

®

US ARMY CORPS OF ENGINEERS (USACE)

**ACQUISITION INSTRUCTION
and
DESK GUIDE**

Effective 25 January 2017

A handwritten signature in black ink, reading "Stuart A. Hazlett", written over a horizontal line.

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UAI – PART 5101

FEDERAL ACQUISITION REGULATION SYSTEM

Subpart 5101.1 – Purpose, Authority, Issuance

UAI 5101.101 Purpose. The U.S. Army Corps of Engineers Acquisition Instruction (UAI) implements the Federal Acquisition Regulation (FAR), Defense Federal Acquisition Regulation Supplement (DFARS), and Army Federal Acquisition Regulation Supplement (AFARS) to establish standard policies for USACE acquisition. The UAI is not a stand-alone document, and it is intended to be used in conjunction with other regulatory guidance. The UAI is intended to promote good business judgment and innovation.

UAI 5101.103 Authority. In accordance with (IAW) UAI 5101.304, the USACE Head of the Contracting Activity (HCA) exercises the authority to issue the UAI.

UAI 5101.104 Applicability. The UAI applies to all USACE Districts, Centers, and activities operating under the authority of the USACE HCA.

UAI 5101.105 Issuance.

UAI 5101.105-3 Copies. The UAI is available electronically via the Intranet at <https://cops.usace.army.mil/sites/CT/P> and the Internet at <http://www.usace.army.mil/BusinessWithUs/Contracting/Resources.aspx>. The HQ USACE Directorate of Contracting, Policy Division will issue notices of UAI revisions to the USACE contracting enterprise and acquisition community.

UAI 5101.170 Peer reviews.

(b)(v) *Preaward peer reviews for competitive procurements valued at less than \$1 billion and noncompetitive procurements valued at less than \$500 million.*

(B) The HCA retains the authority under AFARS 5101.170(b)(v)(A) to chair a Solicitation Review Board (SRB) and a Contract Review Board (CRB) for competitive procurements valued at \$250 million or more but less than \$1 billion and for noncompetitive procurements valued at \$250 million or more but less than \$500 million.

(c) *USACE peer reviews.*

(1) *Objectives of USACE peer reviews.* The objectives of peer reviews are to—

(i) Ensure that USACE acquisition personnel enter into a sound business arrangement,

- (ii) Improve the quality of contracting processes throughout USACE, and
- (iii) Facilitate sharing of best practices and lessons learned throughout USACE.

(2) *Policy.* Peer reviews are independent reviews conducted outside the purview of the Center/District Project Delivery Team (PDT) of the particular action being reviewed. For actions valued at \$50 million and greater, the peer review should be a multi-functional team comprised of senior level experts, which at a minimum, include representatives from the acquisition center, small business office, office of counsel, requirements community and in the case of non-competitive actions, the competition advocate. While legal counsel participates in the peer review process, separate legal sufficiency reviews are required IAW AFARS 5101.602-2-90.

(i) The requirement for a peer review does not eliminate the requirement for a compliance review. A compliance review shall be conducted on every contract action, regardless of the dollar amount. If a peer review is required, the compliance review shall be conducted prior to the peer review. The compliance review comments and peer review comments shall be documented in two separate reports.

- (ii) For more information on USACE compliance reviews, see UAI 4.802.

(3) *Thresholds.*

(i) *CCO peer reviews.* Peer reviews facilitated by the Chief of the Contracting Office (CCO), or designee, apply to contract actions valued at \$150,000 or more but less than \$50 million. The CCO will randomly identify and perform a minimum of one (1) peer review annually for each procuring contracting officer (PCO) in their area of responsibility (AOR).

(ii) *PARC peer reviews.* The Principal Assistant Responsible for Contracting (PARC) will chair the peer reviews for all procurements valued at \$50 million or more but less than \$250 million.

- (iii) *HCA peer reviews.*

(A) The HCA will chair pre-award peer reviews for competitive procurements valued at \$250 million or more but less than \$1 billion.

(B) The HCA will chair pre-award peer reviews for noncompetitive procurements valued at \$250 million or more but less than \$500 million.

