a. General. Preselection boards are permitted by FAR 36.602-2(a). Preselection boards may be advantageous when many firms respond to a synopsis, but generally the use of only a selection board is faster and less costly. The purpose of a preselection board is to determine which firms are highly qualified and have a reasonable chance of being considered as most highly qualified by the selection board (EFARS 36.602-2 (S-100)).

b. Determination of Highly Qualified Firms. Each firm will be completely evaluated, even if a firm does not demonstrate certain required qualifications. A firm may be evaluated by only one board member. However, all evaluations must be discussed by the entire board and a consensus reached on each firm. The firms that demonstrate better aggregate qualifications relevant to the primary selection criteria are considered highly qualified. A preselection board will not consider any secondary selection criteria. A preselection board will not be restricted to a specific or maximum number of firms for referral to a selection board.

c. Report. A preselection board report will be prepared similar to Appendix S. The report must clearly identify the specific weak or deficient qualifications of each firm not recommended as highly qualified. The report will be provided to the selection board and made a part of the selection board's report. Separate approval of a preselection report is not required.

3-10. Selection Board.

a. General. The functions of a selection board are described in FAR 36.602-3. A selection board evaluates the highly qualified firms identified by the preselection board and recommends at least three firms considered as most highly qualified, in order of preference. If a preselection board was not held, the initial phase of the selection board will be conducted and documented similar to a preselection board.

b. Review of Preselection Report. If a selection board considers the preselection board report inadequate, it will record the reasons and return the report to the preselection board for appropriate action. A selection board need not return the preselection report because it considers some of the firms to be less than highly qualified, provided a sufficient number of highly qualified firms remain.

c. **Determination of Most Highly Qualified Firms.** All members must personally evaluate the SFs 330 of all of the highly qualified firms. The firms that demonstrate higher aggregate qualifications relevant to the primary selection criteria are considered to be the most highly qualified firms. Secondary selection criteria will not be considered prior to the interviews in determining which firms are most highly qualified. At least three most highly qualified firms must be recommended¹² if a single contract will be awarded. If more than one contract will be awarded from the same synopsis, sufficient firms must be recommended such that at least two most highly qualified firms remain “in reserve” when negotiations commence on the final contract.

d. **Interviews.**

(1) Interviews (discussions) will be held with all of the most highly qualified firms as required by FAR 36.602-3(c). All firms will be interviewed by the same method (telephone, video teleconference or in person). For a routine project, at least one member will conduct the interview. For a major project, the majority of the members will conduct the interview. For a very significant project, presentations by the firms are recommended, which should be attended by all members in accordance with FAR 15.102. Firms will be given sufficient advance notice to allow responsible representatives to participate in the interviews or presentations.

(2) All firms will be asked similar questions about their experience, capabilities, capacity, organization, management, quality control procedures, and approach for the project, as appropriate. All questions must relate to the announced selection criteria. Information obtained from an interview that influenced the final ranking will be documented in the selection report.

e. **Final Ranking of Most Highly Qualified Firms.** After the interviews or presentations, a board will, by consensus, rank the most highly qualified firms in order of preference using the primary selection criteria. If two or more firms are technically equal, the secondary criteria will be used as "tie-breakers" and the final ranking of firms decided. Firms are technically equal when there is no meaningful difference in their aggregate qualifications relative to the primary criteria.

¹² If the selection board cannot recommend at least three most highly qualified firms as required by the Brooks A-E Act, then the scope of the contract should be revised to increase competition and the contract synopsisized again.

If more than one contract will be awarded from the same synopsis, the number of highest qualified firms must at least equal the number of anticipated contracts¹³. The secondary factors will be used to establish a ranking order for the highest qualified firms, and hence, the order for negotiation.

f. Report. A selection board report should be prepared in a format similar to Appendix T. The report must: clearly describe the reasons why each eliminated firm was less qualified than the most highly qualified firms, summarize the relative strengths of each most highly qualified firm with respect to the selection criteria, and clearly describe the rationale for the relative ranking of each firm.

3-11. Approval of Selections.

a. As permitted by EFARS 36.602-4(a) delegates unlimited A-E selection approval authority to MSC commanders, who may redelegate this authority to appropriate officials. If a synopsis is for more than one contract, the level of selection approval authority will be determined by the greatest anticipated value of any one of the contracts (including all options), and not the aggregate value of all of the contracts.

b. FAR 36.602-4 provides guidance if the selection authority does not agree with the recommendations of a selection board. All firms on an approved selection list are considered "selected" in accordance with FAR 36.602-4(b). Selection approval authorizes the initiation of negotiation, beginning with the highest qualified firm.

c. No contract may be awarded after one year from the closing date of a public announcement, unless justified in writing by the KO. The KO will consider whether the selected firms' qualifications and the specific A-E market are substantially unchanged since the selection.

¹³ The Brooks Act requires that negotiation begin with the highest qualified firm. Hence, all of the selected firms must be equally (and highest) qualified in order that negotiation of the second and subsequent contracts may begin with other than the first firm on the selection list. The highest qualified firms are determined by application of the primary selection criteria which considers technical capabilities. Their ranking is then determined by the secondary selection criteria, which are socioeconomic, and not technical, in nature.

3-12. Notifications.

a. Notifications of firms shall be made within 10 days after selection approval in accordance with EFARS 36.607(a)¹⁴. No notifications will be made after a preselection board.

b. The notification shall indicate to the firm that it is:

- The highest qualified, or
- Among the most highly qualified but not the highest qualified, or
- Not among the most highly qualified firms.

The notification will also inform each firm that it may request a debriefing, but must do so in writing or electronically within 10 days after receiving the notification. The identity of the firm (or firms if multiple awards will be made from one synopsis) selected for negotiations may be released after the selection report is approved (FAR 36.607(a)). Within 10 days after contract award, all remaining most highly qualified firms shall be so notified.

c. When an acquisition is canceled, notices will be sent to all firms that responded to the public announcement within 10 days of the cancellation. When an acquisition will be significantly delayed, notices will be promptly sent to all firms still being considered, giving the estimated award date.

3-13. Debriefings.

a. There are two main objectives for a debriefing. First, instill confidence in the debriefed firm that the selection was conducted fairly and objectively in accordance with the announced selection criteria. Second, provide the firm with specific information to allow it to improve its weak qualifications and better compete for future similar projects.

b. Unless impractical, debriefing of unsuccessful firms will be conducted within 14 days after receipt of a written request in accordance with FAR 15.506 (except 15.506(d)(2)-(d)(5)), FAR 36.607(b), and EFARS 36.607(b). A request under the Freedom of Information Act (FOIA; AR 25-55) will be immediately referred to the local FOIA officer.

¹⁴ HQUSACE has determined that the time periods for notification and debriefing of firms in FAR 15.503 and 15.506 are impractical to follow for A-E contracts due to the large number of A-E selections annually and the heavy volume of responses to each synopsis. Hence, as permitted by FAR 15.502, the time periods have been reasonably modified for USACE A-E contracts. Also, the specific instruction in FAR 36.607(b) that the (notification and) debriefing of successful and unsuccessful A-E firms will be held after selection approval takes precedence over the instruction in FAR 15.5 that notification and debriefing will occur after contract award.

c. Debriefings will be conducted by telephone, electronically or in person, as mutually agreed. Debriefings will be conducted by a USACE board member, preferably the chairperson, of the preselection or selection board, as appropriate. The debriefing will be based on the preselection or selection board report, as appropriate. The debriefing will summarize the significant weaknesses or deficiencies in a firm's qualifications (FAR 15.506(d)(1)). A firm's qualifications will not be compared point-by-point with those of any other specific firm, but with the other firms collectively (FAR 15.506(e)). Also, a firm's 330 will not be revealed or given to any other firm (FAR 15.506(e) and 24.202(a)). The identity of the other firms considered, except the highest qualified firm, shall not be revealed.

3-14. Disposition of SFs 330. SFs 330 will be carefully safeguarded, and retained in accordance with EFARS 36.603(b).

3-15. Special Cases.

a. Contract Actions Not Expected to Exceed \$100,000 (SAT). The short A-E selection processes in FAR 36.602-5 may be used. A purchase order, with the appropriate clauses for A-E services, may be used to simplify and expedite award instead of using SF 252, Architect-Engineer Contract.

(1) Contract Actions Expected to Exceed \$25,000 but not \$100,000. A public announcement on the FBO website is required. The response period may be less than 30 days (FAR 5.203(d)); at least 10-15 days is recommended. If an insufficient number of qualified firms respond to the synopsis, other qualified firms may be identified from ACASS and any other means. These firms will be contacted about their interest, sent the synopsis, and requested to submit an updated SF 330 Part II and possibly a SF 330 Part I as required by the selection board. The firms will be given a reasonable period to respond.

(2) Contract Actions Expected to Exceed \$10,000 but not \$25,000. A public announcement on the FBO website is not required. Instead, an announcement may be posted in a public place or made by any appropriate electronic means (FAR 5.101(a)(2)). In addition to the firms that respond to the announcement, other firms may be identified and evaluated as described in paragraph 3-15.a(1).

(3) Contracts Not Expected to Exceed \$10,000. No public announcement is required. A reasonable number of qualified firms must be identified and evaluated as described in paragraph 3-15.a(1).

(4) Contracts Not Exceeding \$2,500. Contracts that do not exceed the micro-purchase threshold of \$2,500 may be procured using purchase cards in accordance with EFARS 36.601-3(S-100) and 36.602-5(a).

b. Non-Appropriated Fund (NAF) Contracts (AR 215-4).

(1) Public announcement is not required. If a contract is synopsisized, it may be for less than 30 days. A list of qualified firms may be developed from: ACASS; recommendations of

the installation, NAF sponsor, or professional societies; responses to a public announcement; or, any other appropriate source.

(2) Evaluation boards will be conducted and documented as described elsewhere in this pamphlet, except that the selection criteria will comply with AR 215-4. In particular, equitable distribution of DoD contracts and the extent of participation of SB, SDB, HBCU and MI are not used as selection criteria. Also, geographic proximity need not be treated as a secondary criterion. Normal selection approval procedures are followed.

c. Contracting with the Small Business Administration (FAR 19.8). A-E services may be procured through the SBA's 8(a) Business Development Program. USACE may request the names of 8(a) firms from SBA or recommend qualified 8(a) firms to SBA for approval. A sufficient number of qualified 8(a) firms must be considered such that at least three firms are deemed most highly qualified to provide the required services in order to comply with the Brooks A-E Act. Firms present their qualifications using SF 330. The qualifications of 8(a) firms will be reviewed and documented by USACE in accordance with FAR 36.602.

d. Unusual and Compelling Urgency (FAR 5.202(a)(2) and 6.302-2). If the conditions in FAR 6.302-2 are met, public announcement is not required. However, as many firms as is practical under the circumstances should be identified using the process described in paragraph 3-15.a(1). Normal selection and approval procedures are followed.

e. Work Contracted and Performed Outside the United States (FAR 5.202(a)(12)). If the contract action is awarded and performed outside of the United States, public announcement is not required. Normal selection and approval procedures are followed. However, see the restriction in DFARS 236.602-70 on the award of overseas A-E contracts to foreign firms.

f. Medical Facilities. The Medical Facilities Center of Expertise (CEHNC-MX) is the primary technical authority for medical facility engineering and design management. For medical facilities funded by military construction appropriations, MSCs and districts will consult with CEHNC-MX on determination of the appropriate acquisition method, preparation of the synopsis and SOW for A-E services, and conduct of the preselection and selection boards. CEHNC-MX will usually participate in the preselection and selection boards for complex or high cost medical projects, and may participate in the selection board for other medical projects.

g. Design Competition (FAR 36.602-1(b)). The use of design competition shall be approved by HQUSACE (ATTN: CECW-CE).

h. Advance Selection Process. EFARS 36.602 (S-100) authorizes an advance A-E announcement and selection process if two or more A-E contracts for the same type of work are reasonably anticipated in a given period in a particular geographic area. Announcement and selection may be conducted prior to receiving specific authorization for any work of that type. Procedures for this process are provided in Appendix U. This process does not apply to ID contracts.

3-16. EP 715-1-4. This pamphlet describes the A-E contracting process in USACE and how firms may obtain consideration for contracts. This information is useful for firms seeking an A-E contract with USACE and should be widely distributed to the A-E community.

CHAPTER 4 NEGOTIATION AND AWARD

4-1. Principles.

a. Contract negotiation is a team effort among properly trained and well-prepared personnel in engineering, contracting, counsel, project management and other appropriate functional elements.

b. Negotiation will be based on a thorough SOW that fully conveys the customer's requirements and the pertinent technical criteria.

c. Negotiations will be conducted in a professional and sincere manner.

d. The primary objective in negotiation is to agree on a price which is fair and reasonable to the Government (not necessarily the lowest price) and gives the A-E firm sufficient financial incentive to produce quality services and products on schedule.

4-2. Responsibilities. Commanders will ensure that personnel who negotiate A-E services are properly trained.

4-3. Regulatory Basis. A-E contract negotiations will be primarily conducted in accordance with FAR 15.4, 36.605 and 36.606, and supplements thereto.

4-4. Negotiation Team.

a. Team Members.

(1) A-E contract negotiation is a team effort among engineers, architects, contracting specialists, counsel, contract auditors (provide advisory support) and other specialists, under the authority of the KO who is solely responsible for the final price agreement (FAR 15.405(a)). The negotiation team must collectively have a thorough knowledge and understanding of the A-E business community, the detailed project requirements, applicable technical criteria, and contracting policies. (In this pamphlet, "negotiators" means the members of the Government negotiation team.)

(2) There is no regulation that precludes a Government employee who sat on an evaluation board for an A-E contract from participating on the negotiation team for that contract. Also, there is no regulation that precludes a member of the negotiation team from participating in the administration of the contract. However, the KO may impose such restrictions if necessary to ensure the integrity of the system of checks and balances.

b. Training. Engineers, architects and surveyors who are primary participants in A-E negotiations will have the following minimum contracting training:

(1) "Architect-Engineer Contracting," PROSPECT course 004; or DAU course CON 243 (same title).

(2) A course on basic Federal contracting, approved by the local Director/Chief of Contracting.

(3) A course on Government contract law, approved by the local Director/Chief of Contracting.

4-5. Statement of Work. A thorough SOW is the basis for negotiating a fair and reasonable price, successful performance, and fair and effective administration of an A-E contract or task order. The SOW is included as Section C in the Uniform Contract Format (UCF; FAR 15.204-1 and EFARS 15.204(a)). A SOW will typically include the following topics:

a. General responsibilities of the A-E firm.

b. Project description, including estimated construction cost (ECC), if relevant.

c. Scope of A-E services.

d. Schedule and deliverables. Refer to the most recent guidance from the Tri-Service CADD/GIS Technology Center on sample contract language for CADD and GIS deliverables.

e. Reviews and conferences.

f. Technical criteria and standards, including Government-furnished information.

g. Administrative instructions.

h. General provisions.

Appendix V is an example statement of work for a task order.

4-6. Request for Price Proposal. A firm will be notified by the KO or other authorized representative in writing (except for urgent situations) of its selection for negotiation of a contract action (contract, task order, or modification to a contract or task order) and requested to submit a price proposal (FAR 36.606(b)). Appendix W provides RFPP instructions.

4-7. Preproposal Conference.

a. General. When appropriate, a preproposal conference(s) may be held between the A-E firm and pertinent Government representatives to discuss and resolve questions concerning the contract requirements, SOW, and RFPP instructions. The project site may also be inspected if appropriate. An A-E firm's costs for preparing proposals and attending preproposal conferences are normal costs of doing business and are included in a firm's overhead rate. A firm is not compensated for attending a preproposal conference unless the firm performs work of tangible benefit to the Government in connection with the conference, and the work is properly authorized in advance by the KO.

b. Contract Requirements. At the preproposal conference or at some other time early in the negotiation period, the Government will discuss the following contract requirements with the A-E firm and document these discussions in the price negotiation memorandum (PNM):

(1) Performance evaluation process (FAR 36.604, EFARS 36.604 and Chapter 6 of this pamphlet).

(2) Liability for Government costs resulting from design errors or deficiencies (FAR 36.608, 36.609-2, and 52.236-23, and Chapter 7 of this pamphlet).

(3) Design within funding limitations (FAR 36.609-1 and 52.236-22), when applicable.

(4) Registration of designers (FAR 36.609-4 and 52.236-25), when applicable.

(5) Payments (FAR 32.111(d)(1) and 52.232-10, and paragraph 5-7 of this pamphlet).

(6) Subcontractors and Outside Associates and Consultants (Architect-Engineer Services) (FAR 36.606(e), 44.204(b) and 52.244-4)¹⁵.

(7) Subcontracting plan requirements and reporting if the A-E firm is a large business and the contract is over \$500,000 (see paragraphs 4-15 and 5-8).

¹⁵ The prime A-E firm must obtain the KO's consent to change any subcontractors that were identified during selection and negotiation. The KO should refer the qualifications of any new subcontractor to the original selection board (to the extent that these individuals are available) for evaluation. The KO and negotiators may and should strongly encourage contractors to use a qualification-based selection process like the Brooks A-E Act instead of bidding when selecting subcontractors for professional services.

4-8. Partnering.

a. General. Partnering is the development and sustainment of a relationship that promotes achievement of mutually beneficial goals. See ER 1110-1-12 for additional guidance on partnering, including a sample partnering agreement. If a formal partnering agreement is desired by the Government and/or the A-E firm, it should be discussed during negotiations. However, partnering is voluntary and does not begin until after contract award.

b. Costs. Since it is voluntary, a firm is not directly compensated for partnering on its contract. Typically, the Government and the A-E firm share the costs of partnering, with the A-E firm absorbing its costs in its overhead. However, an A-E firm may be compensated for participating in partnering meetings during construction when the firm's attendance is necessary to discuss the design intent, procedures for responding to the construction contractor's questions on the drawings and specifications, scheduling considerations, or similar project issues. Partnering meetings should be scheduled concurrently with required meetings to minimize costs.

4-9. Service Contract Act (SCA). The SCA (FAR 22.10) applies to an A-E contract if the SOW involves the use of service employees (such as drilling and survey crews, clerks, CADD operators, photographers, and laboratory technicians) to a significant or substantial extent. If the SCA applies, a wage determination (WD) must be obtained from the US Department of Labor (DoL) for the service employees anticipated in the contract. In most cases, the WD may be obtained electronically from DoL's Wage Determinations Online website (see Appendix F) by the contract specialist. The WD must be provided to the firm for use in preparing its proposal. The proposed labor rates and benefits for service employees must be at least equal to the WD. For surveying and mapping contracts, the WD for the location of the performing office of the prime contractor and any subcontractors shall be used instead for the WD for the location of the work¹⁶.

4-10. Independent Government Estimate (IGE). In accordance with FAR 36.605(a), an IGE is required for each A-E contract action expected to exceed \$100,000 (total absolute value of all elements of the action, including credits). An informal or working estimate is recommended for actions of \$100,000 or less. An IGE will be prepared and approved in accordance with the procedures in Appendices X and Y. Disclosure of the IGE will comply with FAR 36.605(b). This requirement also applies to task orders.

4-11. Fact-Finding Sessions. The negotiators may hold fact-finding sessions (FAR 15.406-1(a)) with a firm after receiving its price proposal and prior to negotiations. The purpose of

¹⁶ In accordance with CIR Information Letter No. 96-3, CECC-L, 26 July 1996, subject: Service Contract Act Wage Determinations Relating to Surveying and Mapping Services.

fact-finding is to obtain information to better understand the proposal and its assumptions, and to clarify any ambiguities, omissions or uncertainties in the RFPP and SOW apparent after review of the proposal. After fact-finding, a revised proposal may be requested.

Detailed proposal analysis or audit should not be performed until a conforming proposal (a proposal that properly reflects the SOW and complies with the RFPP instructions) is received. No negotiation will take place during fact-finding; that is, the Government will not state its bargaining position or objectives during fact-finding.

4-12. Proposal Analysis and Prenegotiation Objectives.

a. Proposal Analysis. An A-E proposal will be analyzed in accordance with FAR 15.404 and Appendix Z. Proposal analysis includes technical analysis, price analysis and cost analysis.

b. Audit. An audit should be considered for the cases listed in DFARS 215.404-2(a)(i)¹⁷, and this consideration documented in the PNM. An audit is appropriate if the available information is inadequate to determine the reasonableness of the proposed price (FAR 15.404-2(a)). The Defense Contract Audit Agency (DCAA) is the cognizant audit agency for most USACE contracts.

c. Prenegotiation Objectives (PNO).

(1) PNO are developed after a proposal has been analyzed. The PNO are the pertinent negotiation issues and the cost and profit objectives (FAR 15.406-1). The numerical objectives will be shown in a tabular comparison with the corresponding elements of the proposal, IGE, and audit (if available). Keyed to the numerical objectives will be a discussion of the significant differences among the IGE, audit (if performed), PNO and proposal, and the issues to be covered during the negotiations. The PNO may be organized by phase of work, task, discipline, or other appropriate manner. The PNO are documented in a Prenegotiation Objective Memorandum (POM) which includes the significant details of the contracting action and the course of action the negotiators intend to pursue (AFARS 5115.406-1(b)).

¹⁷ Also consider an audit for an ID contract where the total contract amount, including all option periods, exceeds the pertinent threshold in DFARS 215.404-2(a)(i) for the anticipated type of task order (fixed-price or cost-reimbursement).

(2) The review and approval of the POM will be in accordance with local procedures and at the lowest practicable level appropriate for the complexity, risk and dollar value of the contract action. Local procedures may exempt the review and approval of POM for small or routine actions.

4-13. Negotiation of FFP Contracts.

a. Conduct of Negotiations. Negotiations should be conducted in an atmosphere of professionalism, patience, and trust. The KO will assign appropriate responsibilities to the team members according to their expertise and maintain overall positive control of the negotiations. The negotiation team must be fully prepared and know what flexibility there is in the Government position. The negotiators must focus on the pertinent issues and be willing to adjust the Government's position when appropriate.

b. Statement of Work.

(1) General. The Government and A-E firm should have a common understanding of the SOW before discussing effort and price. The negotiators must ensure that the firm is proposing to use personnel and procedures appropriate for the required work. The negotiators must know if there is any flexibility in the SOW requirements, including the performance schedule. It might be possible to reach agreement if one or more items in the SOW are modified or deleted, or provided by the Government.

(2) Construction Cost. The ECC must be included in the SOW. For a contract involving design, agreement must be reached on the ECC of the project because it directly impacts compliance with the 6 percent statutory limitation (paragraph 4-13.c(3)) and the Design within Funding Limitation clause (paragraph 4-7.b(3)). The A-E firm must submit evidence of any perceived deficiencies in the Government cost estimate before the Government agrees to any adjustment to the ECC.

c. Price. Bottom-line price agreement is the primary negotiation objective. However, the negotiators should make a bottom-line price offer only as a final attempt to reach agreement after there is a common understanding of the SOW. The negotiators should not be preoccupied with any single cost item (such as labor hours, labor rates, overhead rates or profit) since agreement on every item is not required to reach overall price agreement (FAR 15.405(a) and (b)). Conversely, final agreement does not indicate agreement on all elements of the proposal. Significant items affecting price agreement must be discussed in accordance with the PNO. The negotiators should not place themselves in a position where they are defending the Government's position. Rather, a firm should be requested to explain and support its proposal and to offer appropriate revisions. Significant elements in price negotiation are discussed below.

(1) Labor and Overhead Costs.

(a) Position classifications and labor hours will be evaluated in the technical analysis (Appendix Z). Labor rates will be examined by audit or review of payroll records and

evaluated for reasonableness. Overhead costs will be reviewed, which may include an audit, for allowability in accordance with FAR 31.2. The review will address the allocability of overhead costs to the contract, the acceptability of specific costs according to FAR 31.205, conformance with accounting standards (FAR 30), and reasonableness.

(b) Labor and overhead rates are negotiable. The reasonableness of labor and overhead rates will be evaluated by comparison with relevant market surveys (Appendix Y) and similar recent proposals (FAR 15.404-1(c)). When assessing reasonableness, a firm's costs should be compared to efficient, competitive firms in the same class (see Appendix X, paragraph 6.a). Verification of the actuality of labor rates and overhead rates, such as by audit, does not necessarily mean that they are reasonable. Also, firms can properly allocate costs in different ways. Hence, overhead rates, labor rates and the assignment of costs as direct or overhead must be considered together to fairly evaluate reasonableness.

(c) Accordingly, the PNO for labor rates and overhead rates shall not be based upon arbitrary caps. If labor rates and/or overhead rates are so high as to make the total price unreasonable, the negotiators should first seek justifiable reductions in the judgmental elements of the proposal (such as labor hours and position classifications) before negotiating the labor rates and overhead rates.

(2) Profit. It is in the Government's interest to negotiate sufficient profit to stimulate efficient contract performance and to attract the best qualified firms (FAR 15.404-4(a)(2) and (3)). Profit must not be negotiated until all costs have been agreed to. The negotiators should be primarily concerned with the total dollar amount of proposed profit, and not the method or rationale used by the firm to estimate profit for itself and any subcontractors (FAR 15.404-4(c)(5)). The profit method for A-E contracts in EFARS 15.404-73-101 is only used in preparing the Government estimate of a fair and reasonable price.

A firm is not required to compute its profit by this method. Profit should be allowed on all costs, including travel and reproduction.

(3) Statutory Limitation. The portion of the contract price for A-E services for the preparation of designs, plans, drawings and specifications may not exceed 6 percent of the project's ECC (FAR 15.404-4(c)(4)(i)(B) and 36.606(a), and DFARS 236.606-70). This limitation is statutory (10 U.S.C. 4540(b)). EFARS 36.606-70(c) provides examples of services that may be excluded from the A-E contract price when determining compliance with the statutory limitation. These examples will be used as a guide in determining other types of services that may be excluded. Preparation of the construction cost estimate is not excluded.¹⁸ The 6 percent statutory limitation does not apply to a design-build contract, but does apply to an A-E contract for developing a design-build solicitation.

¹⁸ Preparation of the cost estimate is an integral part of "producing and delivering designs, plans, drawings and specifications" and is therefore, subject to the 6 percent limitation. The mandatory Design within Funding Limitation Clause (FAR 52.236-22) requires an A-E firm to design a project within the construction budget. The estimate must be prepared coincident with the construction documents to guide the selection of materials,

d. Acceptance or Termination of Negotiations. If agreement is reached, the firm will be advised not to begin work until directed by the KO. If agreement can not be reached, the firm will be requested to submit its best and final offer in writing (FAR 36.606(f)) within a reasonable time. If the firm does not submit a final offer in the stated time, its last written proposal will be used as the final offer. No further discussions will be held with a firm if its final offer is not completely acceptable. The firm will be sent a brief letter stating that negotiations are terminated. A POM will be prepared documenting the unsuccessful negotiations and be approved by the KO. Negotiations may then begin with the next ranked firm. To preclude complaint or protest by the unsuccessful firm, no significant changes should be made in the SOW during negotiations with the next firm.

e. Modifications. The negotiation of modifications generally follows the same procedures as the negotiation of contracts in accordance with FAR Part 43.

4-14. Negotiation of ID Contracts. The negotiation of an ID contract is similar to a FFP contract, however the negotiation of total prices pertains only to the task orders issued under an ID contract. Agreement on labor rates and overhead rates is the central issue in the negotiation of an ID contract.

a. Labor and Overhead Rates.

(1) Labor and overhead rates will be evaluated similar to a FFP contract. Negotiation should concentrate on the important position classifications anticipated to be used in the contract. A specific hourly or daily rate must be negotiated for each position classification, and a common understanding reached on the type of work that each level of employee will do.

(2) Disagreement over the labor rate for a certain position classification might be resolved by the use of additional classification levels (such as three experience levels for an architect instead of one), or by adjusting the proportion of time of individual employees with different labor rates which comprise that classification. Also, disagreement over labor and/or overhead rates may be resolved by negotiating composite labor and overhead rates. Rates or a method for determining rates, such as reference to Engineering News-Record cost indices or the DoL Employment Cost Index (website in Appendix F), for all contract option periods must also be negotiated. Further, for contract periods longer than one year, consider including a pre-determined method for adjusting the rates periodically to account for inflation.

components, and systems and keep the project within budget. Hence, the estimate is a necessary and integral part of the design process, and is not excludable.

b. Travel. The schedule of negotiated contract rates will include unit costs for all anticipated travel items such as vehicle cost per mile or day and per diem for certain locations of work. For travel that can not be anticipated, the contract may include a statement that travel costs will be computed in accordance with FAR 31.205-46.

c. Other Direct Costs. A unit cost or price should be negotiated for all anticipated supplies (such as survey monuments) or support services (such as soils tests or computer use). Unit costs or prices may also be negotiated for specific types of services, such as a daily rate for a survey crew or per acre rate for a topographic survey.

d. Profit. Profit will usually be negotiated for each task order under an ID contract. However, a standard profit rate for all task orders may be established in an ID contract if all orders will be very similar in nature, complexity, risk, price, and performance period. In either case, the profit rate will be applied to the total of the prime firm's costs and any subcontractors' costs (without profit) to avoid unreasonable layering of profit (i.e., no profit on profit). Profit should be allowed on all costs, including travel and reproduction.

e. Acceptance or Termination of Negotiations. Agreement on every rate, such as labor, overhead, or travel, is not necessary. The negotiators should consider the impact of specific rates on the prices of typical task orders anticipated under the contract. The rates for certain classifications (such as a principal) may exceed the PNO but may not be significant costs in typical task orders. If the final offer is not acceptable, negotiations will be terminated similar to a FFP contract.

f. Task Orders.

(1) The negotiation of a FFP task order is very similar to a FFP contract, except that the labor rates, overhead rates, and certain other unit costs or prices (and maybe profit) are already fixed in the ID contract. Also, there is a limitation in an ID contract on the cumulative amount of all orders that must be considered, and possibly a limitation on the price of individual task orders. Negotiation typically concerns the quantity and mix of various position classifications. A task order may be modified, have options, or include work involving minor cost elements that are not in the contract rate schedule.

(2) The SOW of a task order must be within the scope of the ID contract (FAR 16.505(a)(2)).

For any task order over \$500,000, the contract file must be documented to justify why a task order was used instead of publicly announcing the requirement (EFARS 36.601-3-90(c)). The reasons should relate to the basic reasons for using an ID contract in EFARS 16.501(S-103)(a). Also, the contract file must be documented to justify the basis for issuing a task order under a particular ID contract when the order could have been issued under more than one ID contract (EFARS 16.505(b)(1)). Price cannot be considered.

4-15. Subcontracting Plan. A Small Business Subcontracting Plan is required for any A-E contract over \$500,000 (including any options) with a large business if there are subcontracting possibilities (FAR 19.702, 19.704, 19.705-2 and 52.219-8). See Appendix J for further details. The subcontracting plan is an element of the negotiation process and is made a part of the contract. A change in subcontractors from those proposed on the SF 330 must be approved by the KO (FAR 44.201-1(c)); see paragraph 4-7(b)(6)).

4-16. Price Negotiation Memorandum. The negotiators will complete the PNM (FAR 15.406-3 and supplements thereto) promptly after concluding negotiations. A PNM will discuss the principal elements of the negotiation. The PNM will demonstrate that the final accepted price complies with the 6 percent statutory limitation, if applicable. If an audit was performed, the PNM will discuss any deviations from the audit recommendations in the final negotiated price. A PNM shall be prepared, reviewed and approved in accordance with local procedures (EFARS 15.406-3(a)). Ordinarily, review and approval of a PNM should be concurrent with the review and approval of the final contract instrument.

4-17. Preaward Survey. The selection process addresses the technical capability, production resources and quality assurance methods of the firm. Hence, a short-form preaward survey report (only SF 1403, Preaward Survey of Prospective Contractor (General)) in accordance with FAR 9.106-4(d) is typically adequate. The preaward survey can be initiated after selection approval to avoid delaying award of a contract. The main emphasis of the preaward survey should be checking the financial capability of the firm through Dunn and Bradstreet reports, statements from the firm's bank, annual financial statements, or other appropriate means. Also, a contractor must be registered in the Central Contractor Registration (CCR) to be eligible for a contract (FAR 4.1102(a)).

4-18. Contract Preparation and Award.

a. General. An A-E contract will be prepared using the uniform contract format in FAR 15.204.1, using SF 252, "Architect-Engineer Contract," as the cover sheet (FAR 36.702(a)). The contract may state a notice to proceed (NTP) date or the KO may send a separate NTP letter after contract award. If a contract is executed by mail, the KO should sign the contract after it has been signed by the contractor (FAR 4.101). However, if the action is urgent, an award letter (Appendix M) can be used, which also serves as the NTP.

b. ID Contracts. In order to satisfy the minimum contract quantity (EFARS 16.504, the best practice is to issue the first task order using project funds at the same time the ID contract is awarded. If the first task order is not issued simultaneously with award of the ID contract, then the minimum quantity shall be obligated¹⁹ at the time of contract award using

¹⁹ Immediately upon award of a task order(s) in sufficient amount to satisfy the minimum quantity, the KO must deobligate the funds used to award the ID contract.

project funds, if the contract is customer-specific, or using the appropriate departmental overhead or revolving funds, if the contract serves many customers.

4-19. Task Order Issuance. IDC task orders are prepared using DD Form 1155, Order for Supplies or Services (DFARS 216.506). A DD Form 1155 for an ID contract task order need only be signed by the KO or ordering officer. The DD Form 1155 is a NTP.

4-20. NAF Contracts. AR 215-4 specifies the general procedures for NAF contracting. The FAR and its supplements, including the 6 percent statutory limitation, do not apply. Otherwise, the negotiation of an A-E contract for an NAF project should generally comply with this pamphlet.

4-21. Continuing Contract Clauses. The continuing contracts clauses allow for incremental funding of civil works water resource projects. The continuing contracts clause prescribed at EFARS 32.705-100(a), and found at 52.232-5001, is appropriate for use in A-E contracts, including ID contracts, for civil works water resource projects that have been specifically authorized by legislation. The alternate continuing contracts clause prescribed at EFARS 32.705-100(b), and found at 52.232-5002, is appropriate for use in A-E contracts, including ID contracts, for civil works projects under the continuing authorities program (ER 1105-2-100). Under both clauses, each increment of funding should produce a deliverable, such as a required interim submittal.

CHAPTER 5

CONTRACT ADMINISTRATION AND MANAGEMENT

5-1. Introduction. This chapter addresses certain, but not all, aspects of A-E contract administration and management. Chapters 6 and 7 address in detail two other very important aspects of A-E contract administration - evaluating performance and enforcing design responsibility, respectively.

5-2. Principles.

a. A-E contracts will be proactively managed to ensure the timely delivery of quality products and services.

b. A-E firms will be treated fairly and professionally.

5-3. General. The administration and management of an A-E contract is a team effort among the KO, contract specialist, contracting officer's representative (COR) and other technical personnel, the PM, and others. The primary functions in administrating and managing an A-E contract are:

a. Monitoring the A-E firm's performance, ensuring compliance with the contract, and enforcing the responsibility of the firm for the quality of its work.

b. Ensuring the firm has an adequate quality control process, and reviewing the A-E products for conformance with the technical requirements of the contract.

c. Evaluating the firm's performance.

d. Maintaining liaison and direct communications with the A-E firm, and promptly resolving any questions and issues that may arise.

e. Providing required Government-furnished information and materials, and arranging access to work areas.

f. Paying the firm in a timely manner for satisfactorily completed work.

g. Modifying the contract as required accommodating changes in requirements.

h. Closing out the contract.

5-4. Contracting Officer's Representative.

a. The appointment and responsibilities of a COR are described in DFARS 201.602-2. A COR assists the KO with technical monitoring and administration of the contract. A COR must have the training listed in paragraph 4-4.b as well as any other training specified by the KO, and have considerable experience in contract administration. There is no regulation

which precludes a Government employee that participated in the evaluation boards for and/or negotiation of an A-E contract from being a COR on that contract. However, the KO may impose such restrictions if necessary to ensure the integrity of the system of checks and balances.

b. A COR may be in any organizational element²⁰ as long as the COR is in a position to directly monitor an A-E firm's performance and the system of checks and balances is maintained. During construction, an appropriate, qualified person in the field office may be appointed as COR for an A-E contract, especially if the A-E firm is required to provide certain construction phase services²¹.

5-5. Quality Management. The quality management procedures, practices and tools in ER 1110-1-12 will be employed to ensure that the A-E firm delivers excellent engineering and design services and products to the customer on schedule and within budget.

5-6. ID Contracts.

a. Management of Contract Limitation. An ID contract is typically used by more than one organizational unit. Hence, a process must be established for all ID contracts to reserve an estimated amount for a planned task order and to track the actual prices of orders to ensure the limit for the contract or contract period (if applicable) is not exceeded.

b. Contract Limitations. See EFARS 36.601-3-90 regarding limitations on the amount and duration of A-E ID contracts, and waivers thereof. See EFARS 16.5 on general guidance for ID contracts, and paragraph 4-18.b regarding the minimum quantity.

c. Ordering. See EFARS 16.505(b)(1). When two or more ID contracts contain the same or overlapping scopes of work (including, but not necessarily, multiple award contracts) so that a particular task order might be issued under more than one contract, the contract file must be documented to show the basis for selecting a particular contractor for negotiation of a task order.

d. Installation Use of ID Contracts. When authorized by a USACE command, installations may use USACE A-E ID contracts (AFARS 5136.600-90 and EFARS 36.601-3-90(i)). Qualified public works personnel may be appointed as COR to administer orders.

²⁰ For example, a PM may be a COR, depending on local practices.

²¹ Construction phase services include, for example, design modifications to accommodate unforeseen site conditions or criteria changes, review of contractor value engineering change proposals, site visits to evaluate the acceptability of completed construction or monitor certain tests, review of shop drawings, and assistance with commissioning.

Also, if mutually agreed between USACE and the installation, an installation KO may be appointed as an ordering officer to issue task orders. In any case, the USACE KO shall provide written instructions to the installation KO and facilities engineering personnel regarding the limitations and procedures for the negotiation, issuance and administration of task orders. These instructions will address USACE and installation responsibilities, and include:

- (1) SOW preparation.
- (2) Requirements for preparation of an IGE (FAR and EFARS 36.605, and Appendix X).
- (3) Negotiation procedures, including compliance with the 6 percent statutory limitation (DFARS 236.606-70). Also indicate that any failure to reach agreement must be referred to the USACE KO.
- (4) Preparation of the DD Form 1155.
- (5) Funding and payments.
- (6) Requirement for design within the construction funding limitations (FAR 36.609-1).
- (7) Enforcing the responsibility and liability of the A-E firm for design errors or deficiencies (FAR 36.608 and 36.609-2, and Chapter 7).
- (8) Resolution of disputes.
- (9) Preparation of performance evaluation (FAR and EFARS 36.604, and Chapter 6).
- (10) Contract documentation.

5-7. Payments.

a. FAR 52.232-10 is the payment clause for A-E contracts. The payment clause and process should be discussed with an A-E firm during negotiations. The clause allows for monthly progress payments. The contract (typically under Section G, Contract Administration Data) should specify the format of the payment request (typically ENG Form 93, Payment Estimate - Contractor Performance is used) and any required supporting data, such as a written description of the work completed in the payment period, a bar chart of work progress, and example work products. Payments are by electronic funds transfer in accordance with the Debt Collection Act of 1996, and must be made promptly in accordance with FAR 52.232-26, Prompt Payment for Fixed-Price A-E Contracts. Generally, payment must be made within 30 days after receipt of a proper invoice from a contractor.

b. The PM, COR and/or other technical staff may also visit the A-E firm's office to verify progress. The COR will reduce the payment estimate, if warranted, to conform to the actual satisfactory progress and promptly notify the A-E firm in accordance with the prompt payment clause (FAR 52.232-26). Typically, the KO delegates the authority to approve progress payments to the COR. However, the KO usually approves the final payment.

c. The payment clause allows for up to 10 percent of an approved progress payment to be retained to protect the interests of the Government. However, retainage should not be automatically withheld from each payment if the PM and COR is certain of the progress and the quality of the completed work. Retainage should not be held in an amount greater than, or for a period longer than, absolutely needed to protect the Government. All retainage should be paid when discrete phases of the project are satisfactorily completed. Retainage shall never be applied in a punitive manner. Also see the guidance in FAR 32.103 which is equally applicable to A-E contracts.

5-8. Subcontract Reporting. A contractor must report semiannually on its progress in complying with the subcontracting goals agreed to in the subcontracting plan using SF 294, Subcontracting Report for Individual Contracts, and SF 295, Summary Subcontract Report (FAR Clause 52.219-9). The contract administration team must ensure that the A-E firm makes a good faith effort to comply with the subcontracting plan and submits the required reports to the KO in a timely manner. Compliance with the subcontracting plan is an attribute on the A-E performance evaluation form. A contractor may be assessed liquidated damages for not complying with its subcontracting plan.

5-9. Resolving Performance Problems. Proactive day-to-day oversight of an A-E contract by the PM, COR and/or other technical staff, including frequent communications with the firm, will prevent most A-E performance problems. However, the A-E firm must be promptly advised whenever its performance is marginal or unsatisfactory²². If performance continues to be marginal or unsatisfactory, the Government shall take stronger action to improve the firm's performance. The following methods, in general order of increasing impact and severity, should be used to resolve A-E performance problems.

a. Verbal notice to the firm by the COR. Document in the contract file. (The COR should keep the KO informed on any corrective action.)

b. Letter to the firm from the COR citing specific deficiencies and required corrective action.

²² This pamphlet is based on the April 1999 edition of DD Form 2631, Performance Evaluation (Architect-Engineer), which replaced the November 1992 edition. The new overall ratings are "exceptional," "very good," "satisfactory," "marginal" and "unsatisfactory." The 1992 edition of the form had corresponding overall ratings of "excellent," "above average," "average," "below average" and "poor."

- c. Meeting between the firm and the COR and possibly PM. Document in the contract file.
- d. Meeting between the firm and the Chief of Engineering. Inform the firm that an interim “marginal” or “unsatisfactory” performance evaluation will be prepared if its performance does not promptly improve, and that this evaluation could affect its selection for other contracts. Document in the contract file.
- e. An interim “marginal” or “unsatisfactory” performance evaluation in accordance with the procedures in Chapter 6.
- f. Meeting between the firm and the KO and PM and/or COR. Document in the contract file.
- g. A “cure” notice to the firm from the KO (FAR 49.402-3(c) and (d)). The cure notice must cite the specific deficiencies, required corrective actions, and suspense date.
- h. A “show” cause notice to the firm from the KO (FAR 49.402-3(e)), notifying the firm of the possibility of termination.
- i. A final "marginal" or “unsatisfactory” performance evaluation.
- j. Termination for default (FAR 49.4), which shall always be accompanied by a final “unsatisfactory” performance evaluation.

Also, see Chapter 7 regarding an A-E firm's responsibility for errors or deficiencies in design or other services discovered after completion of the contract work.

5-10. Contract Closeout.

- a. An A-E contract must be closed out promptly after satisfactory completion and delivery of all required services and products. However, in the case of an A-E contract for the design of a particular construction project, A-E services are often required during the construction period that cannot be definitively anticipated or priced when the contract is awarded (or even when the design is completed). The A-E contract should typically remain open to readily accommodate these potential changes.
- b. In order to preserve the Government’s ability to add work during the construction period that can not be quantified or priced at the time of the award of the original contract, the synopsis and the scope of an A-E contract for the design of a particular project should include a statement that additional work is contemplated (list the types of possible services

such as in the footnote 2) during the construction period and may be added pursuant to the Changes clause (FAR 52.243-1, Alternate III). It is not acceptable to withhold earned payment from a firm as a means to keep the contract open.

c. FAR 4.804 provides general procedures for contract closeout. For an A-E contract, the following additional actions are required:

- (1) All liability actions resolved.
- (2) Performance evaluation(s) prepared, approved and distributed.
- (3) Return of all Government-furnished materials.
- (4) .Release of claims executed.
- (5) Final SFs 294 and 295.

CHAPTER 6 PERFORMANCE EVALUATION

6-1. Principles.

a. Accurate and timely performance evaluations support the USACE objective of continuously improving the quality of A-E services and products.

b. The performance of A-E firms shall be evaluated fairly and objectively. Ratings are ultimately the decision of the Government and are not subject to negotiation with A-E firms. However, overall ratings²³ of "marginal" and "unsatisfactory" may be rebutted by A-E firms in accordance with the procedures herein.

c. A-E firms shall be kept apprised of the quality of their work throughout contract performance and shall promptly be notified of completed performance evaluations.

6-2. Responsibilities.

a. The Chief of Engineering in each operating command²⁴ is responsible for the A-E performance evaluation process in the command.

b. Area engineers and resident engineers (AE/RE) are responsible for preparing A-E evaluations after the completion of USACE-managed construction projects.

6-3. Regulatory Background. This pamphlet implements²⁵:

a. FAR 36.604, which requires that the performance of A-E contractors be evaluated and that files of performance evaluations be maintained for use in selecting firms for A-E contracts,

²³ This pamphlet is based on the April 1999 edition of DD Form 2631, Performance Evaluation (Architect-Engineer), which replaced the November 1992 edition. The new overall ratings are "exceptional," "very good," "satisfactory," "marginal" and "unsatisfactory." The 1992 edition of the form had corresponding overall ratings of "excellent," "above average," "average," "below average" and "poor."

²⁴ See definition in paragraph 2-2.a.

²⁵ FAR Subpart 42.15, and the supplements thereto, addresses recording and maintaining contractor performance information, but, by its terms, do not apply to A-E services.

b. DFARS 236.604, which requires a separate performance evaluation after completion of construction and specifies that all DoD agencies forward completed evaluations to the “central data base” maintained by USACE (ACASS), and

c. EFARS 36.604, which amplifies certain requirements of the FAR and DFARS.

6-4. General Procedures.

a. Implementation. The Chief of Engineering will establish written procedures, including a tracking system, to ensure the timely preparation, approval and distribution of all required A-E evaluations in accordance with this pamphlet. (A recommended process is to coordinate completion of the performance evaluation with processing of the final payment.) A-E evaluations shall be scheduled events in the management plan for a project.

b. Contracts Requiring Performance Evaluation. Performance evaluations are required for all contracts²⁶ and task orders for A-E services in excess of \$25,000, but may be prepared for lesser contracts (FAR 36.604 (a)). Design services provided under a design-build contract are not given an A-E performance evaluation and are not subject to this pamphlet. Instead, the quality of the design services in a design-build contract will be addressed in the remarks section on the construction performance evaluation form (DD Form 2626). Do not do an after-construction evaluation of an A-E firm who prepared a design-build request for proposal with a partial design.

c. Preparation of Evaluations.

(1) A performance evaluation shall be prepared by the engineers, architects and other technical personnel who reviewed and accepted the A-E firm's work, as recommended by FAR 36.604 (a)(1). Sufficient effort must be devoted to this function so that thorough and fair evaluations are completed in a timely manner. Additional guidance is also available in the ACASS Policy Manual at the CPARS web site, <http://cpars.navy.mil/cparsfiles/acass/acassref.htm>.

(2) Performance evaluations (except marginal or unsatisfactory) shall be prepared, reviewed, approved and distributed within 60 days of the designated milestones in paragraphs 6-7 and 6-8. Additional time will generally be required for evaluations with an overall rating of “marginal” or “unsatisfactory” if rebutted by the A-E firm (see paragraph 6-10). Do not wait for fiscal close-out of the contract to do the evaluation.

d. Evaluation Form. Performance evaluations shall be prepared on DD Form 2631 (DFARS 236.604(a)) in accordance with the instructions in Appendix AA.

²⁶ Exclusive of ID contracts, which are evaluated on the basis of individual task orders.

e. ACASS.

(1) Performance evaluations shall be prepared in the Architect-Engineer Contract Administration Support System (ACASS) sub-module of the Contractor Performance Assessment Reporting System (CPARS), at <http://www.cpars.navy.mil>. The Chief of Engineering of each operating command shall appoint an individual to serve as the "Focal Point" for the system. The Focal Point shall be responsible for assigning access to individuals for contracts to be evaluated. Each contract will have the following individuals assigned as a minimum: An Assessing Official, a Reviewing Official (the Chief of Engineering), and a Contractor Representative from the A-E firm.

(2) The Assessing Official (or his/her representative) will prepare the evaluation electronically. After the evaluation is prepared but before it is signed, the system automatically routes the evaluation to the Contractor Representative for inclusion of remarks in the evaluation. After the Contractor Representative prepares the remarks (or after 30 days if he/she does not respond), the system notifies the Assessing Official who will electronically sign the evaluation. It is then automatically sent to the Reviewing Official for approval and electronic signature.

(3) Firms automatically receive e-mail notification upon completion of evaluations prepared within ACASS, and may retrieve the evaluation from ACASS, or the Past Performance Information Retrieval System (PPIRS), at <http://www.ppirs.gov>, by using their Dun & Bradstreet (DUNS) number and the Marketing Partner Identification Number (MPIN) to access their information. The MPIN number is selected when the firm registers in the Central Contractor Registry (CCR). Additional information about the MPIN number is available at the following CCR link: <http://www.ccr.gov/vendor.asp#4.5>.

(4) When extenuating circumstances require that evaluations be posted directly to ACASS as completed evaluations, rather than utilizing the electronic process described above, it is the responsibility of the operating command²⁷ administering the contract to either forward a copy of the completed evaluation to the firm, or notify the firm that they can view the evaluation in the PPIRS.

f. Assignment of Overall Ratings. The overall rating is based on the ratings in the discipline and attribute matrices. While this is a matter of judgment, general guidance is given below to promote uniformity.

(1) "Exceptional." All or almost all of the significant disciplines and attributes are rated "exceptional." No discipline or attribute should be "marginal" or "unsatisfactory."

²⁷ See definition in paragraph 2-2.a.

(2) "Very Good." A majority of the significant disciplines and attributes are rated "exceptional" or "very good." No significant discipline or attribute should be "marginal" or "unsatisfactory."

(3) "Satisfactory." No significant discipline or attribute should be "unsatisfactory." Quality of final work is acceptable in an overall sense; however, it may have been necessary to get the firm to correct some unacceptable work.

(4) "Marginal." One or two significant disciplines or attributes are rated "unsatisfactory," or all or almost disciplines or attributes are rated "marginal." An unusual amount of extra effort and follow-up on the part of the Government was required in order to get an acceptable product.

(5) "Unsatisfactory." Several significant disciplines and attributes are rated "unsatisfactory." This rating is appropriate for a firm that does not produce acceptable work despite extensive effort by the Government. This rating is required for all contracts terminated for default.

g. Remarks. The remarks in Item 20 of the DD Form 2631 should support and be compatible with the overall rating. A rating of "marginal" or "unsatisfactory" must be fully explained in the remarks. Also, the remarks should not suggest that the firm really did "marginal" work when the overall rating is "satisfactory."

h. Safeguarding Evaluations. Completed A-E performance evaluations are classified as "For Official Use Only" in accordance with AR 25-55. All pages of the evaluation shall be stamped or marked at the top and bottom "For Official Use Only" in accordance with the provisions of AR 25-55, Section 2, Markings. A firm's evaluations will only be given to proper representatives of the firm, to representatives of a Federal agency having a legitimate need for this information, and to ACASS.

i. Contract Negotiation. The performance evaluation form and procedures shall be discussed with an A-E firm during contract negotiation (EFARS 36.604(S-100) and paragraph 4-7.b).

The Government will clearly describe its performance expectations, and stress the importance of the performance evaluation in future selections. The PNM will indicate that this discussion took place.

j. A-E Office Location. Enter in Item 6 of the DD Form 2631 the A-E office location that had the lead role in performing the work, which may not be the office that signed the contract. The evaluation will not be useful or relevant in future selections if it does not reflect the actual performing office.

k. Responsible Command. When more than one command is involved in the execution of a project, the command having KO authority for administration of the A-E contract is responsible for preparation of the A-E performance evaluation.

The responsibility for the A-E performance evaluation will be included in the overall management plan for the project (see ER 5-1-11).

1. A-E Contracts Awarded for Installations.

(1) This chapter also applies to A-E contracts awarded by USACE for administration by Army installations or other activities. As required by paragraph 5-6.c, the USACE KO will issue instructions to the installation on the preparation of performance evaluations, including preparation of the A-E evaluation after completion of construction when the installation is responsible for managing the construction contract.

(2) If a person at the installation has COR authority for the A-E contract, this person may act as the rating official (Assessing Official). Otherwise, the chief of the unit in the Directorate of Public Works or similar engineering office charged with the oversight responsibility for the A-E contract will act as the rating official. The reviewing official will be the Chief, or Assistant Chief, of Engineering of the supporting USACE district.

6-5. Monitoring Performance.

a. General. The quality of an A-E firm's products and services must be adequately documented throughout the performance of the contract and the firm kept apprised of the quality of its work (EFARS 36.604(S-100)). An A-E firm will be notified immediately upon recognition of marginal or unsatisfactory performance as outlined in paragraph 5-9.

b. Appraisals. Operating commands shall establish procedures to appraise the quality of each A-E submittal, using the discipline and attribute matrices on the DD Form 2631. The appraisals will be supplemented as appropriate with narrative that supports the rating and will assist the PM and COR in communications with the A-E on submittal quality. These appraisals will be made by each of the pertinent disciplines. It is particularly important to adequately document any area of unsatisfactory or exceptional performance. These appraisals constitute the basis for interim and final performance evaluations and shall be retained in the contract files.

6-6. Interim Evaluations.

a. General. An interim performance evaluation (FAR and EFARS 36.604(a)(3)) will be prepared under the following conditions, in accordance with the procedures in paragraph 6.7.c:

(1) A cumulative, interim evaluation will be prepared at least annually for a task order or a FP or CR contract with a performance period anticipated to exceed 18 months (EFARS 36.604(S-102)).

(2) An interim evaluation will be prepared whenever a project is deferred for more than 3 months if a substantial portion of the work has been completed.

(3) An interim evaluation will be prepared when a firm's performance is "marginal" or "unsatisfactory" (EFARS 36.604(a)(3)) after reasonable steps have been taken by the Government to improve the firm's performance (see paragraph 5-9). An interim evaluation formally puts a firm on notice that its performance is inadequate in order to encourage improvement and to make the information on the firm's performance available to other contracting offices in a timely manner. An interim "marginal" or "unsatisfactory" evaluation provides a very strong basis for a final "marginal" or "unsatisfactory" evaluation (see paragraph 6-10) if a firm's performance does not improve.

(4) At any other appropriate time.

b. Approval and Distribution. Interim evaluations will be approved and distributed in accordance with paragraph 6-9. All evaluations prepared in the ACASS system are automatically routed to the firm for inclusion of their remarks or rebuttal. The basis for an interim "marginal" or "unsatisfactory" evaluation must be well documented. An interim "marginal" or "unsatisfactory" evaluation is subject to the rebuttal process in paragraph 6-10, and will not be finalized until the rebuttal process is completed (EFARS 36.604(a)(4)). Interim evaluations that have been transmitted to ACASS will be replaced by the final evaluation. Any interim "marginal" or "unsatisfactory" evaluations and a summary of any actions the firm took to remedy the deficiencies shall be recorded in Item 20, "Remarks" of the final evaluation.

6-7. Evaluation of A-E Performance after Completion of Design or Engineering Services.

a. General. A final evaluation will be prepared for each task order or FP or CR contract exceeding \$25,000 (EFARS 36.604(S-101)). For engineering services not directly related to design, the evaluation shall be prepared after acceptance of the A-E products. For design services, the evaluation shall be prepared after the construction bid opening, provided the bid opening is scheduled to occur within 3 months of design completion. Otherwise, the evaluation will be prepared after completion of the design.

b. Preparation. All performance evaluations shall be prepared and automatically routed within the ACASS sub-module of the CPARS system. The final performance evaluation will be based on the appraisals prepared by the technical reviewers and input received from the PM and customer, as well as any interim evaluations. The COR will assign the overall rating and electronically sign the form as the rating official. A copy of the evaluation will be sent to the PM when the evaluation is forwarded for approval.

c. Contract Termination. A performance evaluation shall be prepared for a task order or a FP or CR contract terminated for any reason prior to completion of the work if the value of services completed at termination exceeds \$25,000 or if the contract was terminated for default.

6-8. Evaluation of A-E Performance after Completion of Construction.

a. An evaluation (referred to herein as the A-E construction evaluation) shall be prepared after substantial physical completion of each construction project based on an A-E design where the price of the A-E services (performed by task order or FP or CR contract) exceeds \$25,000 (EFARS 36.604(S-101)).

b. Preparation.

(1) During construction, the AE/RE is responsible for assessing the accuracy and completeness of the A-E firm's work and its responsiveness in resolving design problems that arise during construction. Sufficient documentation will be maintained by the AE/RE to support the A-E construction evaluation. Use of the discipline and attribute matrices on the DD Form 2631 can assist in documenting performance during construction and in communicating with the A-E firm on design problems. The AE/RE will coordinate the evaluation with the design COR and PM.

(2) The AE/RE is responsible for preparing the A-E construction evaluation in the ACASS system, assigning the overall rating, and electronically signing the form as the rating official.

c. Review and Approval. Engineering Division will be notified electronically by the system and will promptly review and approve an A-E construction evaluation after it is prepared by the Construction Division. No changes will be made in the A-E construction evaluation without the concurrence of the AE/RE, design COR and PM.

(1) Any significant differences in assessment between the design and construction evaluations will be resolved. This may require reevaluation of some aspects of the design by the personnel who reviewed the A-E firm's work during the design phase. Particular attention should be given to discipline or attribute ratings that could possibly reflect a misunderstanding of the A-E firm's responsibility. Any questions of this nature should be discussed with the AE/RE and the construction modification file reviewed if necessary.

(2) As a consequence of the A-E construction evaluation, or other factors, Engineering Division may wish to change some of the ratings given for disciplines or attributes in the design evaluation. If so, the matrices on page 2 of the A-E construction evaluation, applying to design/engineering services, shall be completed and a statement made in Item 20, "Remarks," giving the reason for the change.

If Engineering Division wishes to change the overall rating on the design evaluation, a revised evaluation will be prepared within the ACASS system in accordance with paragraph 6-9.c(1). A statement shall be made in Item 20, "Remarks," giving the reason(s) for the revision.

d. Review of A-E Liability. The COR will obtain the A-E liability information for Item 11 of the DD Form 2631 from the A-E Responsibility Coordinator (AERC; see Chapter

7). Refer to the instructions in Appendix AA. An updated evaluation will be prepared in ACASS as specified in paragraph 6-9.c(2) if there is a later change in the A-E liability information. Completion of an evaluation shall not be delayed because liability determinations have not been resolved.

6-9. Approval and Revision of Evaluations.

a. Approval. The reviewing official for A-E performance evaluations shall be the Chief or Assistant Chief of Engineering, unless a proposed “marginal” or “unsatisfactory” evaluation is rebutted (see paragraph 6-10). The reviewing official will review the performance evaluation and the supporting documentation to assure that the overall rating is justified. The date of the reviewing official's electronic signature (in ACASS) is the official date of the evaluation.

b. Revisions and Corrections.

(1) A performance evaluation may be changed by the reviewing official, or successor, upon presentation of adequate evidence. However, no changes shall be made in an A-E construction evaluation without concurrence of the AE/RE. A statement must be included in Item 20, "Remarks," describing the change and explaining why it was made.

(2) The revised evaluation shall be submitted to the ACASS system. If the revisions are significant, the evaluation should be prepared within ACASS (and automatically routed to the A-E for comment). Evaluations with minor changes may be submitted to ACASS as completed evaluations and notification sent to the A-E firm. The revised evaluation will automatically replace the prior evaluation in ACASS and PPIRS.

(3) An evaluation may be updated to change factual information (such as Items 9, 10 or 11) or correct obvious clerical errors without the approval of the reviewing official. An email clearly identifying the changes, contract number, evaluation type, and date shall be sent to the CPARS Navy Help Desk at webpmsmh@navy.mil. The CPARS Navy Help Desk will make the requested changes.

6-10. Marginal and Unsatisfactory Performance.

a. General. This section implements FAR and EFARS 36.604(a)(4), and only applies to final evaluations, and not interim evaluations.

b. Documentation. Documentation of marginal or unsatisfactory performance must be adequate to support the performance rating. It is very important to document the steps taken by the Government to get the A-E firm to improve performance (see paragraph 5-9), and the A-E firm's responses. Records should be made of all telephone conversations and meetings with the A-E firm concerning performance. Generally, a final “marginal” or “unsatisfactory evaluation” should have been preceded by an interim “marginal” or “unsatisfactory” evaluation.

c. Preparation and Notification.

(1) A performance evaluation will be prepared in the ACASS system, documenting the marginal or unsatisfactory performance.

(2) At the time that the evaluation is prepared in ACASS, the preparer shall notify the Contractor Representative that he/she has 30 days during which he/she may either rebut the rating or add his/her remarks electronically to the evaluation.

(3) If the A-E firm does not respond by entering their remarks in ACASS or by notifying the Government that he/she intends to rebut the rating within the allotted time, the evaluation will be finalized.

d. Rebuttal Process.

(1) If an A-E firm rebuts a rating, a meeting will be scheduled with the District Commander or Deputy District Commander. The firm will be advised of the fact-finding nature of this meeting and provided with the evidence that will be submitted to the Commander for consideration. Every effort will be made to fully explore the major performance deficiencies in the meeting to enable the Commander to make a decision without the need for additional meetings or evidence. The firm will be given sufficient time to prepare for this meeting. The meeting with the Commander will be held within 30 days of the firm's rebuttal, to the maximum extent possible.

(2) Following the meeting with the A-E firm, the Commander will decide whether to support or change the proposed rating. If the Commander decides to change the rating, the contract file will be documented to show the reason(s). The firm may at this time add comments to Item 20, "Remarks." The evaluation will be signed by the rating official and the Commander shall sign as the reviewing official. The KO will send a letter to the A-E firm advising of the Commander's decision.

(3) Performance evaluations that are rebutted by A-E firms will not be finalized in ACASS and transferred to PPIRS until the above rebuttal process is completed (EFARS 36.604(a)(4)). (Electronic signature by the Reviewing Official finalizes evaluations in the ACASS system).

CHAPTER 7

A-E RESPONSIBILITY MANAGEMENT PROGRAM

7-1. Introduction. This chapter addresses actions to be taken from the discovery of an A-E error or deficiency to the issuance of a final contracting officer's decision (COD) against the A-E firm under FAR 52.233-1, the contract "Disputes" clause. Subsequent action is covered by FAR 33.2, Disputes and Appeals.

7-2. Principles.

a. In accordance with FAR clause 52.236-23, "Responsibility of the Architect-Engineer Contractor," an A-E firm is responsible for the quality of its products and services and is liable for damages to the Government caused by its negligence or breach of contractual duty. The A-E Responsibility Management Program (AERMP) is a formal process for holding A-E firms accountable for their work and recovering damages to the Government caused by A-E firms.

b. The goals of the AERMP are to:

(1) Maintain and improve the quality of A-E services and products.

(2) Hold A-E firms responsible for their work and recover damages to the Government resulting from negligence or breach of contractual duty.

c. The AERMP will be conducted in a fair, consistent, and reasonable manner.

d. No demand for recovery of damages will be made to an A-E firm without an adequate review of the facts and circumstances.

e. Investigations and recovery actions will be pursued in a cost-effective and timely manner to mitigate damages, minimize administrative costs, strengthen the likelihood for full recovery, and allow the reuse of project funds.

f. Recovery of damages will only be pursued when economically justified or otherwise in the best interest of the Government.

g. A reasonable effort will be made to resolve liability actions through partnering and negotiation. If unsuccessful, other alternative dispute resolution (ADR) techniques should be considered. Litigation should be the last option.

h. Only the KO can accept a liability settlement for the Government or relieve an A-E firm of its liability.

7-3. Responsibilities.

a. MSC. MSC commanders are responsible for overseeing the AERMP in their subordinate districts to ensure timeliness, cost-effectiveness, and compliance with this pamphlet. MSC Commanders will appoint an MSC A-E Responsibility Coordinator (AERC). The AERC will provide day-to-day oversight of the AERMP, and be the point of contact with the districts and HQUSACE.

b. Operating Commands²⁸.

(1) A-E Responsibility Administrator (AERA). The Chief, or Assistant Chief, of Engineering (or comparable position) will be the AERA. The AERA is responsible for the timeliness, cost-effectiveness, reasonableness and fairness of the AERMP, and compliance with this pamphlet. The AERA will appoint a command AERC. The AERC will be a very experienced engineer or architect who has the training specified in paragraph 4-4.b of this pamphlet. The AERC will be responsible for the day-to-day management of the AERMP and be the point of contact for the program.

(2) A-E Responsibility Management Review Board (AERRB). The commander of each operating command will establish an AERRB to review deficiencies in A-E performance when requested by the AERC or the KO and advise on appropriate action. The AERA shall chair the AERRB and the voting members will include senior representatives from Construction, Programs and Project Management, Contracting and Counsel.

c. Multiple Responsible USACE Commands. When the project management, design and/or construction of a project are performed by different USACE commands, the USACE command having KO authority for the A-E contract ("design" command) will be responsible for the AERMP, including reporting. The "design" command is responsible for developing a memorandum of understanding with the "project management" and/or "construction" commands on how the requirements of this chapter will be met.

7-4. Legal and Regulatory Background.

a. All FP contracts and ID contracts with FP task orders for A-E services must incorporate FAR clause 52.236-23, "Responsibility of the Architect-Engineer Contractor," which stipulates that:

(1) The A-E firm shall be responsible for the professional quality, technical accuracy, and coordination of all designs, specifications, and other services it furnishes.

²⁸ See definition in paragraph 2-2.a.

(2) The A-E firm shall, without additional compensation, correct or revise any errors or deficiencies in its work.

(3) The Government's review, approval or acceptance of the A-E services is not a waiver of any of the Government's rights.

(4) The A-E firm shall be and remain liable for all damages to the Government caused by its negligent performance.

b. Typical examples of A-E liability are when, due to an A-E design error or deficiency, modification of an ongoing construction contract is required or there is a design-related failure after construction. An A-E firm may also be liable for Government damages arising from failure to design within the funding limitations (FAR 36.609-1 and 52.236-22) or to comply with the contract schedule or technical provisions. In all such instances, FAR 36.608 directs the KO to "consider the extent to which the architect-engineer contractor may be reasonably liable," and to "enforce the liability and collect the amount due, if the recoverable cost will exceed the administrative cost involved or is otherwise in the Government's interest."

c. Each of the following three questions must be answered affirmatively for an A-E firm to be liable for damages:

(1) Did the firm make an error or omission?

(2) Did the error or omission result from the firm's negligence, or from a breach of contractual duty?

(3) Has the Government suffered damages as a result of the error or omission?

d. The following legal principles should be considered when deciding if an A-E firm is liable:

(1) Negligence. Negligence is the failure to meet the standard of reasonable care, skill and diligence that one in the A-E profession would ordinarily exercise under similar circumstances.

(2) Burden of Proof. In order for the Government to prevail in a claim against an A-E firm, it must be able to prove that the firm was negligent and that the error or omission by the A-E firm was the cause of the damages.

(3) Comparative Negligence. The doctrine of comparative negligence provides that the Government is not barred from any recovery of damages if it is also negligent, but that there will be an apportionment of damages or responsibility in proportion to the relative fault of the parties involved.

(4) Mitigation. The Government has a responsibility for minimizing damages resulting from an A-E firm's deficiencies. The firm must be notified promptly when a deficiency is discovered by the Government and provided a reasonable opportunity to correct its work.

(5) Government Assumption of Risk. An A-E firm may be relieved of responsibility for a design deficiency due to action by the Government, such as if the Government corrects the design deficiency without the concurrence of the A-E firm and the corrected design is the cause of a failure.

e. The Government is entitled to seek recovery of damages resulting from any type of negligence, non-performance, or breach of contract terms. It is not necessary that the deficiency be corrected for the Government to recover damages. It is only necessary to show that the Government has incurred damages, or will in the future (diminished value theory).

f. FAR 36.608 allows economic factors to be considered when deciding whether to initiate an A-E liability case. However, it may be in the Government's interest to initiate a case where the administrative costs could exceed the anticipated recovery, such as a small claim arising from a serious error that could have resulted in much larger monetary damages or personal injury. All the circumstances of each case must be considered when deciding whether to pursue A-E liability.

g. It is possible to be overly zealous in the pursuit of A-E liability. It is not in the Government's best interest to make claims for relatively small damages due to minor errors that would probably not support a claim of negligence before a board or court. This could lead to the A-E community regarding such claims as a cost of doing business with USACE, with attendant increases in price proposals, diminution of the Corps' professional image, and fewer firms willing to work for USACE.