(iv) The HCA will establish the peer review participants, the PARC analyst will confirm the peer review participants with the Center/District Business Oversight Branch (BOB), and the Center/District BOB will coordinate the PDT members requested as attendees at the peer review meeting. The attendees will include, at a minimum, the PCO, Technical Evaluation Team Lead, Price Evaluation Team Lead/Price or Cost

Evaluator (as applicable), and Source Selection Evaluation Board (SSEB) Chair. The Source Selection Authority (SSA) will be invited to attend the peer review meeting but is not required. If the SSA does not attend the peer review meeting, the peer review team will provide a debriefing to the SSA upon request. For more information on peer reviews, see DFARS 201.170 and AFARS 5101.170.

(4) *HCA peer review process.*

(i) *Notice of upcoming HCA peer reviews.* Requests for HCA peer review shall be submitted by the Center/District BOB Chief to the HQ USACE Directorate of Contracting, Acquisition Support Division (ASD) analyst for the respective PARC. The ASD analyst will coordinate the peer review date and time with the Center/District BOB Chief. A HCA peer review timeline is available at the USACE Desk Guide (UDG) 5101.170(1).

(ii) HCA peer reviews are conducted IAW the HQ USACE Contracting Acquisition Review and Approval Process flowchart available at UDG 5101.170(2).

(5) *Peer review reporting requirements.* The Office of the Deputy Assistant Secretary of the Army (Procurement) (DASA(P)) requires quarterly reporting of peer reviews. To ensure timely submission of the peer review report, the Peer Review Chair shall ensure all peer reviews, regardless of the dollar value or approval authority, are reported at the Central Peer Review Site. ASD will maintain the site.

(6) *Notification of peer review cancellation.* In the event that it becomes necessary to cancel a peer review valued at \$50 million or greater, the Center/District BOB will document the justification in a memorandum to the PARC or the HCA, depending on level of approval. The memorandum shall be submitted as soon as the cancellation becomes known.

(7) *Waivers.* Peer reviews for procurements valued at \$50 million or more but less than \$1 billion may be waived by the Peer Review Chair. Each peer review waived shall have a written waiver signed by the Peer Review Chair. The waiver shall be part of the contract file.

(8) *Peer review required documents and elements, suggested questions, tenets and toolkits.* See UDG 5101.170(3) for more information on peer review required documents, elements, questions, tenets, and toolkits.

Subpart 5101.2 – Administration

UAI 5101.201-100 Maintenance of the UAI.

(a) The UAI will be maintained by the Policy Division. Recommendations for changes to the UAI are encouraged and should be submitted to the Policy Division via email (HQ-CECT-PolicyMailbox@usace.army.mil) with the subject "UAI Revision".

(b) The UAI will be posted on the Policy Division SharePoint site, divided into the regulatory parts. Real-time updates to the UAI will reflect the date of the revision.

UAI 5101.290 Routing documents and mailing addresses.

(a)(1) The HCA retains the authority under AFARS 5101.290(a)(1) to concur on all procurement document packages submitted for Headquarters, Department of the Army (HQDA) review, coordination, and/or approval.

Subpart 5101.3 – Agency Acquisition Regulations

UAI 5101.303 Publication and codification.

(a)(ii) To the extent possible, the UAI text is numbered IAW the FAR, DFARS, and AFARS. Numbered divisions of the UAI with a suffix in the "100" series (e.g., 1.601-100) contain subject matter related to but not contained in a FAR, DFARS, or AFARS numbered division. Omission from the UAI of a numbered division that appears in FAR, DFARS or AFARS denotes that there is no additional guidance provided in the UAI.

UAI 5101.304 Agency control and compliance procedures.

The HCA retains the authority under DFARS 201.304 to develop, coordinate, issue, and maintain the UAI, UDG, and Acquisition Policy Memorandums (PMs).

Subpart 5101.4 – Deviations from the FAR

UAI 5101.402 Policy.

Individual deviations may be approved by the PARC for a one-time use on one contract. See AFARS 5101.4 for details on the Army deviation process. For deviations requiring higher headquarters approval, or publication in the *Federal Register*, the PCO shall submit the request to the PARC, with a copy furnished to the Policy Division email address (HQ-CECT-PolicyMailbox@usace.army.mil), for review, coordination, and staffing.

Subpart 5101.6 – Career Development, Contracting Authority and Responsibilities

UAI 5101.602 Contracting officers.

UAI 5101.602-2 Responsibilities.

UAI 5101.602-2-90 Legal coordination.