7-5. Implementation.

a. Command Implementation. Each USACE command will issue written procedures implementing the AERMP in the command.

b. Installation Support. The USACE KO retains responsibility for certain aspects of the administration of A-E contracts awarded for use by Army installations, including the investigation and enforcement of liability and resolution of contract disputes. In accordance with paragraph 5-6.d, the USACE KO will provide written instructions to the installation regarding the AERMP, including notification of the A-E firm, obtaining a corrective design, funding, and preparation of damage statements and findings-of-fact.

c. Program Cost Effectiveness. The AERA will periodically review the cost-effectiveness of liability investigations and recovery actions to ensure that the technical and administrative effort is commensurate with the damages recovered. In particular, the AERA will review the Efficiency Ratio and Settlement Ratio, as defined and reported on ENG Form 4858A-R (see paragraph 7-9.b(1)), for each liability case.

d. Schedule. A-E liability cases must be pursued in a timely manner to mitigate the damages and strengthen the likelihood for full recovery. Also, since recoveries can be credited to the project if the appropriation is open, quick action is highly desirable if the damages are significant. The AERC will establish an appropriate schedule for each case (depending on dollar value, complexity, and other pertinent considerations), closely track the Government and A-E firm's actions, and follow-up with the appropriate parties when suspense dates are not met. The AERA will periodically review liability cases to ensure their timely progress.

7-6. Funding.

a. The AERMP is a team effort. While Engineering Division is the lead in administration of this program, the PM, Contracting, Counsel, Construction Division, Resource Management (RM) and other team members must be continually involved. The PM will be kept apprised of A-E liability actions so the PM may control, allocate and/or obtain funds and keep the customer informed. Also, the AERC will coordinate with the PM and RM to keep the project account open until all A-E liability actions are resolved. This will facilitate funding of the costs to pursue recovery of damages, as well as allow crediting the appropriate account(s) with monies received in settlements.

b. The AERC will request that the PM take appropriate action to ensure that detailed project cost records are maintained for each A-E liability case, starting when it is apparent that a liability case will be initiated. These cost records must include all costs associated with investigation, deliberation and prosecution of the case, including support costs incurred by the Office Counsel such as for travel, expert witnesses, and deposition expenses. (Office of Counsel labor costs are funded as general and administrative overhead.)

c. General administration of the AERMP, such as AERRB meetings and reporting, will be funded by the respective departmental overhead accounts of the personnel involved.

d. Planning and design (P&D) funds for military construction (MILCON) projects, and appropriate project funds²⁹ for other types of projects, will be used to investigate and pursue A-E liability actions that occur during planning or design.

e. Initial investigation and documentation of potential A-E liability and damages will be charged to S&A. Thereafter, DDC or P&D funds approved and provided by the customer will be used for further investigation and pursuit of an A-E liability claim.

f. During the design or construction of a project, the AERC will request additional project funds from the PM when necessary to investigate or pursue A-E liability. The

²⁹ Project funds mean the appropriation that funded the project, or succeeding appropriations in the rare case the appropriation ceases to be funded and the activity is funded from a different appropriation.

request will give an explanation of the design deficiencies and damages, breakdown of estimated costs, discussion of likelihood of recovery and expected amount of recovery.

g. The PM will request additional funds from the customer, if warranted. The decision to request and expend project funds to pursue A-E liability will consider the amount of the damages, the likelihood of recovery, whether the settlement will be received in time to benefit the customer's project or program (see paragraph 7-7.n and Appendix DD, paragraph 3), and the customer's willingness to provide the funding. Where project funds are no longer available, the respective departmental or general and administrative overhead accounts of the personnel involved may be used to investigate and pursue A-E liability. Only the KO can finally decide not to pursue A-E liability (FAR 36.608) due to funding constraints.

7-7. Notification, Investigation and Recovery Procedures. Appendix BB is a graphic depiction of the A-E liability process. Each step is discussed below.

a. Notification and Corrective Design.

(1) The A-E firm will be promptly notified³⁰ as soon as a design deficiency is discovered, requested to provide a corrective design,³¹ and informed that it may be financially liable. Initial notification should be made by telephone immediately and formal notification will be made soon after by letter. The AE/RE will also immediately coordinate directly with the Engineering Division and the PM on significant design deficiencies discovered during construction. All contacts with an A-E firm will be fully documented.

(2) Engineering Division will review the corrective design when appropriate, such as when significant structural or life safety features are involved. The Engineering Division review will be performed promptly to avoid or minimize construction contract delays.

b. Corrective Design by the Government. If the A-E firm is unresponsive or cannot furnish a corrective design within an acceptable time period, the Government may have to provide the redesign. (See ER 1110-1-8152 regarding documenting design changes.) If so, the firm will be formally notified of its liability for the redesign cost and be kept informed of the Government actions. The firm should be requested to concur in the corrective action

³⁰ Notification will be made by a person identified in the A-E contract, such as the AE/RE, COR or PM.

³¹ There are instances where obtaining a corrective design from an A-E firm may not be necessary, such as when the correction is obvious and simple or the damages are minimal. But see paragraph 7-4.d(4) regarding the Government assumption of risk. In such cases, notification is not required; however the A-E firm must still receive an information copy of the construction contract modification.

taken by the Government or should sign a release. A statement shall be prepared for the contract file in accordance with FAR 36.609-2 if no action is taken against an A-E firm to recover redesign costs.

c. Implementation of Corrective Construction. An A-E firm shall not be permitted to perform construction required to correct design deficiencies by any means, including the use of it's or the Government's contractors. If done, the Government is not in control of the work and can not ensure that the Government's requirements and interests are satisfied. The Government may invite the A-E firm, as an advisor, to attend negotiations with the construction contractor on changes due to A-E design deficiencies.

d. Documentation of Deficiency. The discovery of a design deficiency and the early actions taken by the Government will be promptly and adequately documented. Include a thorough description of the deficiency, record of contacts with the A-E firm and its responses, the persons involved, actions taken, potential witnesses, and photographs, when appropriate. The AE/RE will evaluate each design error or deficiency using the conditions in paragraph 7-4.c, determine if the firm is not liable or is potentially liable, and document the contract file accordingly. The AE/RE will forward all potential instances of A-E liability to the AERC for further investigation.

e. Determination of Damages. If an A-E firm is potentially liable for a design error or deficiency, the AE/RE will compute the initial estimate of damages. Damages are the additional costs, diminished value or loss of use or function that the Government has incurred, or will incur in the future, due to an A-E firm's design errors or performance deficiencies. Appendix CC provides detailed guidance on determining damages. The damages will be revised as needed.

f. Investigation of Liability. The AERC will coordinate the investigation of potential instances of A-E liability. The investigation will be conducted by qualified design professionals of the appropriate disciplines who are familiar with the scope of the A-E contract. These persons must be capable of serving as credible Government experts if a liability case is eventually litigated. The investigation will be documented in a findings-of-fact that will:

(1) Explicitly define the errors or omissions by the A-E firm, including specific references to drawings, specifications, design criteria, review comments, and other pertinent documents.

(2) List the applicable contract provisions and any subsequent direction or guidance that might bear on the question of responsibility.

(3) Give an opinion on the A-E firm's responsibility and negligence. If the investigation concludes that the A-E firm is not liable for damages, the AERC will document the findings-of-fact accordingly and forward to the AERRB for concurrence. The findings-of-fact will be included in the contract file.

g. Preparation of Case Document. If the investigation concludes that an A-E firm is liable (but see paragraph 7-7.j for small actions), the AERC will prepare a case document to include:

- (1) Project background and schedule.
- (2) Computation of damages.
- (3) Findings-of-fact on liability.
- (4) Summary of any other liability actions on the same contract.
- (5) A-E performance evaluation history, including the contract under review.
- (6) Statement on the support and cooperation which the A-E firm provided during construction.
- (7) Any comments or information provided by the A-E firm regarding its liability.
- (8) Recommended action.

h. Letter of Intent. After the case document is prepared, the AERC will send a letter to the A-E firm (with a copy to the PM and the design COR) indicating the AERC's intent to recommend formal review by the AERRB of the firm's liability for damages. The letter will include any documents supporting the Government's position and a detailed statement of damages. The firm will be invited to present information on its position and to negotiate a settlement. A liability case is initiated when the letter of intent is sent³². Interest is not assessable until, and if, a COD is issued by the KO. In some instances it may be appropriate to issue a demand letter at this stage (see paragraph 7-7.l(3)).

i. Negotiation by AERC. The AERC may directly negotiate a liability settlement with an A-E firm without first presenting the case to the AERRB and without the KO issuing a demand letter, if the AERC has been previously authorized to do so by the KO³³. The AERC will then present the case and proposed settlement to the KO for approval, and to Counsel and any other appropriate offices (which may include the AERRB) for concurrence. The settlement will be reported in accordance with paragraph 7-9. If negotiation is unsuccessful, the AERC will present the case to the AERRB.

³² If an A-E settlement is made without the need for a letter of intent, a case report will still be prepared and the amount of the settlement included in the annual AERMP report. See paragraph 7-7 for reporting requirements.

³³ The KO may assign a contract specialist to the negotiation team with the AERC.

j. Small Errors or Deficiencies. If there are no compelling non-economic reasons, the consideration of small errors or deficiencies (typically below \$2,500 - \$5,000, depending on the size of the contract) may be deferred until the total number and/or total damages warrants recovery. The AERC will periodically review the deferred liability actions on each contract to see if aggregate recovery is warranted, and document these reviews. Any errors or deficiencies still held at the end of a construction contract that do not warrant recovery will be presented collectively to the KO for approval not to pursue, with the concurrence of any other appropriate offices. The decision not to pursue will be documented in the contract file as required by FAR 36.608.

k. AERRB Review and KO Action. The AERRB will promptly review the cases referred to it by the AERC and recommend action to the KO. The KO will then decide whether to issue a demand letter or not pursue recovery. The case document will be placed in the A-E contract file, along with the minutes of the AERRB meeting and the KO's decision.

l. Demand Letter.

(1) The demand letter provides an opportunity for resolution of the matter without resorting to the "Disputes" clause. The demand letter is prepared by the Office of Counsel, with factual and technical input from the Engineering and Construction Divisions and the PM, and shall be signed by the KO.

(2) The demand letter shall include the charge of negligence or contract breach, with the supporting documentation, a detailed listing of the damages, and the A-E firm's options. The letter shall state that a COD will be issued if satisfactory progress towards resolution is not made within a specified period of time (typically 30-60 days).

(3) Consider when the demand letter should be issued on a case-by-case basis. For example, if the A-E liability is obvious and the damages are significant, a demand letter should be sent as soon as the AERC prepares the case document instead of sending a letter of intent.

m. Negotiation and COD.

(1) A reasonable effort will be made to resolve a liability case by negotiation. If negotiation is not successful, consider using other ADR techniques³⁴. If a firm does not

³⁴ ADR is a range of techniques for the efficient and effective management of disputes without litigation. See FAR 33.214. The techniques include collaborative problem solving, mediation, facilitation, and third party intervention. ADR can be very useful in resolution of disputes before issuance of a COD, as well as afterwards.

respond to a demand letter in a reasonable length of time, the firm should be contacted and encouraged to either take issue with the Government's charges or enter into negotiations.

(2) If the firm still does not respond, a COD will be issued without delay. The COD starts a defined process under the "Disputes" clause. (See EFARS Appendix A, Part 3, A3-203.) The firm must either concede the case or appeal to the appropriate board of contract appeals within 90 days or the Court of Federal Claims within one year. The COD formally notifies the A-E firm that the Government is making a claim for the reasons stated, gives a detailed statement of damages, and lists the firm's options. The Debt Collection Act of 1982 applies to a claim against an A-E firm when a COD is issued. See Appendix DD for applicable procedures. Interest charges in accordance with FAR 52.232-17 will accrue on the damages if the claim is not settled within 30 days (FAR 32.610(b)(2) and 32.614-1(a)), and that the damages will be adjusted for costs incurred by the Government subsequent to the COD. (See Hazen & Sawyer, Inc., 85-1 BCA 17,919, which established the right of the Government to interest on recoveries under the A-E Responsibility clause. Also see 94-2 BCA 26,631, and 94-3 BCA 26,992.)

(3) Primary responsibility for a case passes from Engineering Division to Office of Counsel if a COD must be issued. Counsel prepares the COD based on data provided by Engineering, Construction and Contracting Divisions. The COD must be fully coordinated in accordance with command procedures. Engineering Division remains responsible for monitoring the progress of the case, coordinating support, and reporting.

(4) The 6-year limitation on initiation of a Government claim in FAR 33.206(b) is applicable to A-E liability cases. The 6-year period begins on the date the A-E firm submits its completed work.

n. Settlement. A liability case is closed when final payment is received from the A-E firm or the KO sends a letter to the firm advising that the Government is dropping its claim. The A-E contract file shall be properly documented (FAR 36.608) upon settlement of a liability case to show the amount received and how the funds were dispersed. If the amount of the settlement is less than the amount of the assessed damages, the rationale for accepting the reduced amount must be documented. Appendix DD discusses settlement options and the disposition of the monies received in settlements.

7-8. A-E Performance Evaluation and Contract Closeout.

a. Liability arising during design is reflected on the A-E performance evaluation prepared after completion of design. Similarly, liability related to construction is reflected on the A-E construction performance evaluation. A revised evaluation will be submitted if a liability case is settled after the final performance evaluation has been prepared.

b. It may be convenient for Engineering Division to combine the review of the construction A-E performance evaluation with the "wrap-up" review of the A-E firm's design deficiencies after completion of construction. The AE/RE should be contacted to find out

whether there are construction problems attributable to design deficiencies that have not been corrected by construction changes.

c. An A-E contract shall not be closed out until the firm's performance has been evaluated and all liability actions have been resolved. However, closeout of an A-E contract or a construction contract based on an A-E firm's design does not affect the Government's right to pursue the recovery of damages resulting from performance deficiencies which later become apparent (see paragraph 7-7.m(4)).

7-9. Reporting.

a. Customer. Customers and partners will be regularly apprised of the status of A-E liability actions on their projects.

b. District Reports.

(1) Quarterly. Districts will submit a quarterly report to their MSC (with a copy to Project Management, Construction, Contracting, Counsel and other concerned offices) on the status of all A-E liability cases within 30 days after the end of each fiscal quarter. The report will be prepared on ENG Form 4858A-R, Quarterly A-E Liability Case Report (Appendix EE). All settlements will be reported, no matter how they were reached. If there are no pending A-E liability cases, a letter or electronic message stating this fact will be submitted in lieu of this report.

(2) Annual. USACE operating commands will submit an annual report to their MSC on the status of their AERMP by 31 October. The report will be prepared on ENG Form 4858-R, Annual A-E Responsibility Management Program Report (Appendix EE).

c. MSC Reports. MSCs will submit an annual report to HQUSACE, ATTN: CECW-CE, by 30 November, consisting of:

(1) A brief cover memorandum summarizing the status and effectiveness of their AERMP.

(2) The annual ENG Form 4858-R for each subordinate command

APPENDIX A
BROOKS ARCHITECT-ENGINEER ACT
PUBLIC LAW 92-582, AS AMENDED

TITLE 40-PUBLIC BUILDINGS, PROPERTY AND WORKS

SUBCHAPTER VI-SELECTION OF ARCHITECTS AND ENGINEERS

§ 541. Definitions

As defined in this subchapter-

(1) The term “firm” means any individual, firm, partnership, corporation, association, or other legal entity permitted by law to practice the professions or architecture or engineering.

(2) The term “agency head” means the Secretary, Administrator, or head of a department, agency, or bureau of the Federal Government.

(3) The term “architectural and engineering services” means-

(a) professional services of an architectural or engineering nature, as defined by State law, applicable, which are required to be performed or approved by a person licensed, registered or certified to provide such services as described in this paragraph;

(b) professional services of an architectural or engineering nature performed by contract that are associated with research, planning, development, design, construction, alteration, or repair of real property; and

(c) such other professional services of an architectural or engineering nature, or incidental services, which members of the architectural and engineering professions (and individuals in their employ) may logically or justifiably perform, including studies, investigations, surveying and mapping, tests, evaluations, consultations, comprehensive planning, program management, conceptual designs, plans and specifications, value engineering, construction phase services, soils engineering, drawing reviews, preparation of operating and maintenance manuals, and other related services.

§ 542. Congressional declaration of policy

The Congress hereby declares it to be the policy of the Federal Government to publicly announce all requirements for architectural and engineering services and to negotiate contracts for architectural and engineering services on the basis of demonstrated competence and qualification for the type of professional services required and at fair and reasonable prices.

§ 543. Requests for data on architectural and engineering services

In the procurement of architectural and engineering services, the agency head shall encourage firms engaged in the lawful practice of their profession to submit annually a statement of qualifications and performance data. The agency head, for each proposed project, shall evaluate current statements of qualifications and performance data on file with the agency, together with those that may be submitted by other firms regarding the proposed project, and shall conduct discussions with no less than three firms regarding anticipated concepts and the relative utility of alternative methods of approach for furnishing the required services and then shall select therefore, in order of preference, based upon the criteria established and published by him, no less than three of the firms deemed to be the most highly qualified to provide the services required.

§ 544. Negotiation of contracts for architectural and engineering services

(a) Negotiation with highest qualified firm

The agency head shall negotiate a contract with the highest qualified firm for architectural and engineering services at compensation which the agency head determines is fair and reasonable to the Government. In making such determination, the agency head shall take into account the estimated value of the services to be rendered, the scope, complexity, and professional nature thereof.

(b) Negotiation with second and third, etc., most qualified firms

Should the agency head be unable to negotiate a satisfactory contract with the firm considered to be the most qualified, at a price he determines to be fair and reasonable to the Government, negotiations with that firm shall be formally terminated. The agency head shall then undertake negotiations with the second most qualified firm. Failing accord with the second most qualified firm, the agency head should terminate negotiations. The agency head should then undertake negotiations with the third most qualified firm.

(c) Selection of additional firms in event of failure of negotiation with selected firms

Should the agency head be unable to negotiate a satisfactory contract with any of the selected firms, he shall select additional firms in order of their competence and qualification and continue negotiations in accordance with this section until an agreement is reached.

APPENDIX B
ACRONYMS

ACASS	Architect-Engineer Contract Administration Support System
ADR	alternative dispute resolution
AE	area engineer
A-E	architect-engineer
AERMP	A-E Responsibility Management Program
AERA	A-E Responsibility Administrator
AERC	A-E Responsibility Coordinator
AERRB	A-E Responsibility Management Review Board
AFARS	Army Federal Acquisition Regulation Supplement
AR	Army Regulation
ASBCA	Armed Services Board of Contract Appeals
ASFI	Army Single Face to Industry
ATTN	Attention (in a mailing address)
BPN	Business Partner Network
CADD	computer-aided design and drafting
CAGE	Commercial and Government Entity (code)
CAIC	Contractor Appraisal Information Center (Portland District)
CCASS	Construction Contractor Appraisal Support System
CCR	Central Contractor Registration
CECW-CE	Engineering and Construction, Directorate of Civil Works, HQUSACE
CEHNC-MX	Medical Facilities Center of Expertise
CENWP-CT	Contracting Division, Portland District
CEPR-ZA	Principal Assistant Responsible for Contracting (PARC), HQUSACE
CERCLA	Comprehensive Environmental Response, Compensation and Liability Act
CFC	Court of Federal Claims
CFC	Chlorofluorocarbons
CFR	Code of Federal Regulations
COD	contracting officer's decision
COR	contracting officer's representative
CPAF	cost-plus-award-fee
CPARS	Contractor Performance Assessment Reporting System
CPFF	cost-plus-fixed-fee
CR	cost-reimbursement
DA	Department of Army
DAU	Defense Acquisition University
DCAA	Defense Contract Audit Agency
DCADS	Defense Contract Action Data System
DD (DoD)	Department of Defense
DFARS	Defense Federal Acquisition Regulation Supplement
DIOR	Directorate for Information Operations and Reports
DoL	Department of Labor
DQMP	design quality management plan
DPM	Deputy District Engineer for Program and Project Management

DSB	Deputy for Small Business
DUNS	Data Universal Numbering System (number)
ECC	estimated construction cost
EFARS	Engineer Federal Acquisition Regulation Supplement
EM	Engineer Manual
ENG	Corps of Engineers form
EP	Engineer Pamphlet
ER	Engineer Regulation
ESB	emerging small business
FAO	Finance and Accounting Officer
FAR	Federal Acquisition Regulation
FBO	Federal Business Opportunities website (FedBizOpps)
FFP	firm-fixed-price
FOIA	Freedom of Information Act
FP	fixed-price
FPDS-NG	Federal Procurement Data System – Next Generation
FS	feasibility study
GIS	geographic information system
GPE	Governmentwide point of entry (see FBO)
GPS	global positioning system
HBCU	historically black college and university
HQUSACE	Headquarters, United States Army Corps of Engineers
HTRW	hazardous, toxic, radioactive waste
HUBZone	Historically Underutilized Business Zone
HVAC	heating, ventilating and air conditioning
ID	indefinite-delivery (contract) - IDC
IGE	independent Government estimate
KO	contracting officer
LH	labor-hour (contract or task order)
M	million
M-CACES	Micro-Computer-Aided Cost Estimating System
MI	minority institution
MILCON	Military Construction
MSC	major subordinate command
N/A	not applicable
NAF	Nonappropriated Fund
NAICS	North American Industrial Classification System
NCP	National Contingency Plan
NEPA	National Environmental Policy Act
NOx	nitrous oxide
NTP	notice to proceed
ORCA	Online Representations and Certifications Application
PA	preliminary assessment
PARC	Principal Assistant Responsible for Contracting
PCB	polychlorinated biphenyl
P&D	planning and design (applies to MILCON only)

PDT	project delivery team
PGI	Procedures, Guidance and Information (companion to DFARS)
PM	project manager
PNM	price negotiation memorandum
PNO	prenegotiation objectives
POM	prenegotiation objective memorandum
PPIRS	Past Performance Information Retrieval System
PROSPECT	Proponent Sponsored Engineer Corps Training
RCRA	Resource Conservation and Recovery Act
RCS	Reports Control Symbol
RD	remedial design
RE	resident engineer
RI	remedial investigation
RM	Resource Management
RFPP	request for price proposal
S&A	supervision and administration
SAT	simplified acquisition threshold
SB	small business
SBA	Small Business Administration
SCA	Service Contract Act
SDB	small disadvantaged business
SF	Standard Form
SI	site investigation
SOW	statement of work
SDVOSB	Service-Disabled Veteran-Owned Small Business
SWPPP	Storm Water Pollution Prevention Plan
TERC	Total Environmental Restoration Contract
UCF	Uniform Contract Format
USACE	United States Army Corps of Engineers
U.S.C.	United States Code
USGS	United States Geological Survey
UST	underground storage tank
VOSB	Veteran-Owned Small Business
WD	wage determination (from DoL)
WGM	weighted guidelines method (for profit)

**APPENDIX C
A-E CONTRACTING PROGRAM CHECKLIST**

DISTRICT _____ DATE _____

REQUIREMENT	REFERENCES (EP = EP 715-1-7)	YES/ NO? REMARKS
1. Is acquisition planning for A-E services fully coordinated among all pertinent functional elements and reflected in the project management plans?	FAR 7.102 EFARS 7.102, 7.103 EP 2-1.b, 2-2.a, 2-7	
2. Is there an Overall Acquisition Strategy that addresses A-E IDCs?	EFARS 7.1(S-101)	
3. Are preselection and selection board chairpersons properly appointed and qualified?	EP 3-3.c(1), 3-6.b	
4. Are preselection and selection board members properly designated and qualified?	EP 3-3.d, 3-6.b	
5. Is selection approval authority properly delegated?	EFARS 36.602-4(a) EP 3-3.c(2), 3-11.a	
6. Is A-E contract negotiation a team effort among the KO, technical personnel, contracting specialists, and others?	EP 4-1.a, 4-4.a(1)	
7. Are engineers and architects who are primary participants in A-E negotiations properly trained?	EP 4-4.b	
8. Are streamlining techniques being effectively employed?	EP Appendix M	

REQUIREMENT	REFERENCES (EP = EP 715-1-7)	YES/ NO? REMARKS
9. Are there written procedures for preparing, reviewing and approving A-E performance evaluations?	EP 6-4.a	
10. Is there a system for tracking when A-E performance evaluations are due and when they are completed?	EP 6-4.a	
11. Are there written procedures implementing the AERMP?	EP 7-5.a	
12. Is there an AERC appointed?	EP 7-3.b(1)	
13. Is the AERRB established and does it meet as required?	EP 7-3.b(2), 7-7.k	
14. Does the AERA periodically review the cost effectiveness and timeliness of A-E liability cases?	EP 7-5.c-d	
15. Are customers regularly apprised of A-E liability actions?	EP 7-9.a	
16. Are quarterly and annual AERMP reports prepared and submitted?	EP 7-9.b	

Other Remarks:

**APPENDIX D
A-E CONTRACT CHECKLIST**

CONTRACT NO. _____

CONTRACT TITLE _____

REQUIREMENT	REFERENCES (EP = EP 715-1-7)	YES, NO or N/A? REMARKS
1. ACQUISITION PLANNING		
1-1. Was appropriate acquisition planning performed and documented (formal or informal acquisition plan), including consideration of contract type, options and small business?	FAR 7.1 DFARS 207.1 AFARS 5107.1 EFARS 7.1 EP Chapter 2	
1-2. Was a DD Form 2579 prepared and coordinated with the KO, DSB and SBA prior to releasing the synopsis?	DFARS 219.201(d)(10)(B) EFARS 19.201(c)(9)(B) EP 2-6, 3-4.e	
2. SYNOPSIS AND SELECTION		
2-1. Does the synopsis conform to the standard format?	FAR 5.207 EP 3-4.c-d, Appendix N	
2-2. Is the scope of an IDC as specific as possible?	EFARS 16.501(S-102)(b)	
2-3. Has a proper waiver been obtained for an IDC exceeding \$3,000,000 and/or 3 years?	EFARS 36.601-3-90(e)-(h)	
2-4. Are the selection criteria clear and reasonable, in conformance with criteria in FAR and DFARS, free of unnecessary restrictions, and in order of importance?	FAR 36.602-1 DFARS 236.602-1 EP 3-4.d, 3-7, Appendix N	

REQUIREMENT	REFERENCES (EP = EP 715-1-7)	YES, NO or N/A? REMARKS
2-5. Do the preselection and selection reports show that all board members are highly qualified professional employees with the appropriate expertise?	FAR 36.602-2(a) EFARS 36.602-2(a) EP 3-6	
2-6. Do the preselection and selection reports clearly explain the primary reasons for eliminating the firms that were not most highly qualified, and do those reasons properly relate to the selection criteria?	FAR 36.602-3(d) EP 3-8.f, 3-9.c, 3-10.f	
2-7. Were effective and meaningful interviews held with the most highly qualified firms?	FAR 36.602-3(c) EP 3-10.d	
2-8. Does the selection report clearly explain the reasons for ranking the most highly qualified firms, and do those reasons properly relate to the selection criteria?	FAR 36.602-3(d) EP 3-10.e-f	
2-9. Has the selection report been approved by the designated authority?	FAR 36.602-4 EFARS 36.602-4 EP 3-11.a	
2-10. Were all firms promptly notified of their selection status?	FAR 15.503, 36.607 EFARS 36.607 EP 3-12	
2-11. Were meaningful debriefings promptly held with the firms who requested a debriefing?	FAR 15.505, 36.607 EFARS 36.607 EP 3-13	

REQUIREMENT	REFERENCES (EP = EP 715-1-7)	YES, NO or N/A? REMARKS
3. NEGOTIATION AND CONTRACT AWARD		
3-1. Does the scope of work thoroughly address the project description, scope of A-E services, schedule, deliverables, reviews, conferences, criteria and standards, Government-furnished information, and administrative instructions?	EP 4-5	
3-2. Was the Service Contract Act considered, and a wage determination incorporated in contract negotiation, if appropriate?	FAR 22.10 EP 4-9	
3-3. Does the PNM indicate that the key contract clauses and performance evaluation process were discussed with the firm during negotiation?	EFARS 36.604(S-100) EP 4.7.b	
3-4. Is/does the IGE: - Based on a detailed analysis of required work? - Include profit based on alternate structured approach to weighted guidelines method? - Include a check on the 6% limit? - Properly approved prior to receiving the A-E proposal?	FAR 36.605 EFARS 15.404-73-101, 36.605 EP 4-10, Appendix X	
3-5. Is the proposal analysis in adequate detail for the size and complexity of the action, and does it address technical, price, and cost considerations?	FAR 15.404 EP 4-12.a, Appendix Z	

REQUIREMENT	REFERENCES (EP = EP 715-1-7)	YES, NO or N/A? REMARKS
3-6. Are the PNO documented in adequate detail in a POM, and the significant differences among the IGE, proposal and PNO explained?	FAR 15.406-1 AFARS 5115.406-1 EFARS 15.406-1 EP 4-12.c	
3-7. Is there an approved subcontracting plan, if applicable?	FAR 19.702, 19.704, 19.705 EP 4-15, Appendix J	
3-8. Does the PNM: - Describe the principal elements of the negotiation? - Explain the significant differences between the final agreed price and the PNO? - Support that a fair and reasonable price agreement was reached? - Show that the final A-E proposal complies with the 6% limitation?	FAR 15.404-4(c)(4)(i)(B), 15.406-3 DFARS 236.606-70 AFARS 5115.406-3 EFARS 15.406-3, 36.606-70 EP 4-13.c, 4-16	
3-9. Was the contract awarded within the pertinent time standard, exclusive of justifiable delays?	EP 2-11, Appendix L	
4. CONTRACT ADMINISTRATION AND MANAGEMENT		
4-1. Is there a COR with appropriate training appointed in the contract?	DFARS 201.602-2 EP 5-4	
4-2. Is there evidence that the Government closely monitored and managed the A-E firm's performance and reviewed the A-E products for technical adequacy?	EP 5-3, 5-5, 5-9	
4-3. Is there evidence of enforcement of the A-E firm's responsibility and liability for design errors and deficiencies?	FAR 36.608, 36.609-2 EP Chapter 7	

REQUIREMENT	REFERENCES (EP = EP 715-1-7)	YES, NO or N/A? REMARKS
4-4. Is there evidence of enforcement of the firm's responsibility for design within the construction funding limitation?	FAR 36.609-1, 52.236-22 EP 7-4.b	
4-5. Were progress payments processed promptly and retainage withheld as appropriate?	FAR 52.232-10 EP 5-7	
4-6. Was there an appraisal of the A-E performance prepared after each submission or phase of work, and the final performance evaluation prepared in ACASS and sent to the firm?	FAR 36.604 DFARS 236.604 EFARS 36.604 EP Chapter 6	
4-7. Were subcontracting reports (SF 294/295) submitted by the contractor, if applicable?	FAR 52.219-9 EP 5-8, Appendix J	

Other Remarks:

**APPENDIX E
A-E TASK ORDER CHECKLIST**

CONTRACT NO. _____ TASK ORDER NO. _____

TASK ORDER TITLE _____

REQUIREMENT	REFERENCES (EP = EP 715-1-7)	YES, NO or N/A? REMARKS
1. ACQUISITION PLANNING		
1-1. Was appropriate acquisition planning performed and documented (formal or informal acquisition plan), including consideration of contract type, options and small business?	FAR 7.1 DFARS 207.1 AFARS 5107.1 EFARS 7.1 EP Chapter 2	
1-2. Was a DD Form 2579 prepared and coordinated with the KO, DSB and SBA prior to committing to issue of the task order?	DFARS 219.201(d)(10)(B) EFARS 19.201(c)(9)(B) EP 2-6, 3-4.e	
2. NEGOTIATION AND TASK ORDER ISSUE		
2-1. Does the scope of work thoroughly address the project description, scope of A-E services, schedule, deliverables, reviews, conferences, criteria and standards, Government-furnished information, and administrative instructions?	EP 4-5	
2-2. If this task order could have been issued under more than one IDC, is the contract file documented to justify the basis for issuing the task order under this contract?	FAR 16.500, 16.505(b) EFARS 16.505(b)(1) EP 4-14.f(2)	

REQUIREMENT	REFERENCES (EP = EP 715-1-7)	YES, NO or N/A? REMARKS
2-3. If this task order is over \$500,000, is the use of a task order instead of initiating a new contract justified in the file?	EFARS 36.601-3-90(c) EP 4-14.f(2)	
2-4. Is the scope of work for this task order within the scope of the IDC?	FAR 16.505(a)(2) EP 4-14.f(2)	
2-5. Was the Service Contract Act considered, and a wage determination incorporated in contract negotiation, if appropriate?	FAR 22.10 EP 4-9	
2-6. Is/does the IGE: - Based on a detailed analysis of required work? - Include profit based on alternate structured approach to weighted guidelines method? - Include a check on the 6% limit? - Properly approved prior to receiving the A-E proposal?	FAR 36.605 EFARS 15.404-73-101, 36.605 EP 4-10, Appendix X	
2-7. Is the proposal analysis in adequate detail for the size and complexity of the action, and does it address technical, price, and cost considerations?	FAR 15.404 EP 4-12.a, Appendix Z	
2-8. Are the PNO documented in adequate detail in a POM and the significant differences among the IGE, proposal and PNO explained?	FAR 15.406-1 AFARS 5115.406-1 EFARS 15.406-1 EP 4-12.c	

<p>2-9. Does the PNM: - Describe the principal elements of the negotiation? - Explain the significant differences between the final agreed price and the PNO? - Support that a fair and reasonable price agreement was reached? - Show that the final A-E proposal complies with the 6% limitation?</p>	<p>FAR 15.404-4(c)(4)(i)(B), 15.406-3 DFARS 236.606-70 AFARS 5115.406-3 EFARS 15.406-3, 36.606-70 EP 4-13.c, 4-16</p>	
<p>2-10. Was the task order awarded within the pertinent time standard, exclusive of justifiable delays?</p>	<p>EP 2-11, Appendix L</p>	
<p>3. TASK ORDER ADMINISTRATION AND MANAGEMENT</p>		
<p>3-1. Is there evidence that the Government closely monitored and managed the A-E firm's performance and reviewed the A-E products for technical adequacy?</p>	<p>EP 5-3, 5-5, 5-9</p>	
<p>3-2. Is there evidence of enforcement of the A-E firm's responsibility and liability for design errors and deficiencies?</p>	<p>FAR 36.608, 36.609-2 EP Chapter 7</p>	
<p>3-3. Is there evidence of enforcement of the firm's responsibility for design within the construction funding limitation?</p>	<p>FAR 36.609-1, 52.236-22 EP 7-4.b</p>	
<p>3-4. Were progress payments processed promptly and retainage withheld as appropriate?</p>	<p>FAR 52.232-10 EP 5-7</p>	
<p>3-5. Was there an appraisal of the A-E performance prepared after each submission or phase of work, and the final performance evaluation prepared and sent to ACASS and the firm?</p>	<p>FAR 36.604 DFARS 236.604 EFARS 36.604 EP Chapter 6</p>	

Other Remarks:

APPENDIX F INTERNET ADDRESSES FOR A-E CONTRACTING

USACE HOME PAGE:

<http://www.usace.army.mil>

USACE PROJECT MANAGEMENT BUSINESS PROCESS:

<http://bp.usace.army.mil>

HQUSACE, ENGINEERING AND CONSTRUCTION DIVISION:

<http://www.usace.army.mil/inet/functions/cw/cecwe/>

BROOKS A-E ACT:

<http://uscode.house.gov/search/criteria.shtml> Search on Title 40, Section 541. Then scroll to Sections 542, 543, and 544 to view entire law.

FEDERAL ACQUISITION REGULATION (FAR):

<http://www.arnet.gov/far>

DEFENSE FAR SUPPLEMENT:

<http://www.acq.osd.mil/dpap/dars/dfars/index.htm>

DFARS PROCEDURES, GUIDANCE AND INFORMATION: Companion resource to DFARS containing mandatory and non-mandatory internal DoD procedures, non-mandatory guidance and supplemental information used at the discretion of the contracting officer.

<http://www.acq.osd.mil/dpap/dars/pgi/>

ARMY FAR SUPPLEMENT:

<http://farsite.hill.af.mil/reghtml/regs/other/afars/afartoc.htm>

CORPS OF ENGINEERS FAR SUPPLEMENT:

<http://www.hq.usace.army.mil/cepr/> Click on “Engineer Federal Acquisition Regulation Supplement (EFARS)”

A T & L KNOWLEDGE SHARING SYSTEM (AKSS): Comprehensive collection of DoD acquisition policies and procedures.

<http://akss.dau.mil/>

FEDERAL ACQUISITION JUMP STATION:

<http://nais.nasa.gov/fedproc/home.html>

WHERE IN FEDERAL CONTRACTING: Federal contracting regulations, information, newsletters, business opportunities, and small business information

<http://www.wifcon.com/>

USACE PUBLICATIONS:

<http://www.usace.army.mil/inet/usace-docs>

EP 715-1-7
22 May 07

EP 715-1-4, COMPETING FOR ARCHITECT-ENGINEER CONTRACTS WITH THE U.S. ARMY CORPS OF ENGINEERS

<http://www.usace.army.mil/inet/usace-docs/eng-pamphlets/ep715-1-4/toc.htm>

EP 715-1-7, ARCHITECT-ENGINEER CONTRACTING:

<http://www.usace.army.mil/inet/usace-docs/eng-pamphlets/ep715-1-7/toc.htm>

FEDERAL BUSINESS OPPORTUNITIES:

<http://www.fedbizopps.gov>

ARMY SINGLE FACE TO INDUSTRY:

<https://acquisition.army.mil/asfi/>

SMALL BUSINESS ADMINISTRATION:

<http://www.SBAonline.SBA.gov>

DYNAMIC SMALL BUSINESS SEARCH: Part of CCR:

http://dsbs.sba.gov/dsbs/dsp_dsbs.cfm

NORTH AMERICAN INDUSTRIAL CLASSIFICATION SYSTEM (NAICS):

<http://www.census.gov/epcd/www/naics.html>

GOVERNMENT PRINTING OFFICE: Federal Register

<http://www.gpoaccess.gov/index.html>

STANDARD FORM 330:

<http://www.gsa.gov/Portal/gsa/ep/formslibrary.do?formType=SF>

COMPTROLLER GENERAL DECISIONS:

<http://www.gao.gov>

CENTRAL CONTRACTOR REGISTRATION:

<http://www.ccr.gov>

INTEGRATED ACQUISITION ENVIRONMENT: Federal electronic acquisition program.

<http://egov.gsa.gov>

BUSINESS PARTNER NETWORK (BPN): Single source for vendor data for the Federal Government.

<http://www.bpn.gov/>

ON-LINE REPRESENTATIONS AND CERTIFICATIONS APPLICATION (ORCA): Part of BPN. Question 26 is SF 330 Part II.

<http://orca.bpn.gov/>

PAST PERFORMANCE INFORMATION RETRIEVAL SYSTEM (PPIRS):

<http://www.ppirs.gov/>

FEDERAL PROCUREMENT DATA SYSTEM – NEW GENERATION:

<https://www.fpds.gov/>

CONTRACTOR PERFORMANCE ASSESSMENT REPORTING SYSTEM (Navy):

<http://cpars.navy.mil/>

TRI-SERVICE CADD/GIS CENTER:

<http://tsc.wes.army.mil>

USACE TECH INFO: Regulations, design criteria, design guidance, specifications, etc.

<http://www.hnd.usace.army.mil/techinfo/index.aspx>

ARCHITECT-ENGINEER CONTRACT ADMINISTRATION SUPPORT SYSTEM: Public site.

<https://www.nwp.usace.army.mil/ct/i>

ARCHITECT-ENGINEER CONTRACT ADMINISTRATION SUPPORT SYSTEM:

Government site. Requires access permission and password.

<http://www.cpars.navy.mil>

DEPARTMENT OF LABOR WAGE DETERMINATIONS ONLINE:

<http://www.wdol.gov/>

DEPARTMENT OF LABOR EMPLOYMENT COST INDEX:

<http://www.bls.gov/ncs/ect/home.htm>

USACE PROSPECT TRAINING PROGRAM:

<http://pdsc.usace.army.mil/>

LIBRARY OF CONGRESS LEGISLATIVE INFORMATION:

<http://thomas.loc.gov/>

APPENDIX G CLASSIFICATION OF CONTRACTS AS A-E SERVICES

INTRODUCTION

This appendix provides guidance and examples to assist the contracting officer when determining whether a particular contract should be procured as A-E services in accordance with the procedures FAR Subpart 36.6.

A contract must be procured in accordance with FAR 36.6 when:

1. The SOW includes work that is A-E services, and
2. The A-E services are a substantial or dominant portion of the contract.

Each of these two conditions is discussed in turn below.

CATEGORIES OF A-E SERVICES

FAR 36.601-4(a) describes four categories of A-E services, each of which is discussed below.

"(1) Professional services of an architectural or engineering nature, as defined by applicable State law, which the State law requires to be performed or approved by a registered architect or engineer."

Discussion: The test for this category is whether the work is typically of the type that state laws require to be performed or approved by a registered architect or engineer (even though the work is likely on Federal property and state laws generally do not apply to the project). All states license architects and engineers for the protection of public health, safety and welfare. State laws vary but generally the practices of engineering and architecture include the evaluation, planning, design and construction supervision of public and private buildings and structures and the equipment and utilities thereof, site development, and transportation systems.

"(2) Professional services of an architectural or engineering nature associated with design or construction of real property."

Discussion: The test for this category is whether the work is of the type typically performed by architects or engineers in association with the design or construction of real property, even if there is no explicit registration requirement in the SOW. Real property is land and any structures on it. Design also includes investigations and planning when related to a particular construction project. Construction is defined in FAR 36.102 as construction, alteration or repair of buildings, structures, or other real property. Many specific examples are cited. "Construction does not include ... vessels, aircraft, or other kinds of personal property." Personal property is movable or not attached to the land.

"(3) Other professional services of an architectural or engineering nature or incidental services thereto (including studies, investigations, surveying and mapping, tests, evaluations, consultations, comprehensive planning, program management, conceptual designs, plans and specifications, value engineering, construction phase services, soils engineering, drawing reviews, preparation of operating and maintenance manuals and other related services) that logically or justifiably require performance by registered architects or engineers or their employees."

Discussion: The test for this category is whether the work is of the type that should logically or justifiably be accomplished by, or under the supervision, of architects or engineers. However, the work must be of an architectural or engineering nature. For example, not all studies, investigations, tests, evaluations, consultations, planning, and construction phase services are architectural or engineering in nature. Also, the list of typical services in parentheses is not all-inclusive; reasonable extrapolations from this list can be made.

"(4) Professional surveying and mapping services of an architectural or engineering nature. Surveying is considered to be an architectural and engineering service and shall be procured pursuant to Section 36.601 from registered surveyors or architects and engineers. Mapping associated with the research, planning, development, design, construction, or alteration of real property is considered to be an architectural and engineering service and is to be procured pursuant to Section 36.601..."

Discussion: The general FAR test for this category is whether the surveying and mapping is related to architectural and engineering activities. But also, by separate statute (33 U.S.C. 569b), all surveying and mapping procured by USACE must use Brooks Act procedures. (See Appendix I.) EFARS 36.601-4(a)(4)(A) provides examples of surveying and mapping services which should be procured as A-E services. In USACE, the performance of surveying and mapping services will not be limited to A-E firms, but may include surveying and mapping professionals such as licensed surveyors, geodesists, and cartographers.

MIXED WORK

FAR 36.601-3(c) provides the following guidance when the SOW includes both A-E services and other services:

"When the contract statement of work includes both architect-engineer services and other services, the contracting officer shall follow the procedures in this subpart if the statement of work, substantially or to a dominant extent, specifies performance or approval by a registered or licensed architect or engineer."

Discussion: When a contract includes a mixture of A-E services and other services, the contract shall be procured in accordance with FAR 36.6 if the A-E services (as defined in FAR 36.601-4(a) and discussed above) are a substantial or dominant part of the work. Substantial means a considerable percentage of the work but not necessarily a majority of the

hours or cost. Dominant means the primary purpose of the work, although not necessarily a majority of the hours or cost, or the largest component of the work.

EXAMPLES

1. A contract for the complete architectural and engineering design of a building, structure or utility system is A-E services. However, a contract principally for drafting services is not A-E services, even if the SOW requires review by a registered architect or engineer as a quality control measure.
2. A contract for the architectural design of the renovation of a building (such as relocation of load bearing partitions to accommodate a new occupancy, alteration of hallways and corridors to comply with life safety codes, and various improvements to allow handicapped access), which may also include interior design services (such as space planning and modular furniture systems design), is A-E services. However, a contract principally for interior design services, where load-bearing structural elements and mechanical and electrical systems are not altered, is not A-E services, notwithstanding the fact that a few states require registration of interior designers.
3. A contract for a geotechnical engineering study is A-E services, even if the necessary soils borings and tests are the majority of the effort measured in hours or dollars. However, a contract principally for borings and laboratory tests, where engineering analysis and judgment are not required, is not A-E services, even if the SOW requires monitoring of the borings and tests by a registered engineer as a quality control measure.
4. A contract for landscape architecture, which is concerned with the functional as well as aesthetic aspects of site development and is licensed by most states, is A-E services. However, a contract that principally requires application of the natural sciences (such as botany, marine science, or forestry) is not A-E services.
5. A contract for hydraulic engineering to study the effects on shoreline erosion and marine structures due to increased flow in a river is A-E services. However, a contract principally to study the effects on marine plants and fish due to increased flow in a river is not A-E services, even if a minor effort is required by a hydraulic engineer.
6. A contract for an environmental study or assessment with significant engineering considerations (such as alternative highway alignments, air pollution control, sanitary sewage waste collection and treatment, storm drainage management, domestic water supply, energy consumption, or remedial technology evaluation) is A-E services. However, a contract for environmental studies or assessment where the engineering considerations are not significant or dominant is not A-E services. See Appendix H for more detailed guidance on which types of environmental services should typically be procured as A-E services.
7. A contract for aerial photogrammetry is A-E services in USACE. However, a contract for aerial photography only which does not result in a surveying and mapping product is not A-E services. See EM 1110-1-1000 for additional guidance.

8. A contract for construction phase services, such as shop drawing review, evaluation of construction methods, and interpretation of plans and specifications, is A-E services. However, a contract for construction phase services that is principally for materials testing, quantity verification or materials scheduling is not A-E services.
9. A contract for the architectural renovation of the exterior of a historic building (including cleaning and repair of masonry, repair and/or replacement of doors and windows, and handicapped accessibility improvements), which may require research by an architectural historian, is A-E services. However, a contract principally for historic research, archaeology, or cultural resources studies is not A-E services, even though a minor effort may be required by an architect.
10. A contract to study whether to renovate an existing building or construct a new building to accommodate a new mission is an A-E service. However, a contract to do a cost/benefit study of which installation should receive this new mission is not A-E services, even though facilities analysis would be a part of such a study.
11. A contract to design a building, including an artist's rendering and a three dimensional model, is A-E services. However, a contract only for a rendering and/or model is not A-E services.
12. An engineering geology study to determine the foundation requirements for a new dam is A-E services. However, a geology investigation that is not directly related to a construction project, such as mapping of seismic faults, is not A-E services, notwithstanding the fact that many states license geologists.
13. Comprehensive planning that is related to future construction requirements on a military installation is A-E services. However, comprehensive planning that is not related to construction, such as information systems improvements or natural resources management, is not A-E services.
14. A contract for cost engineering or value engineering, which assesses the relative economic and technical merits of alternate engineering solutions, is A-E services. However, a contract solely for cost estimating, which involves computing quantities and applying appropriate cost factors to determine the estimated construction cost of a project, is not A-E services, notwithstanding the expertise required to perform this service.

APPENDIX H ENVIRONMENTAL SERVICES

INTRODUCTION

USACE procures a significant amount of environmental services, some of which are A-E services. This appendix provides examples of common environmental projects that are typically A-E services, that are not typically A-E services, and that may be A-E services. This guidance, in conjunction with Appendix G, should be used when determining whether a particular contract for environmental services should be procured as an A-E contract.

If a contract for environmental services is procured as A-E services, the NAICS code must either be 541330 or 541620. (See Chapter 2, paragraph 2-4.)

PROJECTS THAT ARE TYPICALLY A-E SERVICES

1. Air quality corrective action plans and projects, such as for:
 - a. Stationary and mobile sources
 - b. Asbestos
 - c. Radon
 - d. Chlorofluorocarbons (CFC) and halon
2. Water resources corrective action plans and projects, such as for:
 - a. Drinking water
 - b. Wastewater
 - c. Point source and non-point source discharge
 - d. Storm water discharge
3. Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) studies and design (preliminary assessment/site investigation (PA/SI), remedial investigation/feasibility study (RI/FS), treatability studies, and remedial design (RD)) performed as a single project.
4. Preparation of Spill Prevention, Control, and Countermeasures Plans under the National Contingency Plan (NCP).
5. Design of corrective actions in accordance with the Resource Conservation and Recovery Act (RCRA).
6. Preservation surveys, management plans, and restoration designs for historic structures.
7. Development of Storm Water Pollution Prevention Plans (SWPPP) which include the design of appropriate diversion structures.
8. Design of repair, removal and/or replacement of underground storage tanks (UST) and design of leak detection systems for UST.

9. Design of boiler replacement or upgrade projects, such as installation of low NOx systems.
10. Design of a new or upgraded RCRA Part B permitted hazardous waste management unit.
11. Closure procedures, documentation and certification for RCRA Part B permitted hazardous waste management unit.
12. Design of a new or upgraded solid waste land-based unit.
13. Design of support systems under the excavation standards of the Occupational Safety and Health Act for excavations greater than 20 feet.
14. Monitoring and certification of closure of injection wells in accordance with 40 CFR 144.

PROJECTS THAT ARE NOT TYPICALLY A-E SERVICES

1. Environmental Compliance Assessment System surveys.
2. Preparation of RCS-1383 reports.
3. Air quality surveys and/or emissions reporting, such as for:
 - a. Stationary and mobile sources
 - b. Asbestos
 - c. Radon
 - d. CFC and halon
4. Laboratory testing, such as for:
 - a. Drinking water
 - b. Wastewater
 - c. Point source and non-point source discharge
 - d. Storm water discharge
5. Data management for the Army Automated Environmental Management Information System.
6. Pollution prevention opportunity assessments.
7. Reporting under the NCP, such as for:
 - a. Oil
 - b. Hazardous substances
 - c. Installation Spill Contingency Plan
 - d. Toxic release inventory

8. Hazardous and toxic waste and materials management, including compliance with the Emergency Planning and Community Right-to-Know Act.
9. Chemical inventories.
10. Chemical testing.
11. Lead based paint surveys.
12. General environmental program management functions.
13. Forestry management plans.
14. Wildlife surveys and management plans, including endangered species.
15. Archaeology surveys and management plans.
16. Pest management plans.
17. Wetland identification surveys and management plans.
18. Coastal zone management plans.
19. Land management and restoration plans.
20. Solid waste management functions.
21. Wastewater management functions.
22. Remedial design of ordnance and munitions disposal projects.

**PROJECTS THAT MAY OR MAY NOT BE A-E SERVICES, DEPENDING ON
SPECIFIC INSTALLATION OR PROJECT REQUIREMENTS**

1. National Environmental Policy Act (NEPA) documentation, including environmental assessments and environmental impact statements.
2. Noise abatement activities, such as:
 - a. Compliance with the Quiet Communities Act.
 - b. Compliance with the Noise Control Act, including:
 - (1) Assessment of impact by activities
 - (2) Installation compatible use zone studies

3. Preparation of air quality permits, such as for:
 - a. Stationary and mobile sources
 - b. Asbestos
 - c. Radon
 - d. CFC and halon

4. Preparation of permits for water resources, such as for:
 - a. Drinking water
 - b. Wastewater
 - c. Point source and non-point source discharge
 - d. Storm water discharge

5. Data collection and reporting under Title V of the Clean Air Act.

6. UST installation certification.

7. CERCLA PA/SI and RI only without FS and RD.

8. Preparation of SWPPP.

APPENDIX I SURVEYING, MAPPING AND GEOSPATIAL SERVICES

1. FAR 36.601-4(a)(4) requires that surveying and mapping services associated with real property be procured in accordance with the Brooks A-E Act. Also, 33 USC 569b and 33 USC 2292 require USACE to follow the Brooks Act when awarding contracts for surveying and mapping services, the later statute specifically addressing water resources projects. Hence, all USACE prime contracts for surveying, mapping or geospatial services must be awarded in accordance with the Brooks Act. EFARS 36.601-4(a)(4)(A) defines surveying, mapping or geospatial services applicable to USACE.
2. Significant surveying, mapping or geospatial projects (over approximately \$25,000) should be procured by contractors that have been specifically selected for this type of work. Do not use an ID contract selected to primarily provide other types of A-E services to perform a significant surveying, mapping or geospatial project. The contractor or subcontractor may not be properly qualified to provide the required surveying, mapping or geospatial services, and this type of work was not considered in the selection process.
3. If a command does not have the appropriate surveying, mapping or geospatial contract capability, or the technical expertise to administer such contracts, support should be sought from other commands or from the Technical Center of Expertise for Photogrammetric Mapping at the St. Louis District. The Center can assist with contract administration and has several USACE-wide ID contracts for surveying, mapping or geospatial services that can be used.
4. If a contract statement of work requires significant surveying and mapping services, the public announcement must state that the surveying and mapping subcontractor (or the prime contractor's in-house surveying and mapping personnel) will be identified in the Standard Form 330. The qualifications of the proposed subcontractors (or in-house personnel) are then evaluated as a part of the A-E selection process.
5. Any change in the subcontractors that were specifically identified and agreed to during negotiations, or the addition of any subcontractors that were not contemplated during selection and negotiation, must be approved by the contracting officer in accordance with FAR Clause 52.244-4, Subcontractors and Outside Associates and Consultants (Architect-Engineer Services). The contracting officer should refer the qualifications of the surveying and mapping subcontractor to the A-E selection board for evaluation to ensure that the subcontractor has the required technical capabilities in accordance with the intent of the Brooks Act.
6. In accordance with the spirit and intent of the Brooks Act, the Government may and should strongly encourage contractors to use a qualification-based selection (QBS) approach (instead of bidding) for selecting subcontractors for surveying, mapping and other professional A-E services. The negotiators should stress to the contractor that the Government is willing to pay a fair and reasonable price for quality performance, and that bidding of professional subcontracted services may be detrimental to the quality of the work, and hence, may impact the selection of the prime contractor for future contracts. Also, additional oversight of the subcontractor will likely be required to ensure quality products and services.

7. For a response action contract³⁵, 42 USC 9619(f) directs that “contractors and subcontractors for program management, construction management, architectural and engineering, surveying and mapping, and related services shall be selected” in accordance with the Brooks A-E Act. This statute also directs that response action contractors and subcontractors follow the QBS procedures in the Brooks Act. However, there is no FAR solicitation or contract clause that implements this statute. Hence, the public announcement for any A-E services in connection with a response action contract should include a statement that the contractor must use a QBS approach in selecting subcontractors for professional A-E services, including surveying and mapping, and the contractor may be required to provide evidence that this approach was followed.

8. The majority of the preselection or selection board members for A-E contracts principally for real property surveys, topographic or photogrammetric mapping, hydrographic surveying, or geodetic surveying shall have specialized and current experience in performing or supervising the required type(s) of work. At least one licensed land surveyor shall be included as a member on boards for contracts principally for real property surveys or where state laws require certain surveying and mapping work to be performed by a licensed surveyor. When a command does not have adequate expertise to properly staff an evaluation board for a surveying and mapping contract, technical assistance shall be obtained from other USACE commands, other Federal agencies, or non-Federal partners or customers.

³⁵ A contract for any remedial action (including planning, engineering, surveying and mapping, and design) with respect to any release or threatened release of a hazardous substance or pollutant or contaminant under the Comprehensive Environmental Response, Compensation and Liability Act.

APPENDIX J SMALL BUSINESS PROGRAM

INTRODUCTION

It is the policy of the Government to provide maximum practicable opportunities in its acquisitions to small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns. Such concerns must also have the maximum practicable opportunity to participate as subcontractors in contracts awarded, consistent with efficient contract performance. The Small Business Program is covered in FAR Part 19.

SMALL BUSINESS DEFINITIONS

“Concern” is any business entity organized for profit with a place of business located in the US and which makes a significant contribution to the US economy through payment of taxes and/or use of American products, material and/or labor.

“Emerging Small Business” is a small business concern whose size is no greater than 50% of the numerical size applicable to the North American Industry Classification System (NAICS) code assigned to a contracting opportunity. A certification is not required from SBA.

“Fair Market Price” is a price based on reasonable costs under normal competitive conditions and not on lowest possible cost.

“HUBZone Concern” is a concern that is a small business, is owned and controlled by one or more US citizen or by a Community Development Corporation or Indian tribe, and has its principal office located within a historically underutilized business zone (which includes lands on recognized Indian reservations). Also, at least 35% of its employees must reside in a HUBZone. A certification is required from the SBA.

“North American Industry Classification System (NAICS) Code” is the North American Industry Classification System. It replaced the Standard Industrial Classification (SIC) system.

“Small Business Administration (SBA)” was created by Congress in 1953 to "aid, counsel, assist and protect, insofar as is possible, the interests of small business concerns." Congress stipulated that the SBA would ensure small businesses receive a "fair proportion" of government contracts.

“Service-Disabled Veteran-Owned Small Business Concern” is a small business concern that is at least 51% owned and operated by one or more service-disabled veterans whose management and daily business operations are controlled by service-disabled veterans. Service-disabled veterans are veterans with a disability that is service connected. A certification is not required from the SBA.

“**SBA Size Standards**” define whether a business entity is small and, thus, eligible for Government programs and preferences reserved for “small business” concerns. Size standards have been established for types of economic activity, or industry, generally under the NAICS. Size standards are stated in either number of employees or average annual receipts. NAICS assigns codes to all economic activities within twenty broad sectors. The size standard for most A-E services is \$4 million (see Chapter 2, paragraph 2-4).

“**Small Business Concern**” is a domestic firm that is independently owned and operated, not dominant in its field of operation, and can qualify under the size standards of the NAICS codes. A certification is not required from SBA.

“**Small Disadvantaged Business Concern**” is a business, which is; at least 51% owned by one or more socially and economically disadvantaged individual(s). A certification is required from the SBA. “Socially disadvantaged” is an individual who has been subjected to racial or ethnic prejudice or cultural bias (Black, Hispanic, Native, Asian Pacific or Subcontinent Asian Americans). “Economically disadvantaged” is an individual denied access to capital and credit opportunities because of their identification as a member of a specific group. SBA certifies small businesses that meet specific social, economic, ownership, and control eligibility criteria. Once certified, the firm is added to an on-line registry of SDB-certified firms maintained in the Central Contractor Registration (CCR) database. Certified firms remain on the list for three years. Contracting officers and large business prime contractors may search this on-line registry for potential suppliers.

“**Veteran-Owned Small Business Concern**” is a small business concern that is at least 51% owned and operated by one or more veterans and whose management and daily business operations are controlled by veterans. Veterans are persons who served in the active military, naval, or air service, and who were discharged or released under conditions other than dishonorable. A certification is not required from the SBA.

“**Women-Owned Small Business Concern**” is a small business concern that is at least 51% owned, controlled, and operated by one or more women and whose management and daily operations are controlled by one or more women. A certification is not required from the SBA.

SMALL BUSINESS PROGRAMS APPLICABLE TO A-E CONTRACTS

SBA 8(a) Business Development Program: The SBA’s business development program for socially and economically disadvantaged business concerns is commonly called the 8(a) program based upon Section 8(a) of the Small Business Act. Through the 8(a) program, small companies owned by socially and economically disadvantaged persons can obtain contracts and other assistance from SBA in developing their business.

USACE fulfills its mandate to support the 8(a) program by identifying and offering to the SBA projects deemed capable for performance by 8(a) contractors. All members of the acquisition team (engineering, small business, contracting, legal and project management) must participate in a timely manner in the planning and execution of the 8(a) program.

The acquisition team, including the customer when practicable, shall select those projects that are considered suitable for the 8(a) program. The selection should be made well in advance of the start of the fiscal year. The final selection decision rests with the contracting officer.

A-E procurements reserved for the 8(a) program must utilize the selection procedures outlined in the Brooks A-E Act, including public announcement, technical evaluations, ranking of firms, and holding discussions with the three most highly qualified firms. The Contracting Officer must have a reasonable expectation of receiving a sufficient number of responses from 8(a) firms to proceed with an 8(a) procurement. 8(a) A-E services with an estimated contract value, including options, greater than \$3 million will follow the standard project offering procedures to the SBA (FAR 19.8). For proposed awards below \$3 million, the Contracting Officer is not required to obtain SBA approval prior to announcing an 8(a) set-side for A-E services.

Small Business Set-Asides: The small business set-aside program consists of a procurement action in which only small business firms can compete for the contract. Small business set-asides procedures for A-E services vary considerably depending upon (1) the type of work, (2) the estimated contract amount, and (3) the applicability of the Small Business Competitiveness Demonstration Program (SBCDP). The SBCDP tests the ability of small businesses to compete successfully in unrestricted competition in four designated industry groups (DIGs), one of which is A-E services. The SBCDP does not affect the use of 8(a), HUBZone and SDVOSB set-asides. The program established a small business participation goal of 40 percent of contract awards and requires each participating agency to reestablish small business set-asides whenever small business awards in any individual DIG fall below the 40 percent threshold. The DoD reviews contract award statistics on an annual basis for the purpose of reestablishing or suspending set-aside procedures. The DoD is currently below the goal for A-E services and accordingly reestablished small business set-aside procedures.

There are two exemptions from the requirements of the SBCDP. (1) At FAR 19.1002, the SBCDP establishes an emerging small business reserve amount for A-E procurements of \$50,000. Hence, A-E acquisitions equal to or less than \$50,000 must be set-aside for emerging small businesses, provided the contracting officer determines there is a reasonable expectation of a sufficient number of firms to proceed under Brooks A-E Act procedures. The test of reasonable expectation is a judgment call made by the contracting officer, based on procurement history and knowledge of the industry. (2) DFARS 219.1005 provides exception to the use of small business set-asides for A-E services in connection with a military construction project or a military family housing project. For these requirements, set-asides for small business are only authorized for requirements valued under \$300,000³⁶. Requirements valued at \$300,000 or more must be solicited on an unrestricted basis or as a set-aside for 8(a), HUBZone, or SDVOSB concerns.

³⁶ For an IDC, this threshold applies to the total value of the contract (DFARS 219.1005(a)(i)(B)).

The Small Business Subcontracting Program: With the exception of firms classified as small business concerns, any A-E firm receiving a contract for more than \$500,000 that has subcontracting possibilities, must submit an acceptable subcontracting plan. The subcontracting plan will be evaluated in accordance with the Army Federal Acquisition Regulation Supplement (AFARS) Appendix DD. If the successful offeror fails to negotiate a subcontracting plan acceptable to the contracting officer within the time limit prescribed by the contracting officer, the offeror will be ineligible for award. Each subcontracting plan must include separate percentage goals for using small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns. Subcontracting plans also include assurances that the A-E firm will submit periodic reports so the contracting officer can determine the extent of compliance with the subcontracting plan, as well as submit required Standard Form (SF) 294 and SF 295 subcontract reports.

The command subcontracting goals must be considered when negotiating subcontracting plans, but do not necessarily have to be met for a plan to be acceptable. The subcontracting goals should be tailored to the specific circumstances of each contract, including the subcontractors proposed (and accepted) team on the SF 330 and the magnitude and nature of the work. FAR 19.705-4(c) cautions against setting unrealistically high goals that could “significantly increase the Government’s cost or seriously impede the attainment of acquisition objectives.” However, any plan with a small disadvantaged business goal of less than five percent must be approved two levels above the contracting officer (DFARS 219.705-4(d)).

The Indian Incentive Program: This program strives to provide opportunities to Indian organizations and Indian-owned economic enterprises. When authorized under the terms of the contract, any tier contractor may receive an incentive payment of 5 percent of the amount subcontracted to an Indian organization or Indian-owned economic enterprise.

The Women-Owned Small Business (WOSB) Program: This program came into being as a result of Executive Order 12138 signed in May 1979 that prescribed a national initiative to assist WOSB entrepreneurs. The Acquisition Streamlining Act (P.L. 103-355) of 1994 established a 5% government-wide goal for contract and subcontract awards to WOSB for each fiscal year. The Small Business Reauthorization Act of 2000 (PL 106-554) allows agencies to "restrict competition" when soliciting for supplies or services in industries where WOSB are underrepresented. The SBA is currently drafting regulations for implementation of the WOSB set-aside program.

The HUBZone Empowerment Contracting Program: The HUBZone Empowerment Contracting Program stimulates economic development and creates jobs in urban and rural communities. This program provides for contracting opportunities for certain qualified small business concerns located in distressed communities and promotes private sector investment and employment opportunities in these communities. These preferences go to small businesses that obtain HUBZone certification in part by employing staff that live in a HUBZone.

The SBA regulates and implements the program, determines which businesses are eligible to receive HUBZone contracts, maintains a listing of qualified HUBZone small businesses that agencies can use to locate vendors, and adjudicates protests of eligibility to receive HUBZone contracts. A-E procurements reserved for the HUBZone Program must utilize the selection procedures outlined in the Brooks A-E Act, including public announcement, technical evaluations, ranking firms, and holding discussions with the three most highly qualified firms. The Contracting Officer must have a reasonable expectation of receiving a sufficient number of responses from HUBZone firms to proceed with a HUBZone procurement. Also, large businesses must address their HUBZone subcontracting efforts in their Small Business Subcontracting Plan.

Veteran-Owned Small Business and Service-Disabled Veteran-Owned Small Business

(VOSB and SDVOSB) Program: This program was established by the Veterans Entrepreneurship and Small Business Development Act of 1999. The purpose of the program is to provide technical, financial, and procurement assistance by expanding existing and establishing new assistance programs for veterans and service-disabled veterans who own or operate small businesses and requires Government personnel to encourage participation of VOSB and SDVOSB in prime Government contracts and subcontracts. Public Law 108-183, Section 308, established a procurement program providing that contracting officers may set-aside contracts for SDVOSB concerns. Implementing regulations were effective May 5, 2004. A-E procurements reserved for the SDVOSB Program must utilize the selection procedures outlined in the Brooks A-E Act, including public announcement, technical evaluations, ranking firms, and holding discussions with the three most highly qualified firms. The Contracting Officer must have a reasonable expectation of receiving a sufficient number of responses from SDVOSB firms to proceed with a SDVOSB procurement. Large business contractors must address their VOSB and SDVOSB subcontracting efforts in their Small Business Subcontracting Plan.

Central Contractor Registration and Dynamic Small Business Search: All contractors must be registered in CCR in order to do business with the Federal government. As of December 2002, the Central Contractor Registration (CCR) system eliminated the requirement to register separately within the SBA's PRO-Net database. A vendor only needs to input business information in one database (CCR), which will then automatically populate the SBA database. CCR is an electronic gateway of procurement information for and about small businesses. It is a search engine for contracting officers, a marketing tool for small firms and a link to procurement opportunities and important information. It is designed to be a "virtual" one-stop-procurement-shop. The Dynamic Small Business Search (DSB) is a search tool in the CCR for identifying small, SDB, 8(a), HUBZone, veteran, service-disabled veteran, and women-owned businesses. The DSB database is available to government contracting personnel as well as large DoD prime contractors as a resource for seeking potential small business sources. DSB is free to government agencies as well as prime and other contractors seeking small business contractors, subcontractors and/or partnership opportunities. Businesses profiled in the DSB system can be searched by NAICS codes, key words, location, quality certifications, business type, ownership race and gender, etc. The Internet address is <http://www.ccr.gov/>.

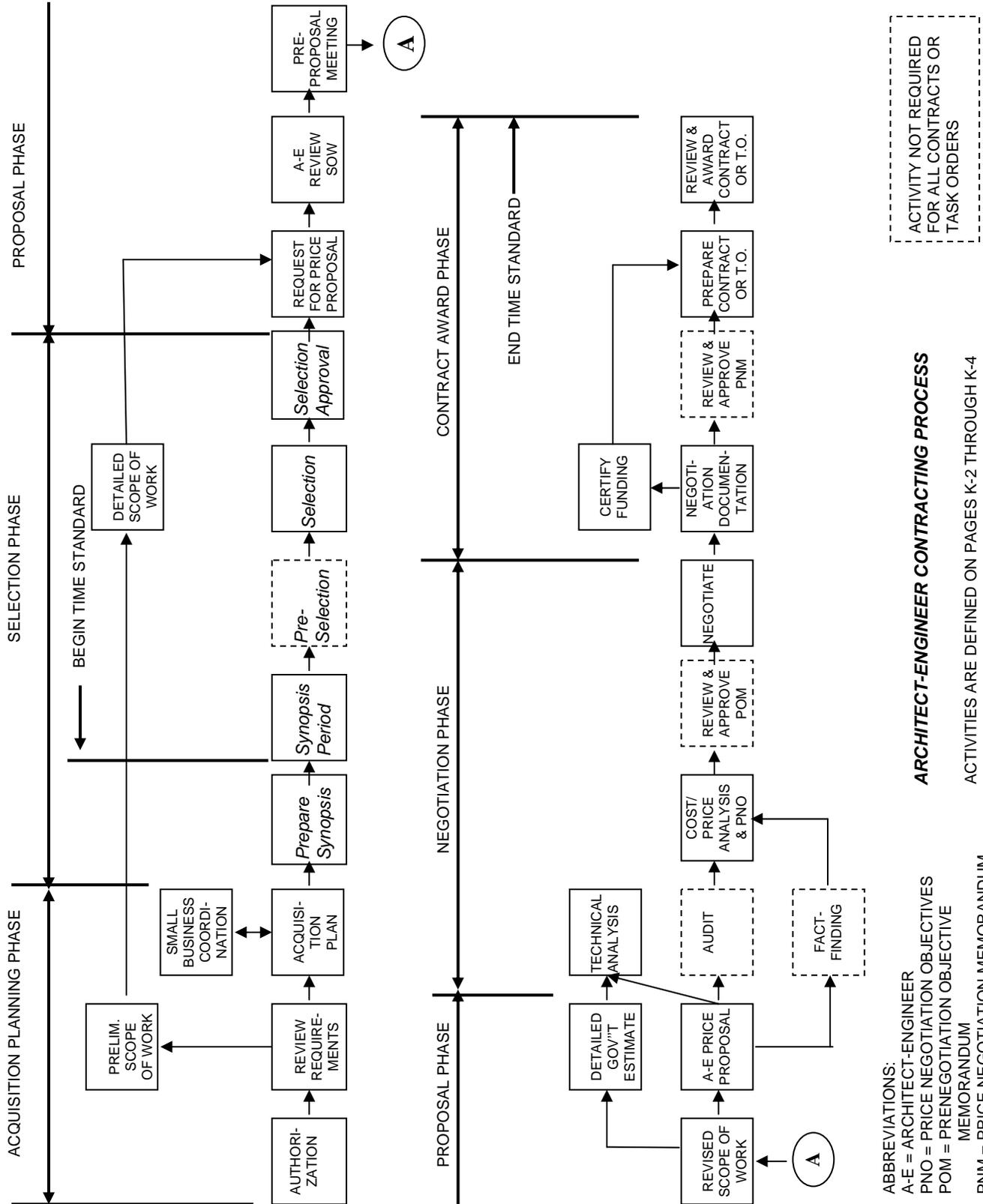
Sub-Net: The SBA has established a new web site for locating and posting subcontracting opportunities called Sub-Net. (Access is available through the DSB home page.)

While the web site is designed primarily as a place for large businesses to post solicitations and notices, agencies, state and local governments, non-profit organizations, colleges and universities, and even small businesses can also use it for the same purpose. The new web site has shifted the traditional marketing strategy from the shotgun approach to one that is more focused and sophisticated. Instead of marketing blindly to hundreds of prime contractors, with no certainty that any given company has a need for their product or service, small businesses can now use their limited resources to identify concrete, tangible opportunities and then bid on them.

Order of Precedence:

Less than \$50,000	<ol style="list-style-type: none"> 1. Set-aside for emerging small business* 2. Set-aside for 8(a), SDVOSB, or HUBZone** 3. Set-aside for Small Business* 4. Solicit on unrestricted basis*
\$50,000 to 300,000	<ol style="list-style-type: none"> 1. Set-aside for 8(a), SDVOSB, or HUBZone** 2. Set-aside for Small Business* 3. Solicit on unrestricted basis
Greater than \$300,000 for MILCON & Military Family Housing,	<ol style="list-style-type: none"> 1. Set-aside for 8(a), SDVOSB, or HUBZone** 2. Solicit on unrestricted basis
Greater than \$300,000, other than MILCON & Military Family Housing	<ol style="list-style-type: none"> 1. Set-aside for 8(a), SDVOSB, or HUBZone** 2. Set-aside for Small Business* 3. Solicit on unrestricted basis
<p>* In accordance with the Brooks A-E Act, in order to set-aside a procurement in the Small Business Program, a contracting officer must determine that there is a reasonable expectation of receiving at least three offers from highly qualified firms. If multiple awards will be made from one solicitation, the Contracting Officer must make a determination that a sufficient number of highly qualified firms will submit offers.</p> <p>** Each of these set-aside programs is of equal preference. Therefore, when making a determination regarding which set-aside program to use, the Contracting Officer should consider if the requirement would be best suited as an 8(a), HUBZone, or SDVOSB set-aside based upon meeting the activity's respective goals.</p>	

APPENDIX K A-E CONTRACTING PROCESS



ACTIVITY NOT REQUIRED FOR ALL CONTRACTS OR TASK ORDERS

ARCHITECT-ENGINEER CONTRACTING PROCESS

ACTIVITIES ARE DEFINED ON PAGES K-2 THROUGH K-4
ACTIVITIES IN *Italics* ARE NOT REQUIRED FOR TASK ORDERS

- ABBREVIATIONS:**
 A-E = ARCHITECT-ENGINEER
 PNO = PRICE NEGOTIATION OBJECTIVES
 POM = PRENEGOTIATION OBJECTIVE MEMORANDUM
 PNM = PRICE NEGOTIATION MEMORANDUM
 SOW = SCOPE OF WORK

A-E CONTRACTING PROCESS ACTIVITY DEFINITIONS

ACQUISITION PLANNING PHASE

Authorization. Receipt of a formal authorization or customer request to initiate a project or A-E contract. Assignment of the project or contract to project delivery team members in project management, engineering, contracting and other appropriate functional areas.

Review of Requirements. Review of the project or contract requirements. Coordination with the customer to understand and refine the requirements, and obtain other pertinent information.

Preliminary Scope of Work (SOW). Preparation of the preliminary SOW based on review of the requirements and coordination with technical personnel and the customer.

Acquisition Plan. Decision on performance by the traditional design-bid-build method or an alternative method such as design-build (not procured as A-E services). Decision on which portion of work, if any, will be done by in-house personnel. Decision on packaging in one or multiple A-E contracts. Decision on appropriate A-E contract type. Development of a project management plan, including preliminary SOW, preliminary project budget (including preliminary estimate of A-E fee), schedule, and informal or formal acquisition plan, and their coordination with the customer and/or higher authority. Verification of the availability of funding with the customer.

Small Business Coordination. Coordination with the DSB and the SBA to identify prime contract and subcontracting opportunities for SB and SDB firms. Decision on set-aside for SB, ESB, 8(a), SDVOSB or HUBZone A-E firms. Preparation of DD Form 2579, Small Business Coordination Record.

SELECTION PHASE (Not applicable for task orders. However, if a task order can be issued under more than one ID contract, then the decision on which contract to use must be documented in the contract file. See EFARS 16.505(b)(1).)

Preparation of Synopsis. Preparation of the synopsis based on the preliminary SOW, and review and approval, as required. Electronic transmission of the synopsis to the FedBizOpps.

Synopsis Period. Minimum 30 days response period as required by FAR 5.203(c), for contracts expected to exceed the SAT.

Detailed Scope of Work. Development of a detailed SOW, including a description of the facility or project, design criteria, specific contract services and products, performance schedule, quality control requirements, and administrative instructions.

Preselection. A preselection board is optional. If a preselection board is not held, its functions will be performed by the selection board. Gathering and organizing documents for evaluation by preselection and selection boards, including SFs 330 and performance evaluations. Conducting the preselection board and preparation of the board report. Scheduling board meetings, appointing board members, and preparing worksheets for both the preselection and selection boards should be done during the synopsis period.

Selection. Conducting a selection board and preparation of the board report.

Selection Approval. Review and approval of the selection report in accordance with the delegated selection authority in EFARS 36.602-4.

PROPOSAL PHASE

Request for Price Proposal (RFPP). Formal notification of selection for negotiation of a contract and RFPP sent to the most highly qualified firm. An RFPP is also sent for a task order under an ID contract. The RFPP includes the draft contract (not applicable to task orders), SOW, project documentation and design criteria.

Scope of Work Review by A-E. Review of the SOW, project documentation and design criteria by the A-E firm to prepare for the preproposal conference, if needed, and the development of its proposal.

Preproposal Conference. Conference(s) among the A-E firm, USACE personnel, customer and others as appropriate to discuss and refine project and contract requirements. Conference(s) may be by telephone, at the project site, in the firm's office or elsewhere, as appropriate.

Revised Scope Of Work. Resolution of any issues raised at the preproposal conference(s) and revision of the SOW accordingly.

Detailed Government Estimate. Preparation and approval of an IGE based on a detailed analysis of the SOW as required by FAR 36.605. Coordination with the customer and/or higher authority on estimated funding requirements.

A-E Price Proposal. Preparation and submission of a price proposal by the A-E firm. Includes preparation of a small business subcontracting plan if the A-E firm is a large business and the proposal exceeds \$500,000 (not applicable for task orders).

Fact-Finding. Obtaining information in order to understand the A-E price proposal and its assumptions, and to clarify any ambiguities, omissions or uncertainties in the RFPP and SOW prior to negotiations (FAR 15.406-1(a)). After fact-finding, a revised proposal may be requested.

NEGOTIATION PHASE

Technical Analysis. Evaluation of the judgmental elements of the A-E proposal in accordance with FAR 15.404-1(e).

Audit. If considered necessary by the KO (FAR 15.404-2(a)).

Cost/Price Analyses and Prenegotiation Objectives (PNO). Evaluation of all cost elements of the A-E proposal in accordance with FAR 15.404-1(c), using the results of the technical analysis and the audit, if performed. Evaluation of the total price of the proposal and, as appropriate, the prices of phases or items of work in accordance with FAR 15.404-1(b). Based on the technical, cost and price analyses, development of the PNO in accordance with FAR 15.406-1. The proposal analysis and PNO are documented in a Prenegotiation Objective Memorandum (POM). Coordination with customer and/or higher authority on estimated funding requirements.

POM Review and Approval. Review and approval of the POM, in accordance with local procedures.

Negotiation. Negotiation of a fair and reasonable price in accordance with the POM. Includes negotiation of an acceptable small business subcontracting plan (if applicable) and approval by the KO prior to contract award.

CONTRACT AWARD PHASE

Negotiation Documentation. Preparation of a PNM in accordance with FAR 15.406-3, preparation of the final SOW as a result of clarifications and changes during negotiations, and receipt of the final A-E proposal.

Funding Certification. Requesting, receiving and certifying the funds to award the contract or issue the task order.

Price Negotiation Memorandum (PNM) Review and Approval. Review and approval of the PNM in accordance with local procedures.

Contract Preparation. Preparation of SF 252, Architect-Engineer Contract, or preparation of DD Form 1155, Order for Supplies or Services, for a task order.

Contract Review and Award. Final review of the contract documentation and signing of the contract by the KO and the A-E firm, or signing of the task order by the KO.

**APPENDIX L
TYPICAL DURATIONS FOR A-E CONTRACTING ACTIVITIES**

1 Contracting Activity	Duration (Calendar Days)	
	Contract	Task Order
Synopsis Period	30	N/A
Preselection	10	N/A
Selection	10	N/A
Selection Approval	3	N/A
RFPP	7	3
SOW Review by A-E	7	2
Preproposal Conference	2	1
Revised SOW	10	4
Government Estimate	(9)	(7)
A-E Price Proposal	14	7
Proposal Analysis/PNO/POM	10	4
Negotiation	14	7
Negotiation Documentation/PNM	7	3
Funding Certification	(7)	(7)
Contract/Order Preparation	7	3*
Contract/Order Review and Award	14	3*
1.1 TIME STANDARD	145	37

Notes:

1. See Appendix B for acronyms.
2. Durations in parentheses () are not on the critical path of the contracting process.
3. N/A = not applicable for task orders.
4. Asterisk (*) indicates activities applicable for preparation and issue of task orders scoped and negotiated by outside customers, such as Army installations. Total duration = 6 days.

APPENDIX M

STREAMLINING TECHNIQUES FOR A-E CONTRACTS AND TASK ORDERS

GENERAL RECOMMENDATIONS

1. Develop a schedule for each A-E contract or task order showing the dates and responsible offices and persons for each contracting activity. All responsible staff members should agree with this schedule. Track actual dates compared to scheduled dates for each activity and document reasons for significant delays. Revise the schedule as required.
2. Assign a specific team member with the overall responsibility and accountability to track and control each A-E contracting schedule.
3. Encourage continual communication among A-E contracting team members.
4. Use automation and standardization to the maximum extent for preparing correspondence, public announcements, preselection and selection board reports, IGE, POM, PNM and other typical documents in the A-E contracting process.
5. Minimize the number of offices and persons who review each document such as public announcements, board reports, IGE, POM and PNM. Consider the "value added" of each reviewer and the dollar value, complexity and risk of the contract action. Conduct reviews concurrently whenever possible. Set a suspense date for each reviewer.
6. Delegate approval authorities to the lowest reasonable level, considering the dollar value, complexity and risk of the contract action.
7. Collocate the Engineering Division and Contracting Division personnel that are principally involved in A-E contracting to improve communications, teamwork and efficiency.
8. Procure A-E services up the micro-purchase threshold of \$2,500 using the Government purchase card.

PUBLIC ANNOUNCEMENTS AND EVALUATION BOARDS

1. Coordinate proposed A-E acquisitions with the DSB early to avoid delaying release of public announcements.
2. Commanders do not have to approve the membership of each board. The designated chairperson may appoint members from a standing list of eligible personnel designated by the commander.
3. Have a sufficient number of alternate board members to ensure that boards are held when scheduled.

4. A board should stay convened and fully committed to its task until it is completed. Minimize disruptions.
5. Do not prepare or use elaborate tabulations of information from the SFs 330 since the board members must still personally review the SFs 330 and prepare a consensus evaluation.
6. A preselection board can usually be held within 2-3 days of the closing date of a synopsis, and a selection board within 3-5 days of the preselection board.
7. Consider eliminating preselection boards. One board can typically do the entire selection process in two days, including interviewing and ranking the most highly qualified firms, and drafting the board report. Not only is the total selection process substantially shortened, but the overall labor hours and costs are also considerably reduced.
8. Review of the SFs 330 by a preselection board may be divided up among the voting members. Each firm's submission is reviewed by one member, using the evaluation system established by the board. The review of each firm is then presented and discussed by the entire board, and consensus is reached on the evaluation of each firm. (This does not apply to selection boards.)
9. Use a standard preselection board cover memorandum report that can be prepared prior to the board meeting, and completed and signed by all board members at the meeting. Attach handwritten worksheets reflecting the board's consensus for each firm. Using this method, the report is completed when the board adjourns.
10. A preselection board report does not have to be separately approved. It can be attached to the selection board report and approved as a package.
11. Conduct telephone interviews with the most highly qualified firms, instead of in-person interviews, to the maximum extent possible. Typically, the firms need only be notified 2-3 hours in advance of the interview. A selection board should usually be able to evaluate the highly qualified firms, interview and rank the most highly qualified firms, and prepare a draft report in the same day.
12. Since equitable distribution of DoD work is a secondary criterion, do not compile or report DoD contract award data unless this criterion is used by a selection board as a "tie-breaker" in ranking the most highly qualified firms.
13. Use a standard selection board cover memorandum that can be completed and signed by all board members prior to adjourning the meeting. Written evaluations reflecting the board's consensus can be prepared in final form soon after the meeting and attached to the memorandum.
14. Commanders should delegate full selection authority as allowed by EFARS 36.602-4.

15. When MSC approval of a selection will be required, coordinate the schedule, selection criteria, and evaluation method in advance with the MSC.

NEGOTIATION AND AWARD

1. As soon as the selection is approved, notify the top ranked A-E firm by telephone. At the same time, notify the firm of the date and location for the preproposal conference. Promptly follow up the telephone call with a formal notification letter and RFPP. Similar procedures also apply to task orders.

2. Develop the SOW and assemble all pertinent criteria during the synopsis and selection period so that this information can be provided to the A-E firm immediately after selection notification and not delay the acquisition.

3. Carefully prepare for the preproposal conference and have the "right" people there who can make decisions in order to promptly and properly resolve issues. Aggressively pursue any SOW issues remaining after the conference, and resolve them before award.

4. If schedule is important, state in the public announcement the requirement to submit a price proposal within a specific period after the preproposal conference. Impress upon the A-E firm that the timeliness of their proposal may be considered in its performance evaluation if they are awarded a contract.

5. Use DoL "on-line" electronic wage rate determinations if the SCA applies to a contract.

6. A revised IGE is only required if there is a significant change in the Government's position, and is not required to justify accepting an A-E proposal greater than the IGE. The POM explains the significant differences between the IGE and the proposed Government negotiation position (PNO). Similarly, the PNM explains the significant differences between the PNO and the final negotiated price.

7. After receiving a price proposal, hold a fact-finding session(s) with the A-E firm to obtain information in order to understand the proposal and its assumptions, and to clarify the SOW and RFPP, as required. A revised price proposal may then be requested. The first proposal(s) must still be mentioned in the PNM.

8. Only require review and approval of the POM for large or complex actions. Hence, for most actions, the negotiators should be allowed to proceed with negotiations when they are adequately prepared and without higher-level review or approval. (Of course, only the KO can approve the final agreement. Hence, the negotiators should coordinate with the KO if they have any doubt about the course of the negotiations.)

9. Use tabular comparisons to simplify the preparation of cost and price analysis, technical analysis, PNO, and PNM. Express the PNO as ranges to give the negotiators flexibility.

10. Minimize the use of audits. Audit is a tool available to the KO and negotiators to assist in determining the reasonableness of a proposal. Typically, experience in pricing similar contract actions and market surveys published by A-E professional and industry organizations provide sufficient information to judge the reasonableness of a firm's proposal without requiring an audit.
11. If an audit is needed, advise the auditor of the requirement as soon as the A-E firm is selected for negotiations. Provide the auditor the request for price proposal and any data available on the firm so that the auditor can conduct preliminary research. Also, instruct the firm to submit a copy of their proposal directly to the auditor. Keep in close contact with the auditor during the conduct of the audit.
12. If a small business subcontracting plan is required, it should be submitted with the price proposal, and reviewed, negotiated and approved in parallel with the price negotiation.
13. Coordinate with the customer or higher authority, as appropriate, on estimated funding requirements prior to negotiations to avoid any "surprises" or delays in final funding authorization when negotiations are completed.
14. Do not require separate review and approval of a PNM. Instead, include the PNM with the contract action when it is staffed for review and signature.
15. After completing negotiations, begin preparation of the contract or task order while awaiting funds certification.
16. Initiate the pre-award survey and Equal Employment Opportunity Clearance (for contracts of \$10 million or more in accordance with FAR 22.805(a)) as soon as an A-E firm is selected for negotiations to avoid delaying contract award. (Not applicable to task orders.)
17. Expedite award by having the A-E principal come to the contracting office to sign the contract with the contracting officer.

APPENDIX N STANDARD SYNOPSIS FORMAT FOR A-E SERVICES

FAR 5.207(a) specifies a standard 19-item format for synopses. Most items are self-explanatory. Additional instructions are provided below for Items 6, 8, 17 and 18 to standardize synopses for A-E services throughout USACE.

ITEM 6. CLASSIFICATION CODE

All A-E services, except for surveying and mapping, will be listed under Service Code C (Architect and Engineering Services). Surveying and mapping contracts will be listed under Service Code T (Photographic, Mapping, Printing, and Publication Services), except those exclusively for boundary surveys, which will be listed under Service Code R (Professional, Administrative, and Management Support Services).

ITEM 8. SUBJECT

Title of proposed A-E contract in capital letters such as "DESIGN OF GENERAL PURPOSE WAREHOUSE, FT. RUCKER, AL" or "INDEFINITE DELIVERY CONTRACT FOR GEOTECHNICAL ENGINEERING WITHIN THE VICKSBURG DISTRICT." Include the location of project if the contract is for a specific project. Include the geographic area for an indefinite delivery contract.

ITEM 17. DESCRIPTION

The description will be divided into the following four standard parts:

CONTRACT INFORMATION. Include as appropriate:

- Include an introductory statement as follows:

“This contract(s) is being procured in accordance with the Brooks A-E Act as implemented in FAR Subpart 36.6. Firms will be selected for negotiation based on demonstrated competence and qualifications for the required work. See Numbered Note 24 for general information on the A-E selection process.”

- General nature of A-E services, such as design, studies, surveying and mapping, facilities master planning, or construction phase services. Do not use the terms "Title I" or "Title II," which are obsolete and have no statutory or regulatory basis.

- North American Industrial Classification System code, and size standard.

- Set-aside restrictions, if applicable. Also indicate in Item 19.

- Type of contract, such as FFP, ID, or CPAF.

- Number of contracts. If multiple contracts, state how rank of firms will relate to award of contracts.
- If multiple ID contracts, state method to be used to allocate task orders among contracts when two or more ID contracts contain the same or similar scopes of work such that a particular task order might be awarded under more than one ID contract. See EFARS 16.505 for guidance.
- Anticipated start and completion dates of the contract.
- Proposed contract options, such as final design, construction phase services, or option periods for an ID contract.
- Maximum contract amount, maximum task order amount (if applicable) and contract duration for an ID contract.
- Subject to availability of funding statement (if applicable)
- Range of estimated A-E contract price, if construction costs are not applicable. Use the ranges in FAR 36.204 and DFARS 236.204.
- Subcontracting plan requirements and goals for large businesses if the contract price is estimated to exceed \$500,000. Include percentage goals for SB, SDB, woman-owned SB, veteran-owned SB, service-disabled veteran-owned SB, and HUBZone SB.
- Applicability of the Service Contract Act (FAR 22.10).
- Requirement for registration in Central Contractor Registration.

PROJECT INFORMATION. Include as appropriate:

- Brief description of the project and/or A-E services. Do not include selection criteria in this description, such as necessary disciplines and special experience requirements.
- Description of deliverables. See Tri-Service Standards for A-E CADD and GIS deliverables.
- Additional information on the geographic area of work for an ID contract, if not clear from Item 8, Subject.
- Range of estimated construction cost, if applicable. Use the ranges in FAR 36.204 and DFARS 236.204.

SELECTION CRITERIA. List all selection criteria in relative order of importance following the general FAR and DFARS selection criteria.

State any justifiable minimum qualifications (such as minimum number of years of experience, minimum number of projects, or minimum number of personnel in a discipline). *Include only selection criteria that will be true discriminators in determining the most highly qualified firms.*

Begin this part with a statement similar to the following:

"The selection criteria for this particular project are listed below in descending order of importance (first by major criterion and then by each sub-criterion). Criteria a-f are primary. Criteria g-i are secondary and will only be used as "tie-breakers" among firms that are essentially technically equal."

Typical selection criteria include³⁷:

a. Specialized Experience and Technical Competence:

- Experience of firm and its consultants in certain types of projects and/or features of work.
- Experience in energy conservation, pollution prevention, waste reduction, and the use of recovered materials, as appropriate.
- Experience of the prime firm and significant subcontractors in working together.
- Experience in adapting standard design packages.
- Specific technical capabilities, such as construction cost estimating or materials testing.
- Knowledge of specific laws and regulations.
- Compatibility with specific CADD equipment, and format of required CADD products.
- Knowledge of certain design criteria.

³⁷ The criteria are listed in the order of importance that is usually most appropriate, however they may be ordered differently as warranted for specific contracts.

- Design quality management approach.
- Specialized equipment requirements.
- Knowledge of a foreign language.

b. Professional Qualifications:

- Professional and supporting disciplines, including registration or licensing requirements.
- Specific experience and training for certain personnel.

c. Past Performance: State this criterion similar to the following:

"Past performance on DoD and other contracts with respect to cost control, quality of work, and compliance with performance schedules, as determined from ACASS and other sources."

d. Capacity to Accomplish the Work:

- Ability to meet the schedule of the overall project and/or certain phases.
- Ability to provide a minimum number of teams or crews for surveying, inspections, data collection or similar services.
- Ability to accomplish a certain number of task orders simultaneously for an ID contract.
- Minimum number of personnel in a certain discipline to be assigned to the project, when appropriate.
- If schedule is critical for the project, say so.

e. Knowledge of the Locality: Specific knowledge of certain local conditions or project site features, such as geological features, climatic conditions, local construction methods, or local laws and regulations. A general desire for a local firm must be translated into specific required knowledge of the locality.

f. SB and SDB Participation: Include this as a secondary criterion in all unrestricted synopses. State similar to the following:

"Extent of participation of small businesses (including women-owned), small disadvantaged businesses, historically black colleges and universities, and minority institutions in the proposed contract team, measured as a percentage of the total estimated effort."

g. Geographic Proximity: Proximity should normally only be used as a selection criterion for small or routine projects and ID contracts in support of a specific installation(s). If used, this criterion should be secondary and stated similar to the following:

"Location of the firm in the general geographical area of _____."

h. Equitable Distribution of DoD Contracts: This is a secondary criterion to be included in all synopses. State similar to the following:

"Volume of DoD A-E contract awards in the last 12 months, with the objective of effecting an equitable distribution of DoD A-E contracts among qualified firms, including SB and SDB."

SUBMISSION REQUIREMENTS. Do not include any selection criteria in this part. Begin this part with a statement similar to the following:

"Interested firms having the capabilities to perform this work must submit ___ copies of SF 330 Part I and ___ copies of SF 330 Part II for the prime firm and all consultants to the above address not later than the response date indicated above. Solicitation packages are not provided. This is not a request for proposal."

Indicate any additional submittal requirements or instructions such as:

- Specific instructions for completing certain blocks of the SF 330.
- Information to include in SF 330, Part I, Section H, such as design quality management plan (DQMP), organization chart, or description of capabilities and equipment.
- Requirement for in-person presentations by the most highly qualified firms for significant projects.
- The specific address for delivery of the submission.
- Any page limitations.
- Selection and notification schedule.

ITEM 18. PLACE OF CONTRACT PERFORMANCE

Generally, this item is not applicable since most A-E services are performed in the A-E contractor's office. However, indicate in this item if the A-E contractor will be required to perform a significant amount of work at the project site.

APPENDIX O
EXAMPLE SYNOPSIS FOR FIRM-FIXED-PRICE CONTRACT

**C -- DESIGN OF CONSOLIDATED TACTICAL EQUIPMENT MAINTENANCE
SHOP, FORT BLISS, TX**

General Information

Document Type:	Presolicitation Notice
Solicitation Number:	W9126G -04-R-0024
Posted Date:	Jun 24, 2004
Original Response Date:	Jul 24, 2004
Current Response Date:	Jul 24, 2004
Archive Date:	Aug 23, 2004
Classification Code:	C – Architect and engineering services

Contracting Office Address

US Army Corps of Engineers, Ft. Worth District, P.O. Box 17300, ATTN:
CESWF-ED-MS, Room 705, 819 Taylor Street, Ft. Worth, TX 76102-0300

Description

1. **CONTRACT INFORMATION:** This contract is being procured in accordance with the Brooks A-E Act as implemented in FAR Subpart 36.6. Firms will be selected for negotiation based on demonstrated competence and qualifications for the required work. See Numbered Note 24 for general information on the A-E selection process. A-E services are required for site investigation, planning, engineering studies, concept design, final design (option), and construction phase services (option) for the subject project. North American Industrial Classification System code is 541330, which has a size standard of \$4,000,000 in average annual receipts. This announcement is open to all businesses regardless of size. A firm-fixed-price contract will be negotiated. The contract is anticipated to be awarded in Nov 2004 and design completed by Apr 2006. If a large business is selected for this contract, it must comply with FAR 52.219-9 regarding the requirement for a subcontracting plan on that part of the work it intends to subcontract. The subcontracting goals for the Fort Worth District which will be considered in the negotiation of this contract are: (1) at least 61% of a contractor's intended subcontract amount be placed with small businesses (SB); (2) at least 9% of a contractor's intended subcontract amount be placed with small disadvantaged businesses (SDB); (3) at least 5% of a contractor's intended subcontract amount be

placed with women-owned SB (WOSB); (4) at least 3% of a contractor's intended subcontract amount be placed with service-disabled veteran-owned SB; (5) at least 3% of a contractor's intended subcontract amount be placed with veteran-owned SB; and (6) at least 3% of a contractor's intended subcontract amount be placed with HUBZone SB. The plan is not required with this submittal, but will be required with the fee proposal of the firm selected for negotiations. To be eligible for contract award, a firm must be registered in the Central Contractor Registration (CCR). Register via the CCR Internet site at <http://www.ccr.gov>.

2. PROJECT INFORMATION: 125,000 SF maintenance facility for heavy armored vehicles adapted from a standard Army design. Facility includes traveling bridge cranes, vehicle and industrial exhaust systems, fuel dispensing, battery charging, arms room with intrusion detection system (power conduit rough-in only), fire protection systems, oil-water separators, and waste oil disposal system. Supporting facilities include water, sewer, natural gas, HVAC, electric service, security lighting, parking, storm drainage, information systems, and general site improvements. Twelve buildings of approximately 119,000 SF containing asbestos will be demolished as a part of this project. The estimated construction cost of this project is between \$10,000,000 and \$25,000,000. Cost estimates must be prepared using the Corps of Engineers Micro Computer Aided Cost Estimating System (MCACES). MCACES software and training will be provided by the Corps. The contractor shall be responsible for accomplishing designs and preparing drawings using computer-aided design and drafting (CADD) and delivering the three-dimensional drawings in Bentley's MicroStation Version 8 CADD software, Windows 2000 version, electronic digital format. The Government will only accept the final product for full operation, without conversion or reformatting, in the target CADD software format, and on the target platform specified herein. The target platform is an Intel-based 1 GHz, 500 mb RAM personal computer, with a Windows 2000 operating system. Drawings shall be compliant with the current A/E/C CADD Standard available from the CADD/GIS Technology Center, Engineer Research and Development Center.

3. SELECTION CRITERIA: The selection criteria for this particular project are listed below in descending order of importance (first by major criterion and then by each sub-criterion). Criteria a-e are primary. Criteria f-h are secondary and will only be used as "tie-breakers" among firms that are essentially technically equal.

a. Specialized experience and technical competence in:

- (1) Design of heavy equipment maintenance facilities.
- (2) Fire protection design for heavy equipment shops.
- (3) Industrial ventilation.
- (4) Sustainable design using an integrated design approach and emphasizing environmental stewardship, with experience in energy and water conservation and efficiency; use of recovered and recycled materials; waste reduction; reduction or elimination of toxic and harmful substances in facilities construction and operation; efficiency in resource and materials utilization; development of healthy, safe and productive work environments; and employing the LEED evaluation and certification methods.
- (5) Producing quality designs based on evaluation of a firm's design quality management plan (DQMP). The evaluation will consider the management approach, coordination of disciplines and subcontractors, quality control procedures, and prior experience of the prime firm and any significant subcontractors on similar projects.

b. Qualified professional personnel in the following key

disciplines: project management (architect or engineer), architecture, fire protection engineering, mechanical engineering, electrical engineering, structural engineering, and civil engineering. The lead architect or engineer in each discipline must be registered to practice in the appropriate professional field. The evaluation will consider education, certifications, training, registration, overall and relevant experience, and longevity with the firm. c. Past performance on DoD and other contracts with respect to cost control, quality of work, and compliance with performance schedules, as determined from PPIRS and other sources. d. Capacity to submit the concept design (35% complete) by June 2005, and complete the final design by April 2006. The evaluation will consider the experience of the firm and any consultants in similar size projects, and the availability of an adequate number of personnel in key disciplines. e. Knowledge of design of building envelopes and systems in hot, arid climate similar to Ft. Bliss. f. Extent of participation of SB (including WOSB), SDB, historically black colleges and universities, and minority institutions in the proposed contract team, measured as a percentage of the total estimated effort. g. Volume of DoD A-E contract awards in the last 12 months, with the objective of effecting an equitable distribution of DoD A-E contracts among qualified firms, including SB and SDB. h. Proximity to Ft. Bliss, TX. 4. **SUBMISSION REQUIREMENTS:** Interested firms having the capabilities to perform this work must submit two copies of SF 330 Part I, and two copies of SF 330 Part II for the prime firm and all consultants, to the above address not later than 4:00 PM on the response date indicated above. The SF 330 Part I shall not exceed 50 pages (8.5" x 11"), including no more than 5 pages for Section H. Each side of a sheet of paper is a page. Use no smaller than 12 font type. Include the firm's DUNS number in SF 330, Part I, Section H.. In Section H describe the firm's overall DQMP. A project-specific design quality control plan must be prepared and approved by the Government as a condition of contract award, but is not required with this submission. In Section H also indicate the estimated percentage involvement of each firm on the proposed team. Facsimile transmissions will not be accepted. Solicitation packages are not provided and no additional project information will be given to firms during the announcement period. This is not a request for proposal.

Point of Contact

John Smith, (817)334-1234

Email your questions to US Army Engineer District, Forth Worth – Military at
john.smith@usace.army.mil

Place of Performance

N/A

APPENDIX P
EXAMPLE SYNOPSIS FOR INDEFINITE-DELIVERY CONTRACT

**T - HYDROGRAPHIC SURVEYING,
PHOTOGRAMMETRIC MAPPING,
AND BOUNDARY SURVEYING
SERVICES FOR ST. LOUIS
DISTRICT**

General Information

Document Type:	Presolicitation Notice
Solicitation Number:	W9126G -04-R-0024
Posted Date:	Jun 24, 2004
Original Response Date:	Jul 24, 2004
Current Response Date:	Jul 24, 2004
Archive Date:	Aug 23, 2004
Classification Code:	T - Photographic, mapping, printing, and publication services

Contracting Office Address

**US Army Corps of Engineers, St. Louis District, 1222 Spruce Street, St. Louis, MO
63103-2833**

Description

1. CONTRACT INFORMATION: This contract is being procured in accordance with the Brooks A-E Act as implemented in FAR Subpart 36.6. Firms will be selected for negotiation based on demonstrated competence and qualifications for the required work. See Numbered Note 24 for general information on the A-E selection Process. The services will consist of hydrographic, photogrammetric mapping, and

related ground and boundary surveying services to support engineering, design operations, maintenance, and construction of various navigation or flood control projects within or assigned to the St. Louis District, US Army Corps of Engineers. Two indefinite delivery contracts will be negotiated and awarded, each with a base year and four option years. The amount of each contract will not exceed \$5,000,000. Work will be issued by negotiated firm-fixed-price or labor-hour task orders. The contracting officer will consider the following factors in deciding which contractor will be selected to negotiate an order: performance and quality of deliverables under the current contract, current capacity to accomplish the order in the required time, uniquely specialized experience, and equitable distribution of work among the contractors. The contracts are anticipated to be awarded in November 2004. North American Industrial Classification System code is 541360, which has a size standard of \$4,000,000 in average annual receipts. *These contracts are set-aside for small businesses only.* The wages and benefits of service employees (see FAR 22.10) performing under these contracts must be at least equal to those determined by the Department of Labor under the Service Contract Act, as determined relative to the employee's office location (not the location of the work). To be eligible for contract award, a firm must be registered in the Central Contractor Registration (CCR).

Register via the CCR Internet site at <http://www.ccr.gov>. 2. PROJECT

INFORMATION: Hydrographic surveying is required to support river and harbor navigation, reservoir sedimentation studies, beach and shoreline erosion studies, underwater hazard detection, dredging and construction measurement, and river/tidal hydraulic studies. Photogrammetric mapping requirements supporting the above projects will consist of aerial photography, analytical aerotriangulation, stereo mapping compilation, orthophotography, and land use/land cover interpretation. Ground survey data collection in support of photogrammetric mapping projects including establishment of necessary ground control (both horizontal and vertical) and profiles used for checking map photogrammetric map accuracy. Real property surveys of Government-owned land tracts, such as levees, reservoirs, or dredge disposal areas, may be required to establish or reestablish corners, monuments, and boundary lines, or for the purpose of describing, locating fixed improvements, or platting or dividing parcels. Work will be submitted in hard copy report format, hard copy F-size drawings, and/or automated/CADD format. Work may be performed to support other Federal agencies. 3. SELECTION CRITERIA: The selection criteria for this particular project are listed below in descending order of importance (first by major criterion and then by each sub-criterion). Criteria a-e are primary. Criteria f and g are secondary and will only be used as "tie-breakers" among firms that are essentially technically equal. a. Specialized experience and technical competence in: (1) Hydrographic surveying and mapping expertise in the areas of river and harbor navigation, reservoir, beach, and shoreline surveys/studies, underwater hazard detection, construction and dredging measurement and payment, and river/tidal hydraulic studies, using differential GPS, acoustic, and conventional survey techniques. (2) Own or lease an automated hydrographic survey vessel of 19-30 foot length capable of being trailered to and operating in US inland and coastal waters, equipped with an automated single-beam 200 KHz acoustic depth measurement system, full motion compensation, side scan sonar imaging for underwater object

detection, and multi-beam acoustic imagery from a single transducer source. (3) Experience in photogrammetric production for large and small scale (between 1"=50' with 1' contours and 1"=2,000' with 50' contours). (4) Photogrammetric equipment including owning or leasing airworthy aircraft, currently (within the last 3 calendar years) certified precision aerial mapping camera, photographic lab for reproducing aerial photographic and mapping products (including natural color, color infra red and panchromatic (black and white) prints and diapositives), hardware and software to perform fully analytical aero-triangulation, analytical stereoplotter instrumentation interfaced for digital data collection of planimetric and topographic features, DTM, DEM data collection and manipulation of terrain data, digital data editing facilities, ability to provide orthophoto products (hardcopy and digital), and airborne GPS capabilities for aircraft navigation and photo control. (5) Technical production expertise consistent with utilization of photogrammetric equipment. (6) Capability to collect and deliver digital data (2D and 3D) properly formatted on appropriate media. (7) Ability to provide ground survey control planning and acquisition in support of photogrammetric mapping. Required skills include establishment of horizontal and vertical control points, traverses and level loops utilizing survey grade transits, EDM systems, levels, and Global Positioning System (GPS) equipment. (8) Facilities and capability to gather historical photos from hardcopy and/or digital sources and perform photo image interpretation to detect land use and change analysis utilizing digital softcopy techniques and manually via hardcopy. (9) Contractor facilities must have capability to deliver digital data on CDROM, optical rewritable disks, 8mm tapes, DVD disks, and 3.5" micro disks. Digital data must be readable and fully operational with US Geological Survey DLG-3, AutoCAD, ARC/INFO (GIS), ERDAS, and Microstation J formats. (10) Own or lease static/kinematic GPS equipment capable of subcentimeter measurement accuracy, electronic total station with data collector. b. Qualified personnel in the following key disciplines: (1) Licensed civil engineers. (2) Registered land surveyors. (3) Engineering, surveying, CADD and photogrammetric technicians. The evaluation will consider education, training, registration, voluntary certifications (e.g., ACSM Certified Hydrographer or ASPRS Certified Photogrammetrist), overall and relevant experience, and longevity with the firm. c. Past performance on DoD and other contracts with respect to cost control, quality of work, and compliance with performance schedules, as determined from PPIRS and other sources. d. Capacity to perform approximately \$1,000,000 in work of the required type in a one-year period. The evaluation will consider the availability of an adequate number of personnel in key disciplines and equipment availability. e. Knowledge of boundary and coordinate systems in states within the boundaries of the St. Louis District (IL and MO). f. Extent of participation of SB (including WOSB), SDB, historically black colleges and universities, and minority institutions in the proposed contract team, measured as a percentage of the total estimated effort. g. Volume of DoD A-E contract awards in the last 12 months, with the objective of effecting an equitable distribution of DoD A-E contracts among qualified firms, including SB and SDB. 4. SUBMISSION REQUIREMENTS: Interested firms having the capabilities to perform this work must submit two copies of SF 330 Part I, and two copies of SF 330 Part II for the prime firm and all consultants, to the above address not later than 4:00 PM on the response date

indicated above. The SF 330 Part I shall not exceed 50 pages (8.5" x 11"), including no more than 5 pages for Section H. Each side of a sheet of paper is a page. Use no smaller than 12 font type. Include the firm's DUNS number in SF 330, Part I, Section H. In SF 330, Part I, Section H describe owned or leased equipment that will be used to perform this contract, as well as CADD capabilities. In Section H, describe the firm's overall DQMP. A project-specific design quality control plan must be prepared and approved by the Government as a condition of contract award, but is not required with this submission. In Section H also indicate the estimated percentage involvement of each firm on the proposed team. Facsimile transmissions will not be accepted. Solicitation packages are not provided and no additional project information will be given to firms during the announcement period. This is not a request for proposal.

Point of Contact

Dennis Morgan, (314) 331-8373

Email your questions to US Army Engineer District, St. Louis, MO – Civil Works at dennis.morgan@usace.army.mil

Place of Performance

N/A

APPENDIX Q
ARCHITECT-ENGINEER CONTRACT ADMINISTRATION SUPPORT SYSTEM
(ACASS)

1. Introduction. ACASS is an automated database of A-E qualifications, DoD A-E contract awards, and A-E performance evaluations. ACASS is a sub-component of the Navy's Contractor Performance Assessment Reporting System (CPARS). It is managed by the Contractor Appraisal Information Center (CAIC) in the Contracting Division of the USACE Portland District. ACASS is primarily used by DoD agencies, but other Federal agencies may also use ACASS to prepare evaluations and access information.

2. Regulatory Basis.

a. ACASS fulfills the following FAR requirements, thereby eliminating this responsibility for individual offices:

(1) FAR 36.603 (a) and (b) to maintain files of SF 330 Part II on firms wishing to be considered for Government contracts.

(2) FAR 36.603(c) to classify each firm with respect to location, specialized experience, professional capabilities and capacity.

(3) FAR 36.603(d)(1) to encourage firms to update their SF 330 Part II annually.

(4) FAR 36.603(d)(3) to maintain records on contract awards in the past year.

(5) FAR 36.603(d)(4) to maintain performance evaluation files. (The original copy of all performance evaluations must still be maintained in the official contract file).

(6) FAR 36.604(a) to prepare a performance evaluation for each contract over \$25,000.

(7) FAR 36.604(c) to distribute performance evaluations to all contracting offices and retain them on file for six years.

b. ACASS use is directed by the DFARS as follows:

(1) DFARS 236.602-1(a)(4) directs that A-E evaluation boards use performance evaluations from ACASS. (ACASS is not referred to by name in the DFARS but as the central data base operated by the US Army Engineer Division, North Pacific. The CAIC has since been transferred to the Portland District.)

(2) DFARS 236.602-1(a)(6)(A) requires that the volume of work awarded by DoD in the previous 12 months be considered in A-E selections and that this data be obtained from ACASS.

(3) DFARS 236.604(c)(i) requires that all DoD agencies forward A-E performance evaluations to ACASS.

3. Functions.

a. Identification of Firms: Until October 2005, the ACASS number was used to identify firms. In the modernized ACASS system, the Data Universal Numbering System number (DUNS number; see FAR 2.101) is used to identify firms. The DUNS number of the parent company is linked to the DUNS number of all branch offices and subsidiaries.

b. A-E Performance Evaluations.

(1) In the modernized ACASS system, the entire evaluation process is Internet-based. All draft evaluations are electronically sent to the contractor for comment. Permission to prepare evaluations in ACASS is controlled, on a contract-by-contract basis, by local individuals who serve as system “Focal Points”. During the evaluation process, draft evaluations are automatically routed between the Rating and Reviewing Officials, and the government contractor. Completed evaluations will be automatically sent to the Federal-wide Past Performance Information Retrieval System (PPIRS; see Appendix F for website), where contractors can access their own evaluations using a password. The Office of Management and Budget (OMB) mandates that government employees use PPIRS when retrieving evaluations for source selection purposes.

c. A-E Qualifications.

Until 8 June 2004, SF 254 was used to present the general qualifications of A-E firms. Now SF 330 Part II is used for that purpose. A central Federal website was established to allow A-E firms to voluntarily submit their SF 330 Part II. This website is part of the On-Line Representations and Certifications Application (ORCA; see Appendix F for website). Firms are responsible for keeping their SF 330 Part II up-to-date in ORCA. Currently, if an A-E firm has a SF 330 Part II on file in ORCA, it can be retrieved directly from ORCA using a firm’s DUNS number. ACASS automatically receives the SF 330 part II information from ORCA. Government personnel can retrieve SFs 330 part II from ACASS by applying for the “Business Analysis Reports” access. The ACASS search function for firms meeting specified qualifications uses the SF 330 part II information.

d. DoD A-E Contract Award Data.

In ACASS, contract award data is obtained electronically from the Directorate for Information Operations and Reports (DIOR; DFARS 204.670-2 and 3) and retained for 3 years after contract award. Future plans are for contract award data to be obtained from the Federal Procurement Data System – Next Generation (FPDS-NG); see Appendix F for

website). An update of this appendix will be issued after the link between ACASS and FPDS-NG is completed.”

e. Consolidated A-E Report.

(1) The ACASS system provides a consolidated report containing performance evaluations, qualification information (SF 330 part II), and contract award data for an A-E firm. The qualifications are received from ORCA (if a firm has a SF 330 Part II on file), and the contract award data from FPDS-NG.. The report consists of summarized information for a quick overview, followed by a full report. Evaluations may be retrieved by contract number, firm name or DUNS number.

f. Other Reports. Several other reports are available from ACASS. These reports include performance evaluation status, various summaries of system access and usage, and summaries of performance evaluations by office and agency.

4. Usage.

a. Instructions. The CAIC issues instructions on accessing and using ACASS.

b. Access and Release of Information. ACASS access and use shall be limited to Federal Government agencies and A-E firms doing business with the Federal Government. Qualification data and performance evaluations shall be released only to the respective firm and Government contracting offices having a bona fide need for this data. Firms can only see information about themselves. The only time firms can see their draft performance evaluations is during the 30 day period allotted for them to electronically compile and return their remarks / rebuttal to the rating official.

c. Assistance. USACE offices may contact the CAIC for assistance, as follows:

US Army Engineer District, Portland
ATTN: CENWP-CT-I
P.O. Box 2946
Portland, Oregon 97208-2946
Telephone: (503) 808-4590 or 4591
Facsimile: (503) 808-4596

APPENDIX R

CONSIDERATION OF PAST PERFORMANCE IN A-E SELECTIONS

1. Past performance is an important consideration in the selection of A-E firms. Past performance is an indicator of a firm's ability to perform a contract successfully. (Experience is *what* a firm has done. Past performance is *how well* it has done.) The Government must be fair and reasonable in its application of past performance information since it can have a significant bearing on contractor selection. This appendix addresses some of the considerations when evaluating past performance.

2. The principal guidance on the use of past performance information in A-E selections is found in the following references:
 - a. Federal Acquisition Regulation (FAR) 15.304 -15.306, and 36.602-1(a)(4).

 - b. Best Practices for Collecting and Using Current and Past Performance Information, Office of Federal Procurement Office (available on the web at: <http://www.acqnet.gov/Library/OFPP/BestPractices/pastperformguide.htm>)

 - c. Guide to Collection and Use of and Past Performance Information (PPI), Department of Defense (http://www.acq.osd.mil/dpap/Docs/PPI_Guide_2003_final.pdf).

 - d. Army Source Selection Guide (available on the web at: http://dasapp.saalt.army.mil/library/Army_Source_Selection_Guide_Jun_2001.pdf)

3. Although (DFARS 236.602-1(a)(4)) states performance evaluations be retrieved from ACASS, The Office of Management and Budget issued guidance in 2002, requiring that evaluations used for source selection purposes be retrieved from PPIRS. PPIRS will be queried for all prime firms. Performance evaluations for any significant subcontractors may also be considered. Any credible, documented information on past performance can be considered, but a board is not required to seek other information on the past performance of a firm if none is available from PPIRS. Complete evaluations, and not summaries, will be reviewed if a board is considering downgrading or eliminating a firm due to adverse past performance.

4. Evaluation boards must also consider any information that a firm submits on its past performance on recent similar contracts, including design-build contracts. This information can be for key personnel, specific elements of a company or major subcontractors, which is especially important for new companies entering the marketplace or for mergers of previous companies. It is the responsibility of the firm to explain how the past performance information is relevant to the proposed contract. A firm can also provide information on problems encountered in prior contracts and discuss actions that it has taken to remedy any unsatisfactory performance. This would be especially important for companies that have acquired the resources of other previous companies.

5. A board must ensure that a firm has had an opportunity to comment on any adverse performance if that information is a factor in the firm not being selected. A board can generally assume that firms have had an opportunity to comment on adverse evaluations in ACASS, since this is required by FAR 36.604(a)(4) for A-E contracts. However, this may not be true for evaluations obtained from other sources. Also, a performance evaluation of a design-build contract that addresses an A-E firm's design performance can also be considered, provided the firm is given an opportunity to comment on the evaluation which it may not have seen before.

6. A board will consider the relevancy of past performance information to the proposed contract. The more relevant the information, the more weight it carries. Relevancy includes at least the following factors:

a. Similarities of the work in terms of complexity, scope and size. The more similar a firm's past work to the specific requirements of the proposed contract, the more weight the past performance information should be given. Give more emphasis to a firm's past performance on the projects that it cites in its SF 330 as relevant specialized experience.

b. Key personnel, branch offices, and subcontractors involved. Do not consider past performance information on personnel, subordinate or affiliated offices, or subcontractors who will not be used in the proposed contract. The past performance of an office that has been acquired by buying or merger with other companies can be considered if that office is proposed for use in the contract.

c. Firm's role in proposed contract. Companies form various teaming arrangements, such as a joint venture and prime contractor-subcontractor, with each company assigned certain roles in the proposed contract. Focus more heavily on the past performance of each company in similar roles.

d. Currentness. The more recent the past performance information, the more indicative it is of a firm's likely performance on the proposed contract. An evaluation board can set a reasonable limit on the "age" of evaluations that will be considered.

e. General trends in a firm's performance. If a firm received an adverse evaluation in the past but more recent evaluations show a clear improvement trend, then give the prior evaluation little weight. This would be especially pertinent for a recently acquired branch office that is now under new management control.

f. Credibility and detail of the past performance report. Give more weight to formal Federal evaluations. Be careful using simplistic evaluations from private clients. And again, be especially cautious if the evaluation is unsatisfactory since the offeror may not be aware of it.

g. DoD Contracts. A firm that has earned excellent evaluations on recent DoD A-E contracts for similar projects will be ranked relatively higher on past performance (DFARS 236.602-1(a)(6)(B)).

7. If no relevant past performance information is available on a firm, the firm will be given a neutral evaluation regarding past performance.

APPENDIX S

EXAMPLE PRESELECTION BOARD REPORT

The following example preselection board report corresponds to the project described in the synopsis in Appendix O. Only representative excerpts of the report are shown as indicated. The cover and each page of the report containing source selection information will be labeled "SOURCE SELECTION INFORMATION - SEE FAR 2.101 AND 3.104." (All pages labeled as such in this pamphlet are for illustrative purposes only and are not actual source selection information.)

The report would be organized as follows:

- FOR OFFICIAL USE ONLY Cover Sheet (DA Label 87)

- Cover memorandum (example enclosed). Since this memorandum contains only factual background information, it can be prepared prior to the board meeting. The memorandum is then signed at the conclusion of the meeting while all board members are still readily available.

- Enclosure 1: Synopsis. Enclose a copy of the actual published synopsis and any amendments to the original synopsis.

- Enclosure 2: List of firms. The list of firms, with addresses, that responded to the synopsis will be prepared prior to the board meeting. The list can then be manually marked (such as with asterisks) at the conclusion of the preselection board to identify the highly qualified firms.

- Enclosure 3: Completed evaluation worksheets for each firm (example enclosed). Worksheets may be handwritten (example is shown typed for publication clarity.) The blank worksheets are prepared prior to the board meeting, including the firm names and addresses, and inserted in the appropriate submissions, ready for review and evaluation by the board. The worksheet directly replicates the selection criteria from the synopsis.

Using this report format, the report is completed when the preselection board adjourns.

MEMORANDUM FOR CHAIRPERSON, A-E SELECTION BOARD

SUBJECT: Report of the Architect-Engineer Preselection Board - Design of Consolidated Tactical Equipment Maintenance Shop, Fort Bliss, TX, Project No. 04145

1. References.

- a. FAR 36.602 and supplements thereto.
- b. EP 715-1-7, Architect-Engineer Contracting and local supplements thereto.
- c. Synopsis, 24 June 2004, for the subject project (enclosure 1).

2. Board Information. The preselection board met on 28 July 2004 in the Fort Worth District. The board was conducted in accordance with references 1.a and 1.b. The using agency was invited to participate and accepted. The names and positions of all board members are shown on page 2.

3. Description of Project and A-E Services. A description of the project and the required A-E services is provided in reference 1.c. The current working estimate for construction of this project is \$11,800,000. The estimated A-E contract price is \$650,000.

4. Firms Considered. The board considered a total of 25 firms that responded to the synopsis as listed in enclosure 2. Joint ventures are identified as (JV).

5. Highly Qualified Firms. The board evaluated the firms using the primary selection criteria announced in reference 1.c. The firms marked with an asterisk (*) on enclosure 2 are considered to be highly qualified to perform the required A-E services and are recommended to the selection board. The remaining firms were not considered highly qualified for the reasons noted on the evaluation worksheets in enclosure 3.

SOURCE SELECTION INFORMATION - SEE FAR 2.101 AND 3.104.

CESWF-ED-MS

SUBJECT: Report of the Architect-Engineer Preselection Board - Design of Consolidated Tactical Equipment Maintenance Shop, Fort Bliss, TX, Project No. 04145

Name
Grade/Position/Title
Office/Organization
Member

Name
Grade/Position/Title
Office/Organization
Member

Name
Grade/Position/Title
Office/Organization
Member

Name
Grade/Position/Title
Office/Organization
Chairperson

3 Encls

SOURCE SELECTION INFORMATION - SEE FAR 2.101 AND 3.104.

EP 715-1-7
22 May 07

PRESELECTION BOARD EVALUATION WORKSHEET - PAGE 1

Synopsis Date: 24 Jun 04 Preselection Board Date: 28 Jul 04
Title of Project: Design of Consolidated Tactical Equipment Maintenance Shop
Location of Project: Fort Bliss, TX Project No.: 04145

Firm Name/Address: *Best Architects, Inc., El Paso, TX*

HIGHLY QUALIFIED - YES/NO CRITERION/REMARKS

SPECIALIZED EXPERIENCE/TECHNICAL COMPETENCE:

NO Design of heavy equipment maintenance facilities: *Only 1 small (20,000 sq. ft.) shop 4 years ago*

NO Fire protection design for heavy equipment shops: *No exp. indicated*

YES Industrial ventilation: *Numerous projects.*

NO Sustainable design: *Minimal exp. Mostly energy conservation. No exp. with LEED.*

YES Ability to produce quality designs as evidenced by DQMP: *Thorough plan.*

PROFESSIONAL QUALIFICATIONS:

YES Project management:

NO Architecture: *No exp. with maint. shops or similar facilities. Only with firm 6 months*

NO Fire protection engineering: *Exp. mostly admin. bldgs. Not registered.*

NO Mechanical engineering: *Exp. mostly admin. bldgs.*

YES Electrical engineering:

YES Structural engineering:

YES Civil engineering:

SOURCE SELECTION INFORMATION - SEE FAR 2.101 AND 3.104.

Encl 3

PRESELECTION BOARD EVALUATION WORKSHEET - PAGE 2

Title of Project: Design of Consolidated Tactical Equipment Maintenance Shop
Location of Project: Fort Bliss, TX Project No.: 04145

Firm Name/Address: *Best Architects, Inc., El Paso, TX*

PAST PERFORMANCE: *1 Sat. eval. in ACASS- Fire Sta., Ft. Polk, Design Phase, 15 Jun 01*

CAPACITY TO ACCOMPLISH WORK IN REQUIRED TIME:

NO Experience with similar size projects: *Largest maint. shop only 20,000 sq. ft.*

Capacity of key disciplines:

YES Project management:

NO Architecture: *Back-up arch. is not R.A.*

NO Fire protection engineering: *Technician is only back-up*

NO Mechanical engineering: *5 mech engr. but only 1 w/ exp. in maint. Shops*

YES Electrical engineering:

NO Structural engineering: *Only 1 struct. engr. - no back-up*

YES Civil engineering:

KNOWLEDGE OF LOCALITY:

YES Design of buildings in hot, arid climate:

RECOMMENDED TO SELECTION BOARD AS HIGHLY QUALIFIED:

YES NO

SOURCE SELECTION INFORMATION - SEE FAR 2.101 AND 3.104.

APPENDIX T

EXAMPLE SELECTION BOARD REPORT

The following example selection board report corresponds to the project described in the synopsis in Appendix O and the preselection board report in Appendix S. Only representative excerpts of the report are shown as indicated. The cover and each page of the report containing source selection information will be labeled "SOURCE SELECTION INFORMATION - SEE FAR 2.101 AND 3.104." (All pages labeled as such in this pamphlet are for illustrative purposes only and are not actual source selection information.) The report would be organized as follows:

- FOR OFFICIAL USE ONLY Cover Sheet (DA Label 87)
- Cover memorandum (example enclosed).
- Enclosure 1: Approved preselection board report with its enclosures.
- Enclosure 2: Rationale for elimination of highly qualified firms (example enclosed).
- Enclosure 3: Interview questions (example enclosed). Common questions asked all firms and specific questions asked individual firms. Any information obtained from the interviews that influenced the board's decision will be discussed in the rationale for ranking the most highly qualified firms.
- Enclosure 4: Rationale for ranking the most highly qualified firms (example enclosed).
- Enclosure 5: SFs 330 of the most highly qualified firms.

MEMORANDUM THRU CHIEF, ENGINEERING DIVISION

FOR COMMANDER

SUBJECT: Report of the Architect-Engineer Selection Board - Design of Consolidated Tactical Equipment Maintenance Shop, Fort Bliss, TX, Project No. 04145

1. References:

- a. FAR 36.602 and supplements thereto.
- b. EP 715-1-7, Architect-Engineer Contracting, and local supplements thereto.
- c. Memorandum, CESWF-ED-MS, 28 July 2004, subject: Report of the Architect-Engineer Preselection Board - Design of Consolidated Tactical Equipment Maintenance Shop, Fort Bliss, TX, Project No. 04145 (enclosure 1).

2. Board Information. The selection board met on 3 August 2004, in the Ft. Worth District. The board was conducted in accordance with references 1.a and 1.b. The using agency was invited to participate and accepted. The names and positions of all board members are shown on page 2.

3. Evaluation of Most Highly Qualified Firms. The board evaluated the nine highly qualified firms in the referenced preselection report using the announced primary selection criteria (enclosure 1 to reference 1.c.). The board determined that the three firms listed in paragraph 5 have the highest qualifications for the required services and are the most highly qualified firms. The other firms were eliminated from further consideration as explained in enclosure 2.

4. Interviews. Telephone interviews were conducted with each of the most highly qualified firms to confirm and clarify information submitted in response to the synopsis, and to discuss each firm's approach for the project and their capabilities. Firms were asked the questions listed in enclosure 3.

SOURCE SELECTION INFORMATION - SEE FAR 2.101 AND 3.104.

CESWF-ED-MS

SUBJECT: Report of the Architect-Engineer Selection Board - Design of Consolidated Tactical Equipment Maintenance Shop, Fort Bliss, TX, Project No. 04145

5. Recommended Firms. After the interviews, the board ranked the most highly qualified firms as discussed in enclosure 4. Since there were no technically equal firms, the secondary selection criteria were not applied. The selection board recommends that the following firms, in order of preference, be approved for negotiations. The SFs 330 for these firms are at enclosure 5.

- a. Jones Architects, Inc., Houston, TX.
- b. Richards and Roberts, P.C., San Antonio, TX.
- c. Building Design Associates, Inc., Atlanta, GA.

Name
Grade/Position/Title
Office/Organization
Member

Name
Grade/Position/Title
Office/Organization
Member

Name
Grade/Position/Title
Office/Organization
Member

Name
Grade/Position/Title
Office/Organization
Chairperson

5 Encls

The recommendations of the selection board are approved.

Name
Commanding

Date

CESWF-ED-MS

SUBJECT: Report of the Architect-Engineer Selection Board - Design of Consolidated Tactical Equipment Maintenance Shop, Fort Bliss, TX, Project No. 04145

RATIONALE FOR ELIMINATION OF HIGHLY QUALIFIED FIRMS

Smith and Wesson, Inc., Dallas, TX. This firm has designed three maintenance facilities similar to this project in the last five years, whereas the most highly qualified firms have designed five or more similar facilities. Pipes and Fanz, the mechanical consultant, has done 24 fire protection projects for \$326,000 in gross fees in the last five years (profile code F03, SF 330, Part II, block 10), compared to the fire protection consultants proposed by all of the most highly qualified firms which have each done at least 50 projects for over \$1,500,000 in fees in the last five years. Smith and Wesson has considerably less experience in sustainable design than the most highly qualified firms. The proposed lead architect has designed only one equipment shop compared to three or more for the lead architects proposed by the most highly qualified firms. The experience of the mechanical engineer is mostly in administrative buildings, not heavy equipment maintenance shops as demonstrated by the mechanical engineers proposed by most highly qualified firms. Finally, this firm has little experience in designing in hot, arid climates.

Other firms would be discussed similarly.

SOURCE SELECTION INFORMATION - SEE FAR 2.101 AND 3.104

Encl 2

CESWF-ED-MS

SUBJECT: Report of the Architect-Engineer Selection Board - Design of Consolidated Tactical Equipment Maintenance Shop, Fort Bliss, TX, Project No. 04145

INTERVIEW QUESTIONS

All Firms:

1. Have there been any significant changes in your qualifications since you submitted your SFs 330 for this project?
2. List your Department of Defense A-E contract awards in the last 12 months.
3. Discuss three important lessons learned from the relevant projects on your SF 330 Part I that would be applicable to this project.
4. Discuss your quality control procedures to ensure the proper coordination of disciplines.
5. How will your firm manage the project to ensure the concept design is finished by June 2005?
6. Describe your firm's approach for involving the actual facility users in the design process.

Jones Architects, Inc.: Will your cost estimator prepare the cost estimate independent of the individual designers, or will the designers prepare their appropriate parts of the estimate and the cost estimator compile the overall estimate?

Building Design Associates, Inc.: Although your firm and your mechanical consultant have each designed many equipment maintenance shops, you have only designed one shop together as a team, and that was three years ago. How will you overcome this lack of familiarity with each other's work methods?

SOURCE SELECTION INFORMATION - SEE FAR 2.101 AND 3.104.

Encl 3

CESWF-ED-MS

SUBJECT: Report of the Architect-Engineer Selection Board - Design of Consolidated Tactical Equipment Maintenance Shop, Fort Bliss, TX, Project No. 04145

RATIONALE FOR RANKING OF MOST HIGHLY QUALIFIED FIRMS

1. Jones Architects, Houston, TX. This firm was ranked first for the following reasons:

a. **Specialized Experience and Technical Competence.** This firm has designed nine heavy equipment maintenance shops in the last five years (including four Army), more than any other responding firm. Their fire protection consultant has designed 110 projects in the last five years, earning \$5,500,000 in fees, the most fire protection experience of any responding firm. The firm and its consultants have strong experience in sustainable design, especially energy conservation, use of recovered materials, and use of the SpiRiT and LEED methodologies. The firm presented a very thorough design quality management plan, including effective procedures for coordinating disciplines and consultants. During the interview the firm discussed several important lessons they learned from designing other maintenance shops that will be beneficial to this project, such as a new type of non-slip flooring for shop areas.

b. **Professional Qualifications.** All of the lead professional personnel are registered and have extensive experience in this type of project. In particular, the lead architect has 21 years experience, including 11 years with Jones Architects, and has designed eight maintenance facilities in the last five years. Also, the fire protection engineering will be performed by a registered fire protection engineer who has 33 years experience, and has designed the fire protection systems for all of the nine maintenance facilities designed by Jones Architects in the last five years.

c. **Past Performance.** Jones Architects has a very good performance record on DoD contracts based on a review of the evaluations in ACASS: two excellent, four above average, and one average. Both of the excellent ratings were for Army equipment maintenance facilities.

d. **Capacity.** All of the nine maintenance shops designed by Jones Architects in the last five years have been very similar in size to this project. There have adequate depth in all disciplines. Their current workload is moderate.

e. **Knowledge of Locality.** The firm and its consultants have designed several buildings in hot, arid climates similar to Ft. Bliss.

SOURCE SELECTION INFORMATION - SEE FAR 2.101 AND 3.104.

Encl 4

CESWF-ED-MS

SUBJECT: Report of the Architect-Engineer Selection Board - Design of Consolidated Tactical Equipment Maintenance Shop, Fort Bliss, TX, Project No. 04145

2. Richards and Roberts, P.C., San Antonio, TX. This firm was ranked second for the following reasons:

a. **Specialized Experience and Technical Competence.** This firm has designed seven heavy equipment maintenance facilities in the last five years, slightly less relevant experience than the top ranked firm. Also, the mechanical/electrical consultant has been in business only three years, and has somewhat less fire protection design experience than the consultant proposed by the top ranked firm. They presented a very effective design quality management plan.

b. **Professional Qualifications.** All of the lead professional personnel are registered and have considerable experience in this type of project, though typically less than the top ranked firm. Specifically, the lead architect has 15 years total experience, including five with Richards and Roberts, and has designed five maintenance shops. Also, the mechanical and electrical engineers have only done two maintenance facilities, compared to seven facilities designed by the mechanical/engineer consultants of the top ranked firm.

c. **Past Performance.** This firm has a satisfactory performance record on DoD contracts, though not as strong as the top ranked firm. The firm has four evaluations in ACASS: one above average and three average.

d. **Capacity.** This firm's capacity to perform the project is comparable to the top ranked firm.

e. **Knowledge of Locality.** The firm and its consultants have designed several buildings in hot, arid climates similar to Ft. Bliss.

3. Building Design Associates, Inc., Atlanta, GA. This firm was ranked third for the following reasons:

a. **Specialized Experience and Technical Competence.** Building Design Associates has considerable experience in designing maintenance shops (five in the last five years), but not as much as the first and second ranked firms. Also, this firm has only done one shop design with their mechanical consultant whereas the first and second ranked firms have substantial experience with their important consultants.

SOURCE SELECTION INFORMATION - SEE FAR 2.101 AND 3.104.

EP 715-1-7
22 May 07

CESWF-ED-MS

SUBJECT: Report of the Architect-Engineer Selection Board - Design of Consolidated Tactical Equipment Maintenance Shop, Fort Bliss, TX, Project No. 04145

b. Professional Qualifications. The qualifications of the key personnel are very similar to the second ranked firm.

c. Past Performance. Building Design Associates has two performance evaluations in ACASS, both average.

d. Capacity. This firm has only three architects and does not have the depth in this discipline that the first and second ranked firms have. This project will require two architects. If the firm takes on much additional work it could impact their ability to perform this project on time.

e. Knowledge of Locality. The firm and its consultants have designed two buildings in hot, arid climates similar to Ft. Bliss.

SOURCE SELECTION INFORMATION - SEE FAR 2.101 AND 3.104.

APPENDIX U ADVANCE SELECTION PROCESS

1. Authorization. The advance selection of A-E firms for a specific type of work is authorized by EFARS 36.602(S-100). This appendix provides implementing procedures.

2. Applicability.

a. If two or more A-E contracts for the same type of work are reasonably anticipated in a given period in a particular geographic area, a single synopsis and selection process covering that particular type of work may be conducted prior to receiving specific authorization for any work of that type. The contracts must have similar requirements such that generally the same firms would have been interested and selected if the contracts were synopsized and selected individually. *This process does not apply to ID contracts.*

b. This process is appropriate for the design of a specific type of construction project (such as barracks, Army Reserve Centers, airport runways, utility monitoring and control systems, family housing upgrades, flood protection structures, or shoreline erosion prevention), specific types of engineering or architectural services (such as seismic studies, asbestos surveys, interior architectural renovations, or real property master planning), or topographic or hydrographic surveying and mapping services. If one or more of the anticipated projects have unique requirements such as special seismic, geologic, or environmental conditions, this procedure is not appropriate for those unique projects. Specific unique projects can be cited as being excluded in the synopsis and separate synopses issued for those projects.

c. This method may either be applied on a district or MSC basis. If applied on a MSC basis, the MSC will select a lead district to issue the synopsis and coordinate the A-E evaluation board(s).

3. Synopsis. A brief, written justification will be approved by the Chief, Contracting Division prior to issuing a district-wide synopsis. Similarly for an MSC-wide synopsis, a justification will be approved by the Director of Contracting, and provided to the lead district to issue a synopsis. The synopsis will indicate that none of the projects are yet authorized and that funds are not presently available for any contracts (see FAR 32.703-2(a) and 32.705-1(a) and the clause at 52.232-18). An example synopsis is enclosed.

4. Selection.

a. For a MSC-wide synopsis, all concerned districts should participate in the preselection (if held) and selection boards. Using agency participation is not required.

b. The selection process will proceed through the approval of a ranked list of most highly qualified firms. All of the selected firms must be technically equal and most highly qualified, based on the primary selection criteria. The ranking of the selected firms must be

based only on the secondary selection criteria³⁸. The number of selected firms may be more or less than the anticipated number of contracts, but at least three firms must be deemed technically equal and most highly qualified. Otherwise, the synopsis must be canceled and regular selection procedures used.

c. A selection based on a district-wide synopsis must be approved by the MSC if the price of any contract resulting from the synopsis is estimated to exceed the district's delegated selection authority. A selection based on a MSC-wide synopsis must be approved by the MSC. The selected firms will be notified of their ranking. The selected list of firms must be used for all work of the designated type during the period stated in the public announcement. Separate synopses for specific contracts for this type of work shall not be issued later unless specifically identified as excluded in the generic synopsis.

5. Negotiation and Award. When the first contract for the designated type of work is authorized, the top ranked firm will be issued a request for price proposal and negotiations initiated. When a subsequent contract is authorized or when negotiations on a previously authorized contract have not been successful, negotiations shall begin with the next ranked firm that has not been offered a contract for negotiation. If the list of ranked firms is exhausted, the negotiation cycle shall begin again with the top ranked firm. If a selection is MSC-wide, the MSC will control the approved list of ranked firms. When a district authorized to perform a project, they will advise the MSC and be assigned the next firm for negotiation. Contracts resulting from an advance selection process may be awarded for a period of up to one year after the date of selection approval.

³⁸ The Brooks Act requires that negotiation begin with the highest qualified firm. Hence, all of the selected firms must be equally (and highest) qualified in order that negotiation of the second and subsequent contracts may begin with other than the first firm on the selection list. The highest qualified firms are determined by application of the primary selection criteria which considers technical capabilities. Their ranking is then determined by the secondary selection criteria, which are socioeconomic, and not technical, in nature.

EXAMPLE ADVANCE SELECTION SYNOPSIS

C -- DESIGN OF VEHICLE MAINTENANCE SHOPS IN AR, LA, NM, OK & TX

General Information

Document Type:	Presolicitation Notice
Solicitation Number:	W9126G-04-R-0024
Posted Date:	Jun 24, 2004
Original Response Date:	Jul 24, 2004
Current Response Date:	Jul 24, 2004
Archive Date:	Aug 23, 2004
Classification Code:	C – Architect and engineering services

Contracting Office Address

US Army Corps of Engineers, Ft. Worth District, P.O. Box 17300, ATTN:
CESWF-ED-MS, Room 705, 819 Taylor Street, Ft. Worth, TX 76102-0300

Description

1. CONTRACT INFORMATION: a. General: This contract is being procured in accordance with the Brooks A-E Act as implemented in FAR Subpart 36.6. Firms will be selected for negotiation based on demonstrated competence and qualifications for the required work. See Numbered Note 24 for general information on the A-E selection process. North American Industrial Classification System code is 541330, which has a size standard of \$4,000,000 in average annual receipts. This announcement is open to all businesses regardless of size. b. Nature of Work: A-E services are expected to be required for the design of approximately four Army and Air Force vehicle maintenance shops in the Southwestern Division (Ft. Worth and Tulsa Districts) of the Corps of Engineers (AR, LA, NM, OK & TX). A-E services may include site investigation, planning, engineering studies, concept design, final design (option), and construction phase engineering support (option). The A-E contracts will be awarded between Oct 2004 and Sep 2005. Concept designs will usually be completed within 3-6 months of contract award and final design completed within 6-9 months of concept design approval. c. Contract Award Procedure: This will be the only announcement for the design of vehicle maintenance shops in the Southwestern Division during the next 12 months, except for a maintenance shop at Ft. Hood, which will be announced and selected separately due to special site conditions. A separate firm-fixed-price contract will be negotiated and awarded for each project. A list of at least three most highly qualified and technically equal firms will be selected using the primary criteria listed below.

If there are not at least three most highly qualified and technically equal firms, the synopsis will be canceled. The firms will be ranked for order of negotiation using the secondary criteria listed below. When a directive for the first project of this type is received, negotiations shall begin with the top ranked firm. When a directive is received for a subsequent project, or if negotiations with a firm for a project are unsuccessful, negotiations shall begin with the next ranked firm that has not been offered a contract for negotiation. If the list of ranked firms is exhausted, the negotiation cycle shall begin again with the top ranked firm. None of the projects have been authorized for design and funds are not presently available for any contracts (see FAR 52.232-18). To be eligible for contract award, a firm must be registered in the Central Contractor Registration (CCR). Register via the CCR Internet site at <http://www.ccr.gov>.

d. Subcontracting Plan: If a large business is selected for this contract, it must comply with FAR 52.219-9 regarding the requirement for a subcontracting plan on that part of the work it intends to subcontract. The subcontracting goals for the Fort Worth District which will be considered in the negotiation of this contract are: (1) at least 61% of a contractor's intended subcontract amount be placed with small businesses (SB); (2) at least 9% of a contractor's intended subcontract amount be placed with small disadvantaged businesses (SDB); (3) at least 5% of a contractor's intended subcontract amount be placed with women-owned SB (WOSB); (4) at least 3% of a contractor's intended subcontract amount be placed with service-disabled veteran-owned SB; (5) at least 3% of a contractor's intended subcontract amount be placed with veteran-owned SB; and (6) at least 3% of a contractor's intended subcontract amount be placed with HUBZone SB. The plan is not required with this submittal, but will be required with the fee proposal of the firm selected for negotiations.

2. PROJECT INFORMATION: Vehicle maintenance shops ranging from 25,000 to 150,000 square feet. Facilities typically include traveling bridge cranes, vehicle and industrial exhaust systems, fuel dispensing, battery charging, arms room with intrusion detection system (power conduit rough-in only), fire protection systems, oil-water separators, and waste oil disposal system. Supporting facilities typically include water, sewer, natural gas, HVAC, electric service, security lighting, parking, storm drainage, and information systems. The estimated construction cost range of individual projects is \$1,000,000 to \$10,000,000.

3. SELECTION CRITERIA: The selection criteria for this particular project are listed below in descending order of importance (first by major criterion and then by each sub-criterion). Criteria a-e are primary. Criteria f and g are secondary and will only be used as "tie-breakers" among firms that are essentially technically equal.

a. Specialized experience and technical competence in: (1) Design of vehicle maintenance shops. (2) Fire protection design for maintenance shops. (3) Design of waste oil collection and disposal systems. (4) Design of fuel dispensing facilities. (5) Sustainable design using an integrated design approach and emphasizing environmental stewardship, with experience in energy and water conservation and efficiency; use of recovered and recycled materials; waste reduction; reduction or elimination of toxic and harmful substances in facilities construction and operation; efficiency in resource and materials utilization; development of healthy, safe and productive work environments; and employing the LEED evaluation and certification methods. (6) Producing quality designs based on evaluation of a firm's design quality management plan (DQMP). The evaluation will consider the management approach, coordination of disciplines and subcontractors, quality control procedures, and prior experience of the prime firm and any significant subcontractors on similar projects.

b. Qualified professional personnel in the following key disciplines:

project management (architect or engineer), architecture, fire protection engineering, mechanical engineering, electrical engineering, structural engineering, and civil engineering. The lead architect or engineer in each discipline must be registered to practice in the appropriate professional field. The evaluation will consider education, certifications, training, registration, overall and relevant experience, and longevity with the firm. c. Past performance on DoD and other contracts with respect to cost control, quality of work, and compliance with performance schedules, as determined from PPIRS and other sources. d. Capacity to perform the work in the required time. The evaluation will consider the experience of the firm and any significant consultants in similar size projects, and the availability of an adequate number of personnel in key disciplines. e. Experience in the design of buildings in the general region of the Southwestern Division. f. Extent of participation of SB (including WOSB), SDB, historically black colleges and universities, and minority institutions in the proposed contract team, measured as a percentage of the total estimated effort. g. Volume of DoD A-E contract awards in the last 12 months, with the objective of effecting an equitable distribution of DoD A-E contracts among qualified firms, including SB and SDB. 4. SUBMISSION REQUIREMENTS: Interested firms having the capabilities to perform this work must submit two copies of SF 330 Part I, and two copies of SF 330 Part II for the prime firm and all consultants, to the above address not later than 4:00 PM on the response date indicated above. The SF 330 Part I shall not exceed 50 pages (8.5" x 11"), including no more than 5 pages for Section H. Each side of a sheet of paper is a page. Use no smaller than 12 font type. Include the firm's DUNS number in SF 330, Part I, Section H. In Section H describe the firm's overall DQMP. A project-specific design quality control plan must be prepared and approved by the Government as a condition of contract award, but is not required with this submission. In Section H also indicate the estimated percentage involvement of each firm on the proposed team. Facsimile transmissions will not be accepted. Solicitation packages are not provided and no additional project information will be given to firms during the announcement period. This is not a request for proposal.

Point of Contact

John Smith, (817)334-1234

Email your questions to US Army Engineer District, Forth Worth – Military at
john.smith@usace.army.mil

Place of Performance N/A

**APPENDIX V
EXAMPLE STATEMENT OF WORK**

**SCOPE OF WORK
ARCHITECT-ENGINEER SERVICES FOR
PLANS AND SPECIFICATIONS
RIO DESCALABRADO SECTION 205 FLOOD CONTROL PROJECT
SANTA ISABEL, PUERTO RICO**

1. REFERENCES.

1.1. Indefinite Delivery Contract (IDC). This task order will be issued under IDC W9126G-03-D-0022, dated 12 July 2003.

1.2. Federal, State/Commonwealth, and Industry Standards. Some applicable Federal, state/commonwealth, and industry standards are referenced below and listed in Exhibit A. All applicable standards, including those that are not referenced or listed, constitute criteria for the design of this project.

2. PRECEDENCE. This Scope of Work (SOW) and the accompanying Exhibit A provide specific instructions for the design of this project and, in case of conflicts, take precedence over the requirements of Section C of the IDC.

3. OVERVIEW. The project is located in the floodplain of the Rio Descalabrado basin at the rural community of Playita Cortada. Playita Cortada is located on the southern coast of Puerto Rico and is part of the Municipality of Santa Isabel. Playita Cortado lies on the south side of Highway 1, about 5 kilometers west of the town of Santa Isabel and 20 kilometers east of Ponce. The community extends along the east flood plain of Rio Descalabrado from the highway to the coastline. Approximate ground elevation in the area ranges from 1 meter mean sea level (msl) at locations near the sea to 6 meters msl at P.R. Highway 1. East of the community, along the beach, is a mangrove forest approximately 13 hectares (32 acres) in size. A small creek, which runs east of Playita Cortada, forms the eastern border of the mangrove forest. Another smaller creek runs parallel to the eastern border of the community and merge the first mentioned creek within the mangrove forest. The Rio Descalabrado drainage area is about 49.3 square kilometers (19 square miles). The project consists of:

3.1. Levees: A 3,690 meter long ring levee, designed to protect against the standard project flood, will be constructed along the west, north and east side of Playita Cortada. P.R. Highway 1 will ramp over the levee at two locations at the northwest and northeast section of the levee.

3.2. Drainage Ditches: Minimum drainage ditches and culverts to convey local runoff are included on the interior and exterior levee sides.

3.3. Culverts: Six drainage structures consisting of corrugated metal pipes (CMP) with concrete headwalls and wingwalls. Three of these six structures will provide interior drainage. Culverts near the ocean will be equipped with flapgates on the levee floodside to prevent backflow into the interior protected area.

3.4. Recreation Features: A 6'-wide asphalt biking and hiking trail will be constructed on the levee crown. The P.R. Highway 1 ramps will include self-actuated traffic lights and appropriate signs in order to accommodate pedestrian and bicycle traffic. Bollards will be installed on the levee to prevent vehicle from accessing the levee at these crossings. A sufficient number of lockable, removable bollards will be provided for authorized vehicle access to the levees. Four covered picnic tables will be installed on each end of the levee near the ocean.

4. DESCRIPTION OF WORK. This SOW covers all services required to prepare plans, specifications, and other supporting documents necessary for construction of the project features described in the Rio Descalabrado Final Detailed Project Report, dated February 2003. A complete design, including a bid schedule, an order of work clause, a construction contractor submittal register, quantity and cost estimates, M-CACES construction cost estimates, a proposed construction schedule, design analyses and calculations, a design documentation report, an engineering considerations and instructions report, and a draft operations and maintenance manual shall be developed for this project.

5. REQUIRED A-E SERVICES. The A-E shall perform the services indicated in this Scope of Work, including Exhibit A, and Section C of the IDC. These services will be provided in three distinct phases:

- Concept (30%) Design
- Preliminary (60%) Design
- Final (100%) Design

The drawings, specifications, and all other submittal items for this task order will be prepared using metric units of measurement.

5.1. Drawings.

5.1.1. General. The A-E shall prepare drawings in a manner that clearly and adequately delineates the work to be accomplished by the construction contractor. Design documents will be sufficiently detailed to permit construction contractors to submit responsive bids without visiting the project site. The cover sheet will be signed and stamped by principal of the firm who is a registered professional engineer. All drawings will be created using Computer Aided Design and Drafting (CADD) technology and shall conform to the Tri-Service A/E/C CADD Standards, Release 1.7. These CADD standards are available on the Internet at <http://tsc.wes.army.mil/News/aecs.asp>. Additional criteria for preparation of drawings are contained in ER 1110-2-1200.

5.1.2. CADD Files. One CADD (*.DGN) file shall be used per drawing (sheet). All design and site condition features will be shown in each CADD drawing file. No reference files will remain except for the border file, photos and other raster files (*.COT).

5.1.3. Format. All drawings and sketches will be provided in both hard copy and MicroStation™ file format. Full-sized drawings shall be developed as “F” sized sheets (41” x 29” at the trim line) and shall utilize the standard Corps of Engineers Jacksonville District title block. Half-sized drawings are to be provided on 20½” x 14½” (at the trim line) sheets. Original drawings and details must be of adequate size, and be clear and sharp, so that the use of half-size reproduces will result in legible and easy to read copies.

5.2. Specifications.

5.2.1 General. The A-E shall utilize the Corps of Engineers Guide Specifications (CEGS) which are the set of master guide specifications reflecting HQUSACE technical policy. These guide specifications are available over the Internet at <http://www.usace.army.mil/usace-docs/>. SPECSINTACT software will be used for the preparation of project specifications in accordance with ER 1110-1-8155. This software is available from the National Aeronautics and Space Administration over the Internet at <http://www-de.ksc.nasa.gov/specsintact/>. Specifications shall conform with industry standards for format and content as established by the CSI Manual of Practice.

5.2.2. Bid Schedule and Contract Clauses. The A-E shall prepare a project bid schedule that includes all required payment items. Consult the Jacksonville District Project Engineer in developing the bid schedule. The Government retains responsibility for preparation of Division 00 contract clauses (Sections 00010, 00100, 00600, 00700, and 00800).

5.2.3. Outline Specifications. The A-E shall develop an outline specification listing the proposed guide specifications and A-E-prepared sections that will be used for the project. The outline specification will list the guide specification number and title for each proposed section. Sections shall be arranged within their respective divisions, in numerical order. New specification sections, developed by the A-E, will be numbered to fall in their respective division at a logical location.

5.2.3.1. Division 1. Division 1 consists of the following sections:

- Section 01000 - General Requirements
- Section 01320 - Contractor Prepared Network Analysis System
- Section 01330 - Submittal Procedures
- Section 01410 - Environment Protection
- Section 01411 - Turbidity Monitoring
- Section 01451 - Contractor Quality Control

The Government will provide Jacksonville District’s Master Guide Specifications for these sections. The A-E shall edit these specification sections and, if necessary, convert them into SPECSINTACT format. Jacksonville District’s Project Engineer will provide input for certain

sections. This input consists of the construction contract performance period, liquidated damages, accommodations for Government personnel, Government field office requirements, contractor-furnished radios and vehicles for Government personnel, contractor quality control staffing requirements, and annotated hard copies of specification Sections 01410 and 01411. The A-E will obtain all other information necessary to complete Division 1 specification sections.

The A-E shall also prepare an “Order of Work” clause for insertion in Section 01000. The clause shall either state the required sequence of construction operations for this project or state that the order of work shall be at the discretion of the construction contractor.

5.2.3.2. Divisions 2 through 16. The A-E must edit and adapt CEGS to satisfy the project requirements and provide a complete set of construction specifications. In instances where there are no appropriate guide specifications available for use, the required specifications will be prepared by the A-E. These specifications shall list the essential features, functions, and other factors to clearly indicate the type and quantity of items/work required. All specifications will be prepared by listing parameters and requirements that can be met by several manufacturers. The use of trade names and proprietary items in the specifications must be specifically approved by the Jacksonville District’s Project Engineer.

5.2.3.3. Construction Contractor Submittal Register. The specifications require the construction contractor to submit shop drawings, samples, manufacturer’s data, certificates, test reports, and other items to the Government. The A-E shall prepare a complete listing of construction contractor submittal requirements on Eng Form 4288 using SPECSINTACT. These submittals will be classified as either “Government Approval” or “For Information Only.” All non-critical submittals should be classified as “For Information Only”. Those submittals that are critical to safety, construction execution, and system or facility operation should be classified as “Government Approval”. The type of submittals requiring government approval are extensions of design, critical materials, deviations, O&M manuals, or those involving equipment that must be checked for compatibility with the entire system.

5.3. Quantity and Cost Estimates.

5.3.1. Format. The A-E shall prepare quantity computations, cost estimates, and construction cost estimates for this project. All construction cost estimates shall be developed using M-CACES (version 5.30) software. These estimates must conform with the requirements contained in ER 1110-1-1300, ER 1110-2-1302, and EI 01D010. A controlled materials report is not required for this task order.

5.3.2. Cost Estimate Submittal. The M-CACES cost estimates shall be submitted in 2 hard copies only, separate from the other design documents, and in electronic form on a 3.5-inch computer diskette(s). Cost estimates shall be submitted only to Ms. Penny Wise, P.E., Chief, Cost Engineering Branch, Engineering Division.

5.3.3. Proposed Construction Schedule. The A-E shall prepare a proposed schedule for construction that is consistent with the project construction cost estimate. During development

of this schedule, due consideration will be given to standard construction practices, durations of tasks, the sequence of construction, procurement of materials, climatic conditions, etc. The Proposed Construction Schedule should be in the form of a bar chart. Engineering Instructions 01D010 contain additional guidance regarding preparation of this schedule.

5.4. Design Analysis (DA). The A-E shall develop a DA that addresses general project parameters, functional and technical requirements, design objectives, design assumptions, and contains calculations applicable to the project's design. Guidance regarding the content and procedures for preparation of the DA are contained in ER 1110-345-700. The DA will be updated during each phase of design.

5.5. Quality Control.

5.5.1. Quality Control Plan. The A-E shall prepare a Quality Control Plan (QCP) which includes the following as a minimum:

- 5.5.1.1. Identification and discussion of all organizational and technical interfaces.
- 5.5.1.2. Design team members and their areas of responsibility.
- 5.5.1.3. Team members responsible for checking the design
- 5.5.1.4. Team members responsible for checking the electronic files
- 5.5.1.5. Independent Technical Review (ITR) team and an explanation of how they will perform their duties

5.5.1.6. Project Schedule showing key milestones and review periods.

5.5.2. Independent Technical Reviews (ITR). The A-E shall perform an ITR during each phase of design development. These ITRs will be conducted by qualified engineers (one per discipline) who are not part of the design team and documented in accordance with the requirements contained in Appendix F of ER 1110-2-1150. Formal written comments will be generated by each member of the ITR team and annotated by designers to indicate the intended corrective action. These corrective actions will be incorporated into the design during the same phase in which the review is conducted, prior to submission to the Government. Copies of all annotated ITR review comments and certification statements shall be furnished as an appendix to the Design Documentation Report. ITR certifications shall be certified by one of the firm's principals or authorized representative.

5.5.3. Quality Assurance. The Jacksonville District will perform a quality assurance review of all A-E work to confirm that proper criteria, regulations, laws, codes, principles and professional procedures have been used. This should confirm the utilization of clearly justified and valid assumptions that are in accordance with policy. It should also assure resolution of legal, technical and policy review issues. The Jacksonville District will review the work of the A-E during each phase of design and return comments using the DrChecks system.

5.6. Design Documentation Report (DDR). The A-E shall prepare a DDR and update it during each phase of design. The content and format of this report must conform with requirements contained in Appendix D of ER 1110-2-1150. ITR comments and certification statements, documentation of QC reviews, and minutes of meetings will be incorporated into the DDR as

separate appendices. The DDR shall also contain copies of site visit reports and all records of discussions.

5.7. Engineering Considerations and Instructions (ECI) Report. The A-E shall prepare an Engineering Considerations and Instructions for Field Personnel Report in accordance with Appendix G of ER 1110-2-1150. The purpose of the ECI is to inform field personnel of critical quality control issues that must be addressed during construction. The ECI should also highlight important elements of the design and provide a better understanding of the project's intended function.

5.8. Operations and Maintenance Manual. The A-E shall prepare a draft Operation, Maintenance, Repair, Replacement, and Rehabilitation Manual (OMRR&R Manual) in accordance with ER 1110-2-401. The Government will insert construction history and as-built information upon completion of construction.

5.9. Site Visits, Meetings/Conferences, and Discussions.

5.9.1. Site Visits. The A-E shall visit the project site during the Concept (30%) Design Phase. The purpose of this visit is to observe and evaluate existing field conditions and to gather supplemental site data necessary for performing the design. A follow-up site visit will be conducted during the Preliminary (60%) Design Phase. The Jacksonville District Project Engineer will be notified of these site visits well in advance of their occurrence. Reports summarizing the conditions observed, personnel contacted, and data gathered during the visits shall be prepared and included in the Design Documentation Report.

5.9.1.1. Concept (30%) Design Phase Site Visit. The following A-E representatives shall participate in this two-day site visit: Project Manager, Senior Civil Engineer (General Site and Drainage Design), Civil Engineer (Highway Design), Senior Geotechnical Engineer, and Senior Electrical Engineer.

5.9.1.2. Preliminary (60%) Design Phase Site Visit. The 60% site visit shall include coordinating the latest design with the local agencies including the Puerto Rico Department of Natural Resources, the Puerto Rico Electric Power Authority (PREPA), the Puerto Rico Aqueduct and Sewer Authority (PRASA), the Puerto Rico Department of Transportation and Public Works (DTPW), through its Highway and Transportation Authority (PRHTA). The following A-E representatives shall participate in this two-day site visit: Project Manager, Senior Civil Engineer (General Site and Drainage Design), Senior Geotechnical Engineer, and Senior Electrical Engineer.

5.9.2. Meetings/Conferences. The following is a list of meetings and conferences the A-E shall attend under this task order. The A-E representatives required to attend these conferences are defined below. The exact location, date, and time of each conference will be established by Jacksonville District's Project Engineer.

5.9.2.1. Initial Technical Coordination Meeting. The A-E will host a one day technical coordination meeting during the concept design phase.

5.9.2.2. Preliminary (60%) Design Review Conference. A one-day Preliminary (60%) Design Review Conference will be held at the Jacksonville District Office. A-E representatives shall be: Project Manager and Senior Civil Engineer.

5.9.2.3. Final (100%) Design Review Conference. A one-day Final (100%) Design Review Conference will be held at the Jacksonville District Office. A-E representatives shall be: Project Manager, Senior Civil Engineer (General Site and Drainage Design), Civil Engineer (Highway Design), Senior Geotechnical Engineer, and Senior Electrical Engineer.

The A-E shall take notes and prepare minutes for all meetings and conferences attended during design. Minutes will be prepared in typed form, signed by the A-E Project Manager, and furnished to Jacksonville District's Project Engineer within five calendar days after the meeting/conference for concurrence and distribution to attendees. Copies of all meeting/conference minutes will be included in the Design Documentation Report.

5.9.3. Discussions. The A-E shall provide a written record of all significant discussions and telephone conversations that the firm's representatives participate in, on matters relative to this project. Copies of these records will be included in the Design Documentation Report.

5.10. Topographic Surveys. The Government has performed topographic surveys in the vicinity of this project. These surveys will be provided to the A-E as Government furnished materials (Survey No. 00-216, Aerials No. 00-148, and Aerials No. 00-915). This task order may be modified, at some later date, to have the A-E perform supplemental surveys as required.

5.11. Geotechnical Investigations. The Government has performed geotechnical subsurface investigations and laboratory testing for this project. The results of these investigations shall be provided to the A-E as Government furnished materials.

5.12. Environmental Investigations and Permits. The Government will conduct investigations to delineate wetlands and identify the habitat of endangered species. The A-E shall show these environmentally sensitive areas on the civil site drawings, but is **not** required to obtain any related permits. The Government will prepare applications and perform any agency coordination that is necessary to secure environmental and water quality certification permits.

5.13. Responsibility after Design Completion. The A-E is required to support the Jacksonville District should errors or omissions in the documents create problems in bidding or administering the contract for construction. As needed, the A-E will clarify the design intent and correct any errors or omissions in the original documents. The corrections shall be done in a timely manner at no additional cost to the Government. The A-E shall incorporate amendment changes on the original drawings and/or CADD drawings when requested to do so after the bidding process at no extra cost to the Government. In addition, the A-E shall incorporate amendment changes on the submittal registers and submit one copy in SPECSINTACT format on a disk or CD labeled with the project title, location, and construction contract number. Also, during the bidding period, the A-E is required to assist in answering all bidders inquiries pertaining to the design. If clarifications are required, the A-E will prepare the required amendment. The A-E, however,

shall not receive or respond to any direct inquiries from bidders. All inquiries or responses shall be through the Jacksonville District Project Engineer.

5.14. A-E Services During Construction. No A-E services during construction, other than the responsibilities described above, are contemplated at the present time. However, this task order may be modified at some later date to include review of construction contractor submittals, on-site inspections, review of value engineering change proposals, review of contractor substitutions, preparation of design modifications, or other similar services during construction.

6. SUBMITTALS AND PERFORMANCE SCHEDULE.

6.1. Distribution of Submittals. Deliverables for each phase of design shall include a complete set of MicroStationTM (*.DGN) files and hard copies of all drawings. Narrative and text documents, specifications, design analysis and cost estimates will be provided in Government approved electronic formats, with hard copies. Electronic files for cost estimates and specifications should be furnished on 3.5" high-density diskettes. All other electronic files should be furnished on recordable compact discs, 650MB/74 minute, DOS compatible, ISO standard. The distribution list and number of copies of each document are shown in Exhibit B.

6.2. Government Review and Comment Resolution. The Government will review all submittals identified under this task order. Formal comments generated during the review will be provided to the A-E via the DrChecks automated review system, and the A-E will respond to the comments via DrChecks. Both parties will discuss these comments, if necessary, and attempt to resolve any unsettled issues that may arise from the review. The time frame for Government review and comment resolution varies however; this process is typically completed within 30 calendar days.

6.3. Performance Periods and Submission Schedules. The performance periods and submission schedules for each phase of design are indicated below. Time for reproduction and mailing is inclusive to the stated durations. The A-E may choose to perform work, at its own risk, during the Government review and comment resolution period, however, comments resulting from that review must be incorporated into the design prior to the next submittal. In the event a subsequent design phase is not authorized, the A-E shall incorporate all available review comments into the design to complete the current phase.

6.4. Concept (30%) Design Phase Submittals.

6.4.1 Quality Control Plan. The A-E shall submit a Quality Control Plan, for review and approval, 15 calendar days after issuance of Notice to Proceed.

6.4.2 Concept (30%) Design Submittal. The A-E shall submit the Concept (30%) Design, for review and approval, 45 calendar days after the issuance of the notice to proceed. This submittal will include drawings, design analysis, a design documentation report, quantity and cost estimates, a bid schedule, an M-CACES construction cost estimate, and other supporting documents.

6.5. Preliminary (60%) Design Phase Submittal. The A-E shall submit the Preliminary (60%) Design, for review and approval, 45 calendar days after receipt of Concept (30%) Design review comments. This submittal will include drawings, outline specifications, design analysis, a design documentation report, quantity and cost estimates, a bid schedule, an M-CACES construction cost estimate, a proposed construction schedule, site plans identifying all right-of- ways (for construction and perpetual operations), a complete order of work clause describing the required sequence of construction operations, and other supporting documents.

6.6. Final (100%) Design Phase Submittals.

6.6.1 Final (100%) Design Submittal. The A-E shall submit the Final (100%) Design, for review and approval, 45 calendar days after receipt of Preliminary (60%) Design review comments. This submittal will include detailed working drawings and specifications necessary for the effective coordination and efficient execution of the construction work. The Final (100%) Design shall also include a construction contractor submittal register, design analysis, a design documentation report, quantity and cost estimates, a bid schedule, an M-CACES construction cost estimate, a proposed construction schedule, site plans identifying all right-of-ways (for construction and perpetual operations), and other supporting documents.

6.6.2 Corrected Final Design Submittal. The A-E shall submit the Corrected Final Design, for review and approval, 28 calendar days after receipt of Final (100%) Design review comments. This submittal will include the same items that are required for the Final (100%) Design submittal.

6.7. Amended Plans And Specifications. The A-E shall provide revised plans and specifications, which include all amendment changes, 14 calendar days after bid opening.

6.8. Request for Payment. The A-E shall include a progress report along with the Payment Estimate – Contract Performance, ENG Form 93 as justification for the amount of payment requested. The progress report shall include in narrative form a Summary of Activities, Estimated Percentage Complete, Project Schedule Evaluation, and Problems and Recommended Solutions.

7. **AUTHORIZED CHANGES**. The A-E shall accept instructions only from the Contracting Officer or his/her duly appointed representative. However, coordination of routine technical matters with Corps of Engineers personnel will be accomplished through the Jacksonville District Project Engineer, Tony Tiger, CESAJ-EN-DL. Direct requests from other agencies should be forwarded to the Project Engineer for consideration.

8. **EXHIBITS**.

- A: Technical Instructions (not included)
- B: Review Distribution List (not included)

APPENDIX W REQUEST FOR PRICE PROPOSAL INSTRUCTIONS

A RFPP to an A-E firm will include the SOW, proposal instructions, preproposal conference date (if needed), proposal due date, name(s) and telephone number(s) of the Government negotiator(s), and the contract terms and conditions. An RFPP will direct the firm to submit the following information, as appropriate, for the contract action. The items in *italics* are not required for ID contract task orders.

1. The name(s) and title(s) of the person(s) authorized to negotiate and sign a contract or task order.

2. The labor rates and supporting payroll data for all position classifications anticipated to be used under the contract by the prime firm and any subcontractors. Include the basis for any escalation in labor rates.

3. Financial data and the methodology used to calculate the proposed overhead rates for the prime firm and subcontractors. Identify costs not allowed by FAR 31.2.

4. The name and address of any Government audit agency that has conducted an audit of the firm within the last year.

5. Submission of cost or pricing data for proposals over \$650,000 as required by FAR 15.403-4(a)(1), 15.403-5(b)(1) and Table 15-2 of 15.408. For task orders, only cost or pricing data that was not included in negotiation of the basic ID contract need be submitted.

6. Certificate of Current Cost or Pricing Data if the negotiated price exceeds \$650,000 (FAR 15.406-2). A certificate is not required for a task order if no additional cost or pricing data (item 5 above) is required. The certificate should not be executed and submitted until negotiations are completed.

7. Executed Representations, Certifications and Other Statements of Offeror. (Note: Contractors must complete the most common representations and certifications through the Online Representations and Certifications Application website listed in Appendix F.)

8. Detailed price breakdown with tasks, position classifications, labor-hours, costs and profit for all phases and sub-phases of work. Indicate which work will be performed by the prime firm and each subcontractor. Identify factual and judgmental items. Discuss any assumptions made in developing the proposal. Include price quotes for any commercial supplies and services.

9. Subcontracting plan for the utilization of SB and SDB if the prime firm is a large business and the contract is expected to exceed \$500,000 (FAR 19.702(a)(1) and 19.704).

10. Acknowledgment that the firm, or any subsidiaries or affiliates, may not be awarded a construction contract for the project to be designed (FAR 36.209 and 36.606(c)). The firm

EP 715-1-7
22 May 07

should also be advised not to release any information to prospective bidders for the construction contract (FAR 9.505(b)).

11. A letter from a banker, creditor, or other appropriate financial institution confirming the firm's business and financial reputation, integrity and ability to execute the contract.

12. Design quality control plan.

13. Verification of registration in the Central Contractor Registration system.

APPENDIX X INDEPENDENT GOVERNMENT ESTIMATES

1. **General.** An IGE for A-E services will be developed from a detailed analysis of the SOW, assuming reasonable economy and efficiency, and modern and effective methods. An IGE shall not be based on a percentage of construction cost, arbitrary ceilings, the availability of funds, or any cost or pricing information provided by the A-E firm. The intent of an IGE is to determine a price for the required work which is fair and reasonable to the Government (Comptroller General decision Dworsky Associates, B-248216, June 18, 1992, 92-1 CPD ¶ 533).
2. **Preparation.** An IGE will be prepared by engineers, architects, and/or other appropriate personnel having expertise (education, training and professional experience) in the type of work being contracted. Where available, cost and pricing specialists or auditors should be consulted for information on overhead, labor rates, and other pertinent unit costs and prices. An IGE will be marked "FOR OFFICIAL USE ONLY" and protected accordingly.
3. **Approval.** An IGE will be approved by a supervisor having expertise in the type of work being contracted. The level of supervisory approval will be appropriate for the complexity and dollar value of the contract action. An IGE will be approved prior to opening the related A-E price proposal. Internal management controls will be established to ensure that each IGE is prepared independently of the A-E proposal.
4. **Revision.** An IGE should be revised whenever there is a significant change in the SOW or a significant error or omission is discovered in the IGE. A revised IGE should normally be approved by the same person who approved the original IGE. Revision of an IGE is not required to justify accepting a proposal greater than the IGE if the significant differences are adequately explained in the PNM.
5. **Statutory Limitation.** The 6 percent statutory limitation for the "production and delivery of designs, plans, drawings and specifications" (FAR 15.404-4(c)(4)(i)(B) and 36.606(a), and EFARS 36.606-70(c)) will be carefully considered when preparing an IGE. An IGE will be clearly organized to show the elements of estimated price, including associated overhead and profit, subject to the 6 percent limitation, and the total of these elements of price expressed as a percentage of the estimated construction cost (excluding contingencies, and supervision and administration). For additional work or redesigned work, the estimated construction cost will be increased by the value of the additional or redesigned work (DFARS 236.606-70(b)).
6. **Labor and Overhead Rates.**
 - a. **FFP Contracts.** An IGE for a FFP contract will use labor and overhead rates representative of the class of A-E firms that have been selected as most highly qualified to perform the required work (EFARS 36.605(a)). Class includes such factors as firm size,

market area, specialization, and capabilities³⁹. Appendix Y lists sources of information on labor and overhead costs in the A-E industry. Rates for the Government or the firm under negotiation will not be used since the objective of an IGE is to independently estimate a fair price for a competitive and efficient private firm, not the Government nor the firm under negotiation, to perform the required A-E services. The estimated labor rates for work of extended duration or for later phases of work will be adjusted for escalation. Arbitrary limits on the overhead and labor rates used in an IGE are prohibited.

b. ID Contracts. An IGE for an ID contract will consist of an independent analysis of fair and reasonable rates for labor, overhead and other costs. An IGE for a task order (or modification to a task order) will use the contract rates for labor, overhead, travel, supplies, services, and possibly profit (if the same profit rate is applicable to all orders) in effect at the time the order (or modification to a task order) is issued.

7. Breakdown of Costs. An IGE will be organized to correspond to each phase or sub-phase of work in the SOW. The estimated price for each phase or sub-phase will be itemized to show the direct labor costs, overhead costs, travel costs, other direct costs, and profit.

a. Direct Labor Costs. The labor-hours needed for each position classification (types of disciplines at certain levels of expertise) are determined by analysis of the required tasks and products in the SOW. Reasonable effort must also be included for project management, quality control and assurance, clerical support, and coordination between disciplines. If the SCA applies to the contract, the labor rates and benefits for service employees must be at least equal to those in the appropriate DoL wage determination.

b. Overhead. Overhead costs (also called indirect costs) include overhead on direct labor and general and administrative overhead. FAR 31 provides detailed guidance on overhead costs. An IGE will normally be prepared using a single overhead factor which combines overhead on direct labor with general and administrative overhead, expressed as a percentage of the total direct labor costs. This method is representative of the accounting practices of most A-E firms and is compatible with the market surveys in Appendix Y. Other overhead structures may be used in an IGE if representative of the class of firms selected for the work. An IGE may be prepared using separate overhead rates for the prime contractor and primary subcontractors if considered reasonable and typical for the type of work.

c. Travel. Travel requirements are determined from analysis of the SOW for tasks such as field investigation and meetings, based on the location of the firm selected for negotiation. Typical travel costs include rental car, company car mileage, airfare, parking fees, and per diem expenses. The labor of personnel when traveling will be included in the direct labor portion of an IGE. The unit cost and quantity of each travel item will be identified. Per

³⁹ For example, for a major military command headquarters, the IGE would likely use labor and overhead rates representative of national, "top 100" firms. Conversely, for a standard vehicle maintenance building at a typical Army installation, the IGE would likely use rates of local, small-to-medium size firms.

diem and airfare costs are limited by FAR 31.205-46. The prevailing privately owned vehicle mileage reimbursement rate for Government personnel will be used to estimate car mileage costs.

d. Other Direct Costs. Include all other necessary direct costs not included in direct labor and travel, and not ordinarily included in the overhead of an A-E firm. Commercial quotes from suppliers are usually available for these items. Typical other direct costs include: reproduction of documents for Government review, supplies, photographs, renderings, models, colorboards, long distance communications, laboratory tests, computer use, and postage.

e. Profit. Profit rates will be determined in accordance with EFARS 15.404-73-101. The profit rate will be applied to all costs (direct labor, overhead on direct labor, general and administrative overhead, travel, reproduction and other direct costs) to estimate the dollar amount of profit. An IGE will not be structured with redundant levels of profit (no profit on profit)⁴⁰. Hence, if an IGE is structured with subcontractors, the estimated costs (without profit) for the prime contractor and the subcontractors will be added to give the total cost base for applying the profit rate. However, it is not necessary to deduct reasonable profit embedded in the prices of commercial supplies and services, such as travel, lab tests, printing and express mail.

⁴⁰ The EFARS alternate structured approach to the weighted guidelines method (WGM) for A-E contracts yields profits that are substantially greater than the WGM in DFARS 215.404-71. Hence, estimating additional profit for layering of subcontractors is not warranted.

APPENDIX Y A-E COST INFORMATION

The following sources of cost information can be used in preparing IGE for A-E services and evaluating A-E price proposals.

Publication: A/E Financial Performance Survey

Contents: Overhead rates (overall and elements) for various sizes, types and locations of firms. Also, data on profit, staffing, labor costs, and automation use and costs.

Publisher: PSMJ Resources, Inc., Ten Midland Avenue, Newton, MA 02458; Phone: 800-537-7765; <http://www.psmj.com/index.asp>.

Note: This firm also publishes: A/E Management Salary Survey and A/E Fees and Pricing Survey.

Publication: Income & Salary Survey

Contents: Detailed data on salaries for engineers for various disciplines, education levels, lengths of experience, levels of responsibility, and locations.

Publisher: National Society of Professional Engineers, 1420 King Street, Alexandria, VA 22314; Phone: 703-684-2800; <http://www.nspe.org>.

Publication: Compensation at US Architecture Firms

Contents: Average salaries for architects for various levels of responsibility, sizes of firms, and regions. Also includes similar data for landscape architects, interior designers, drafters and CADD operators.

Publisher: American Institute of Architects, 1735 New York Avenue, NW, Washington, D.C. 20006, Phone: 800-AIA-3837; <http://www.aia.org>.

Publication: Engineers Salary Survey

Contents: Detailed data on salaries for engineers for various disciplines, education levels, lengths of experience, levels of responsibility, and locations.

Publisher: D. Dietrich Associates, Inc., 61 North Forge Manor Drive, Phoenixville, PA 19640; Phone: 610-935-1563; <http://www.dsveys.com>.

Note: This firm also publishes other similar surveys on engineering executives, architectural positions, drafters and designers, construction services positions, scientists, and laboratory technicians.

EP 715-1-7
22 May 07

Publication: Compensation and Benefits in Consulting Engineering Firms

Contents: Salary and benefit data on 41 engineering positions, such as managers, drafters, technicians, and surveyors.

Publisher: Abbott Langer & Associates, 548 First Street, Crete, IL 60417; Phone: 708-672-4200; <http://www.abbott-langer.com>.

Publication: Financial Performance Survey of A/E/P and Environmental Consulting Firms

Contents: Over 30 different major financial performance statistics on architectural, engineering and environmental firms.

Publisher: Zweig White, P.O. Box 8325, One Apple Hill Drive, Natick, MA 01760-2085, Phone: 1-800-466-6275; <http://www.zweigwhite.com/>.

Publication: MAPPS Non-Cash Benefits and Salary Survey

Contents: Salary and benefit information for photogrammetric mapping firms.

Publisher: Management Association of Private Photogrammetric Surveyors, 1760 Reston Parkway, Suite 515, Reston, VA 20190; Phone: 703-787-6996; <http://www.mapps.org/WageSurvey.asp>.

APPENDIX Z

A-E PRICE PROPOSAL ANALYSIS

1. General. Technical, price and cost analysis will generally be performed on every A-E price proposal. The extent of the analysis and documentation depends on the dollar value and complexity of the proposal. For small actions (typically below the IGE threshold of \$100,000), the proposal analysis can be efficiently performed by annotating the A-E proposal.

2. Technical Analysis (FAR 15.404-1(e)). Technical analysis is the evaluation of the judgmental elements of a proposal and the approach for accomplishing the work. Technical analysis involves comparing the proposal with the IGE, and:

a. Evaluating the general approach for performing the work and any assumptions included in the proposal. Ensure that the proposal includes appropriate modern and cost-effective design methods (FAR 36.606(d)) and is based on reasonable efficiency and economy (FAR 15.404-1(e)).

b. Ensuring that all requirements in the SOW are addressed, and no unnecessary items are included.

c. Evaluating the design quality control plan, if required, to ensure that the firm is using procedures, practices and tools that will produce quality engineering and design services and products in accordance with ER 1110-1-12.

d. Ensuring that all Government-provided information and materials are considered in the proposal.

e. Evaluating the need for the proposed position classifications (types of disciplines with certain levels of expertise) and their mixture. Consider the relationship among management, professional, technician and drafting hours.

f. Evaluating the number of labor hours for each position classification for various tasks, products and/or phases of work.

g. Evaluating proposed subcontracting and how it interrelates with work done by the prime contractor. Ensure that all subcontractors have been approved by the selection board (FAR 36.606(e)).

h. Evaluating the need for and suitability of proposed special equipment and the hours of special equipment usage compared to the labor hours for using the equipment.

i. Reviewing the purpose and number of proposed trips, personnel traveling, origin and destination, and means.

j. Reviewing the type and amount of communications, postage, reproduction, materials and other direct costs.

3. Price Analysis (FAR 15.404-1(b)). Price analysis is the evaluation of the proposed total price, and the price of major phases or elements of work, without evaluating individual cost elements or profit. Price analysis includes, as appropriate, comparing the proposed price(s) to other similar contract actions, the IGE, and rough unit price yardsticks, such as dollars per drawing for designs or dollars per acre for surveying and mapping.

4. Cost Analysis (FAR 15.404-1(c)). Cost analysis is the review and evaluation of the separate cost elements and proposed profit to determine what the price of the contract should be, "assuming reasonable efficiency and economy." Also, the analysis "shall ensure that the effects of inefficient or uneconomical past practices are not projected into the future." Cost analysis includes (items a -l are appropriate for audit review):

a. Verifying labor rates, employee benefits and escalation factors, and evaluating their reasonableness.

b. Verifying the direct labor base.

c. Evaluating the reasonableness of the method for computing overhead rates. When a significant amount of the work is to be performed away from a firm's office, such as resident on-site construction support, overhead rates applied to that portion of the work should be evaluated separately.

d. Reviewing for any duplication between direct costs and overhead costs for items such as principals and managers, administrative personnel, travel, communications, reproduction, computer services, equipment, materials and supplies.

e. Evaluating the reasonableness of travel costs and other direct costs such as reproduction, computer services, laboratory tests, materials and supplies, using price quotes, catalog prices, other recent contracts, and other available data.

f. Determining the allowability of direct costs and overhead costs in accordance with FAR 31.205.

g. Determining the allocability of costs to the contract action for other offices of the firm.

h. Evaluating the rate for facilities capital cost of money.

i. Evaluating the percentage of Government business compared to total business, and the impact of the contract action on overhead rates.

j. Verifying conformance with Cost Accounting Standards (FAR 30) or generally accepted accounting practices.

- k. Identifying and evaluating the necessity and reasonableness of any contingencies (FAR 15.402(c) and 15.404-1(c)(2)(i)(A)).
 - l. Verifying mathematical accuracy.
 - m. Verifying that contract rates for the prime and subcontractors are being used for a task order under an ID contract.
 - n. Verifying that labor rates for service employees (FAR 22.10) are at least equal to the WD by the DoL under the SCA, if the SCA is applicable to the contract.
 - o. Comparing costs with other similar contracts and the IGE.
 - p. Comparing the proposed profit amount with the profit amount determined by the Alternate Structured Approach to the Weighted Guidelines Method (EFARS 15.404-73-101).
 - q. Determining that all necessary cost or pricing data has been submitted by the firm.
 - r. Evaluating the extension of the allowable unit costs (such as labor rates, overhead rates, travel rates, printing costs) to total prices, considering the results of the technical analysis of the judgmental elements (such as labor hours, trips, and number of drawings).
 - s. Evaluating compliance with the 6 percent statutory limitation (FAR 15.404-4(c)(4)(i)(B) and 36.606(a), DFARS 236.606-70, and EFARS 36.606-70(c)).

APPENDIX AA
INSTRUCTIONS FOR DD FORM 2631

Instructions are provided below for items that are not self-explanatory.

- Item 3a. PHASE OF COMPLETION. Check the "Interim" box for any performance evaluation made prior to completion of the design or engineering services phase, or construction phase, and enter the percent of completion of the phase. The usual instances for interim evaluations are: (1) when performance is marginal or unsatisfactory; (2) annual progress evaluations when the performance period exceeds 18 months; or (3) a project is deferred for more than 3 months and substantial work has been completed. Check "Final" if the evaluation is made at the completion of a project phase (i.e., design or engineering services phase, or construction phase).
- Item 3b. COMPLETION. Check "Design" if the A-E services are for design of construction. Check "Engineering Services" if the A-E services are not directly associated with the design of a construction project. Check "Construction" for the evaluation of A-E services during construction.
- Item 5. DELIVERY ORDER NUMBER(S). Only applicable for ID contracts. (The correct term on the form should be "task order" which applies to services, not "delivery order" which applies to supplies.)
- Item 6. NAME AND ADDRESS OF A-E CONTRACTOR. Show primary performing office, which may not be the office which signed the contract.
- Item 7b. DESCRIPTION OF PROJECT. For HTRW projects, indicate the phase in which the A-E firm assumed responsibility for the project.
- Item 8. NAME, ADDRESS AND PHONE NUMBER OF OFFICE RESPONSIBLE FOR. An example for Item 8a is shown below:
- Engineering Division
Savannah District
Savannah, GA
(912) 944-5465
- Item 9a. TYPE OF WORK PERFORMED BY A-E (DESIGN, STUDY, ETC.). For HTRW projects, indicate if performance type specifications were required.

- Item 9d. PROFESSIONAL SERVICES CONTRACT. The “Initial Fee” should include the basic contract or task order amount plus any options awarded before the time of the evaluation. Do not include contract or task order modifications in the initial fee amount. “Contract or Task Order Modifications” should include all additional work not negotiated at the time of the contract or task order award. The “Total Fee” is the sum of the initial fee and the modifications.
- Items 9f,g. NEGOTIATED/ACTUAL A-E CONTRACT COMPLETION DATE (OR NUMBER OF DAYS). Report either negotiated/actual completion dates or number of days, not both. Include authorized contract extensions. The "number of days" is the total period negotiated for performance of the work and does not include Government review time, other design stop periods, or other Government-caused delays.
- Item 11. A-E LIABILITY. Indicate status of A-E liability at time of completing the form. Check "None" if there are no known deficiencies, or if there are and the KO has decided not to take action. Check “Undetermined” if there are deficiencies and a determination on liability has not been made. Discuss in Item 20. Check "Pending" if the contracting officer has determined that action will be taken to recover damages from the A-E firm and enter the amount of damages. Check "Settlement" if a liability case(s) against the A-E has been settled and enter the amount recovered. “Undetermined”, "Pending", and "Settlement" may be concurrently marked.
- Item 12. OVERALL RATING. See guidance in Chapter 6, paragraph 6.4.e of this pamphlet. The overall rating shall be determined through an assessment of ratings of performance elements in Items 16 through 19, and any other significant factors not covered by the performance elements. Explain in Item 20 which disciplines and attributes are significant if not readily apparent from the nature of the work.
- Item 14a. NAME, TITLE AND OFFICE OF RATING OFFICIAL. For the evaluation at the completion of design or engineering services, indicate the COR. For the evaluation at the completion of construction, indicate the Area Engineer or Resident Engineer. Give the name of the office, not just the office symbol.
- Item 15. NAME, TITLE AND OFFICE OF REVIEWING OFFICIAL. The Director/Chief, or Assistant Director/Chief, of Engineering.

Item 19. CONSTRUCTION PHASE. The AE or RE is responsible for addressing these attributes. Any aspect of A-E performance not adequately described by the ratings given in the matrix shall be described in Item 20. Examples of items that might require special comment are:

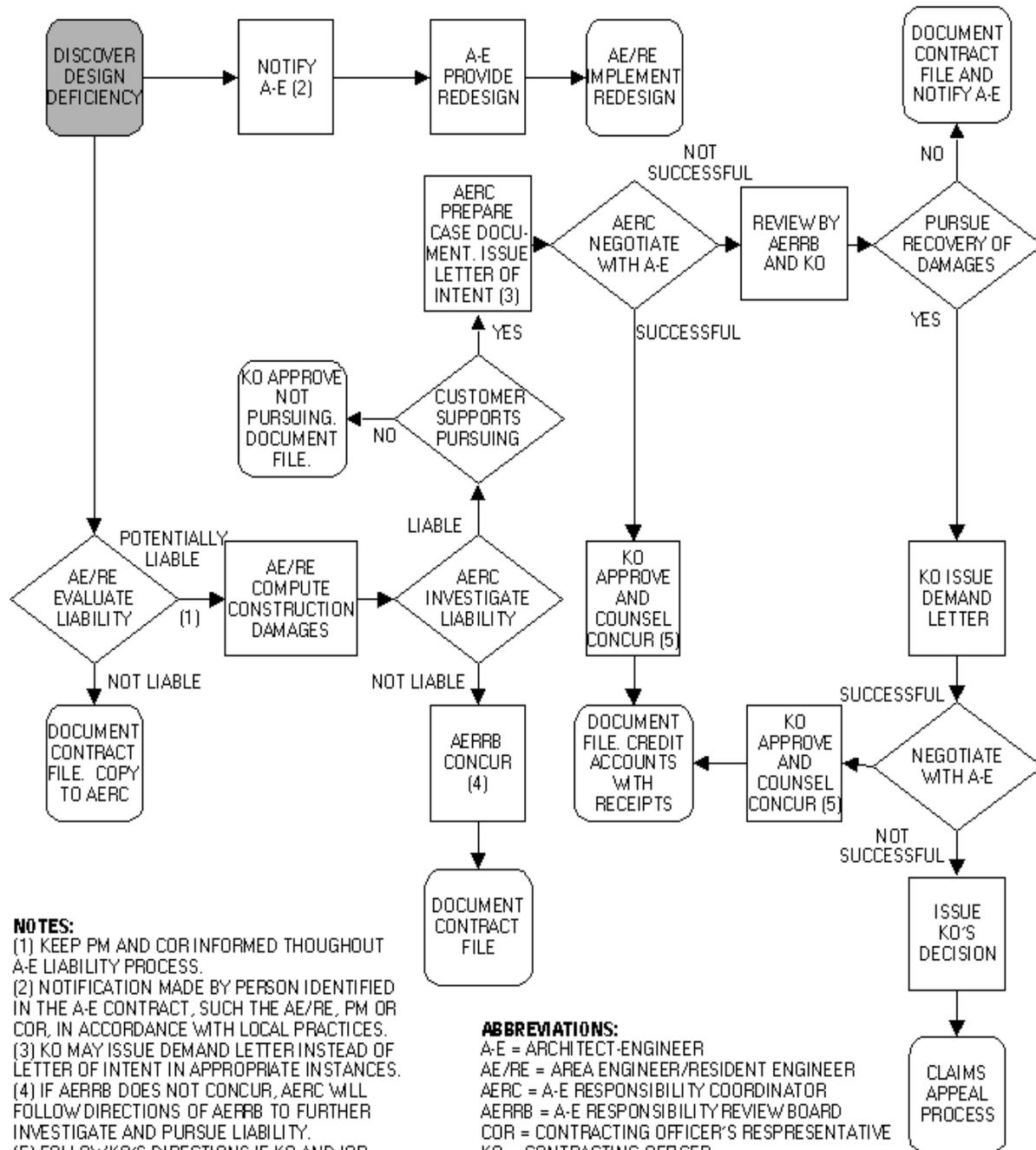
- Field visit support. Did the A-E firm provide the proper individual in a timely manner? Were written reports submitted in a timely manner? Did solutions to problems appear to be cost effective? Did the A-E firm provide information which contributed to the Government's defense against a claim or identification of a construction contractor deficiency?

- Changes. Did the A-E firm provide designs to correct errors or omissions and/or revise criteria in a timely manner? Were the cost estimates useful/realistic in support of negotiations?

- As-Built Drawings and Operation and Maintenance Manuals. Comment on the adequacy of the A-E firm's preparation or review of such documents, if applicable.

Item 20. REMARKS. The comments should be tailored to be of maximum usefulness to selection boards considering this A-E firm for future work, and to the administrators of contracts with this firm in the future. If the effectiveness of the firm's project management is not adequately covered by Items 17 and 19, add comments as needed. Provide substantive comments to support a "Marginal" or "Unsatisfactory" evaluation and include any comments by the A-E firm in response to the proposed evaluation. Explain the basis for a "No" or "Conditionally" recommendation for future contracts in Item 13.

**APPENDIX BB
A-E LIABILITY ACTION FLOWCHART**



APPENDIX CC DETERMINATION OF A-E LIABILITY DAMAGES

1. General. Detailed and accurate cost records are very important when seeking recovery of A-E liability damages. Damage computations must show the source of the data and be signed and dated by the preparer. Government labor costs must be determined in accordance with normal accounting practices. The computation of damages should be amended as required. Damages will be categorized as construction costs, ancillary costs, and investigation and recovery costs, as discussed below.

2. Construction Costs.

a. Identifiable costs in a construction change (usually executed by a contract modification, but may be a new contract, supplemental agreement, purchase order or other type instrument) that would not have been included in the construction contract price had the design been correct. Such costs include: tearout and demolition, scrap material, restocking charges, premium for expedited delivery, reinstallation, difference in new and salvage value of unused or removed material or equipment, delay and impact, and extended overhead.

b. Do not include construction costs of items or work that should have been included in the design but were omitted or were improper due to the A-E firm's error or omission. The Government is entitled to only the extra costs associated with including such omitted or improper items or work in the construction, and not the actual construction costs of the items or work themselves, unless it can be shown that the costs are more than they would have been had the items or work been included in the original construction plans and/or specifications.

3. Ancillary Costs. Include costs such as:

a. Construction S&A costs associated with the additional construction costs, in the usual percentage of construction costs.

b. Administrative costs to prepare and award a purchase order or contract if necessary for the remedial construction.

c. In-house costs for the corrective design.

d. Cost of re-procurement of A-E services, including the associated administrative costs.

e. Diminished value. In some instances it is impracticable to remedy an A-E firm's error or deficiency. If so, the damage is the difference in value of the facility as it exists and what its value would have been had the error or deficiency not occurred.

f. Loss of use or function.

EP 715-1-7
22 May 07

4. Investigation and Recovery Costs. Technical and administrative costs to investigate, document, and review liability, and recover the damages, including actions by the AERC, technical specialists, expert witnesses and counsel (to the extent that the costs are not included in overhead).

APPENDIX DD
A-E LIABILITY COLLECTION AND SETTLEMENT

1. Collection of Claims.

a. The provisions of FAR 32.6, Contract Debts, and its supplements, apply to claims by the Government against A-E firms. These regulations arise from the Debt Collection Act of 1982.

b. A claim for payment of damages made in a demand letter to an A-E firm is not subject to the provisions of FAR 32.6 until a COD has been issued. When a COD is issued, the amount of the claim becomes a "receivable" and the handling of it shall be in accordance with the acquisition regulations. A copy of the COD shall be furnished to the local finance and accounting officer (FAO), with the following information:

- (1) A-E firm's billing address, if different from the mailing address;
- (2) A-E firm's employer identification number, if a US Army contractor;
- (3) Social security number of A-E firm's contracting officer;
- (4) Contract number; and,
- (5) Government KO's name and organization.

c. The A-E firm shall be notified in the COD that it may submit a request for deferment of collection (FAR 32.610(b)(3)). This is pertinent if the A-E firm has not been paid in full for the contract under which the liability action is being taken or has other active contracts, as the KO has authority to set off the claim against payments due the A-E firm. Requests for deferment by the A-E firm and the granting of deferments by the KO are covered in FAR 32.613.

d. The FAO shall be kept informed of the status of the resolution of a liability case and provided copies on all internal and external correspondence concerning the status of the claim. The AERC shall support and coordinate the actions of the KO and FAO to comply with the regulations cited above.

2. Settlement Options.

a. Settlements can be made by cash payment, installment payments, or in-kind A-E services in some instances. The in-kind A-E services should be within the scope of the contract (such as a user-requested change order) under which the liability action has been taken, but obviously cannot be for corrective design. The value of settlements made by other than cash payments shall be estimated and be reported as the settlement amount in reports.

b. Installment settlements shall be reported as follows:

(1) The case shall be reported as settled upon receipt of the first payment.

(2) Subsequent payments will increase the amount of recoveries reported, but not the number of cases reported as settled.

(3) An ENG Form 4858A-R is required for each quarterly report until payment has been received in full.

(4) If the firm fails to complete payment, the case shall be referred to Counsel for collection.

3. Disposition of Monies Recovered.

a. The AERC shall provide written guidance to the FAO for disposition of monies collected in liability case settlements. A copy of the disposition document shall be placed in the A-E contract file.

b. In general, the monies recovered in A-E liability actions are credited to the appropriation or account that bore the costs. This applies to project accounts, flat rate S&A accounts, and general and administrative overhead accounts. The amounts credited to these accounts cannot exceed the charges against them for the liability case.

c. In the cases where the costs associated with a liability case were borne by a customer's operations and maintenance account, the funds recovered shall be returned to the client without regard to whether the return is made in the same year as the costs were incurred.

d. When the monies received cannot be credited to an account because the appropriation has expired, they shall be returned to the Treasury of the United States as miscellaneous receipts.

APPENDIX EE AERMP REPORTS

ENG Form 4858-R, Annual A-E Responsibility Management Program Report (Figure EE-1), and ENG Form 4858A-R, Quarterly A-E Liability Case Report (Figure EE-2) are used for AERMP reporting. The instructions are shown on the reverse of each form. These forms are locally reproducible. Also, the forms can be downloaded via the Internet as follows:

- Access USACE home page (<http://www.usace.army.mil>)
- Click on "Find Corps Publications"
- Click on "Publications Library"
- Click on "Engineer Forms"
- Click on "Versions 1.1, 2.22, 2.23, FormFlow99 and PDF format"
- Scroll to "Eng 4858-r" or "Eng 4858a-r"
- Click on "v 2.22" to open form in FormFlow software
- Complete form and save

1. COMMAND:	ANNUAL A-E RESPONSIBILITY MANAGEMENT PROGRAM REPORT <i>(EP 715-1-7)</i> RCS: CEMP-E-32 <i>(SEE REVERSE FOR INSTRUCTIONS)</i>		2. FISCAL YEAR:
3. LIABILITY CASES CARRIED OVER FROM LAST FISCAL YEAR	a. NUMBER OF CASES		
	b. TOTAL DAMAGES, \$		
4. LIABILITY CASES INITIATED IN THIS FISCAL YEAR	a. NUMBER OF CASES		
	b. TOTAL DAMAGES, \$		
5. LIABILITY CASES DROPPED IN THIS FISCAL YEAR	a. NUMBER OF CASES		
	b. INVESTIGATION & RECOVERY COSTS, \$		
	c. TOTAL DAMAGES, \$		
6. LIABILITY CASES SETTLED IN THIS FISCAL YEAR	a. NUMBER OF CASES		
	b. INVESTIGATION & RECOVERY COSTS, \$		
	c. TOTAL DAMAGES, \$		
	d. SETTLEMENT, \$		
7. LIABILITY CASES CARRIED FORWARD TO NEXT FISCAL YEAR	a. NUMBER OF CASES		
	b. TOTAL DAMAGES, \$		
8. EFFICIENCY RATIO	$(5b + 6b)/(5c-5b + 6c-6b)$		
9. RECOVERY RATIO	$6d/(5c + 6c)$		
10. REMARKS:			
11. PREPARED BY (AERC):	12. OFFICE SYMBOL:	13. TELEPHONE NO.:	

ENG FORM 4858-R, MAY 99

EDITION OF FEB 97 IS OBSOLETE.

(Proponent: CEMP-EC)

FIGURE EE-1. ENG FORM 4858-R, ANNUAL AERMP REPORT

INSTRUCTIONS FOR ENG FORM 4858-R

General: This form is used to consolidate information from individual ENG Forms 4858A-R on A-E liability cases in an operating command. This report is submitted annually from operating commands to their MSCs, from MSCs to HQUSACE, ATTN: CECW-CE. Instructions are provided below for items that are not self-explanatory. Attach additional sheets for remarks if needed.

1. Enter the three character office symbol; e.g., NWO for Omaha District.

5b./6b. Investigation and recovery costs are for cumulative total for the cases, not just for the year. Total damages includes the investigation and recovery costs.

(Reverse of ENG FORM 4858-R)

1. COMMAND:		QUARTERLY A-E LIABILITY CASE REPORT <i>(EP 715-1-7)</i>			3. FISCAL YEAR:	
2. CASE NUMBER:		RCS: CEMP-E-32 <i>(SEE REVERSE FOR INSTRUCTIONS)</i>			4. QUARTER:	
5. A-E NAME AND ADDRESS:		6. PROJECT TITLE AND LOCATION:		7. A-E CONTRACT NUMBER:		
				8. CONSTRUCTION CONTRACT NUMBER:		
9. DESCRIPTION OF DEFICIENCIES:						
DISCIPLINE(S) INVOLVED: CIVIL ___ ARCH. ___ STRUCT. ___ HVAC ___ PLUMBING ___ FIRE PROTECT. ___ ELECT. ___ OTHER ___						
10. A-E POSITION/REBUTTAL:						
11. A-E NOTIFICATION:	12. LETTER OF INTENT:	13. DEMAND LETTER:	14. CONTRACTING OFFICER DECISION:	15. DATE OF APPEAL:	17. FINAL ACTION:	
				16. DOCKET NO.:	___ DROPPED	
					___ SETTLED	
					DATE:	
18. CONSTRUCTION DAMAGES, \$:	19. ANCILLARY COSTS, \$:	20. INVESTIGATION & RECOVERY COSTS, \$:	21. TOTAL DAMAGES (18 + 19 + 20), \$:	22. SETTLEMENT AMOUNT, \$:	23. EFFICIENCY RATIO, 20/(18 + 19):	
					24. RECOVERY RATIO, 22/21:	
25. SUMMARY OF EVENTS AND STATUS, INCLUDING CHANGES AND PROGRESS FROM LAST QUARTER:						
26. PREPARED BY (AERC):						
27. OFFICE SYMBOL:			28. TELEPHONE NO.:			

ENG FORM 4858A-R, MAY 99 EDITION OF FEB 97 IS OBSOLETE. (Proponent: CEMP-EC)

FIGURE EE-2. ENG FORM 4858A-R, QUARTERLY A-E LIABILITY CASE REPORT

INSTRUCTIONS FOR ENG FORM 4858A-R

General: A separate form is required for each A-E liability case until it is dropped or settled. Instructions are provided below for items that are not self-explanatory. Attach additional sheets if needed.

1. Enter the three character office symbol; e.g., NWO for Omaha District.
2. Use the following format for the case number: FY-XXX, where FY is the fiscal year in which the liability case was originated and XXX is a sequential serial number.
9. Identify key consultants by name, and city and state address, if involved.
11. Indicate date(s) and means (T=telephone; L=letter) of initial notification to the A-E.

15/16. Enter date and docket number of appeal to Armed Services Board of Contract Appeals (ASBCA) or Court of Federal Claims (CFC).

Note for Items 18-22: See EP 715-1-7, Appendix CC for a detailed discussion of the determination of damages. Update damages, especially investigation and recovery costs, as the case progresses. Round off to nearest dollar.

18. Enter the additional construction costs the Government incurred due to A-E design errors or omissions, or performance deficiencies, such as tearout, reinstallation, premium for expedited delivery, and delay and extended overhead.

19. Enter the S&A costs associated with the additional construction costs. Also include costs for redesign (if not performed by the original A-E firm), procurement of equipment or construction, and lessened value.

20. Enter all costs to investigate the A-E liability, and to pursue the recovery of damages. Do not include labor costs of personnel who normally charge to overhead.

25. Summarize key events in the case.

a. This should generally be a one-line entry for each event. Earlier entries do not have to be repeated for liability cases in the later stages of litigation.

b. Make a concise statement on the status. For example, when the last step has been a conference with the A-E, a statement might be made that there has been no change in the Government's position and the A-E has been told that a COD will be issued within 30 days.

c. Give a brief statement of any changes in the case from the last report.

(Reverse of ENG FORM 4858A-R)