(b) Each contract action with a total estimated absolute value of \$500,000 or greater shall be reviewed by Office of Counsel for legal sufficiency prior to issuance. This legal sufficiency review process shall be documented in the contract file. The contracting

officer may request legal sufficiency review for actions at any dollar value and may request advice from Office of Counsel; however, the contracting officer retains sole authority to determine matters that relate to the exercise of business judgment.

(c) Regardless of dollar value, Office of Counsel shall provide written support of legal sufficiency for the following:

- (1) Acceptance of late bids,
- (2) Alternate payment protections,
- (3) Assignment of claims,
- (4) Bid mistakes,
- (5) Bid/proposal irregularities,
- (6) Buy America Act/Balance of Payment Program issues,
- (7) Competitive range determinations,
- (8) Decision(s) that may lead to a claim (responses to requests for equitable adjustments (REAs), etc.),
- (9) Individual surety bond request,
- (10) Justifications and Approvals (J&As) (includes J&As for FAR subpart 16.5 – Exceptions to Fair Opportunity),
- (11) Non-responsiveness determination,
- (12) Novation agreements,
- (13) Ratification and Non-Ratifiable contract implied-in-fact quantum merit actions,
- (14) Contracting officer response to requests for Letters of Recommendation for contractors,
- (15) Rejection of all bids,
- (16) Reassignment of claims,
- (17) Substitution of sureties,
- (18) Tax/duty issues,

(19) Terminations,

(20) Unacknowledged amendments, and

(21) Determination to incorporate any FAR clause following award, including the FAR clause 52.217-8, Option to Extend Services, if the clause was not incorporated at the time the solicitation was issued.

(d) Differences between the contracting officer and Office of Counsel as to legal sufficiency that cannot be satisfactorily resolved within the Center/District shall be referred to the PARC, in consultation with PARC Office of Counsel, for resolution.

UAI 5101.602-2-92 Ordering officer appointments.

(b) *Appointment and termination authority.* The PCO is the appointing authority; however, the CCO must first approve the ordering officer's qualifications. It is essential that the qualification decisions appropriately consider the technical knowledge, training, and experience commensurate with what is being acquired via the contract, as well as the business acumen and judgment of the individual. Ordering officers should have at a minimum the training of a Type A contracting officer's representative (COR). See UDG Attachment 2 for the COR Certification and Training Requirements.

(6) Ordering officer appointments should be used by exception in the execution of the contracting mission. The CCO and PCO must exercise sound business judgment in determining the need for such appointments. Conditions that may lend themselves to appointing ordering officers are:

(i) The scope of work to be executed is for specific, non-complex, repetitive requirements (e.g., mowing and janitorial services, sand/gravel supply orders, painting, roofing, etc.); and

(ii) The ordering officer is issuing orders for quantities placed against bid schedules with pre-priced line items.

(d) *Procedures.* All ordering officer appointments shall comply with AFARS 5101.602-2-92. The exception is for job order contract (JOC) ordering officer appointments, which shall be made in compliance with AFARS 5117.9006.

(e) *Annual ordering officer file review.* PCOs shall ensure a review of all ordering officers' files are conducted at least annually. If the period of performance is less than 12 months, the review should be conducted at least once during the performance period. A copy will be provided to the individual and their supervisor. The reviews must be documented on Annual ACO/Ordering Officer File Inspection Checklist and shall be filed in the Paperless Contract File (PCF).

UAI 5101.602-3 Ratification of unauthorized commitments.

(b) *Policy.*

(3)(A)(1) The HCA retains the authority under AFARS 5101.602-3(b)(3)(A) to ratify unauthorized commitments above \$100,000. This authority may not be further delegated.

(3)(B) The PARC is delegated the authority under AFARS 5101.602-3(b)(3)(B) to ratify unauthorized commitments of \$10,000 or more but less than \$100,000. This authority may not be further delegated.

(3)(C) The CCO is delegated the authority under AFARS 5101.602-3(b)(3)(C) to ratify unauthorized commitments \$10,000 or less. If the CCO is the individual making the unauthorized commitment \$10,000 or less, that individual may not ratify their own unauthorized commitment. In this instance, the PARC is delegated the authority under AFARS 5101.602-3(b)(3)(C) to ratify the unauthorized commitment.

UAI 5101.603 Selection, appointment, and termination of appointment for contracting officers.

UAI 5101.603-1 General.

(3)(i) The PARC is delegated the authority under AFARS 5101.603-1(3) to select, appoint, and terminate contracting officers. This authority may not be further delegated.

(1) The PARC is delegated the authority under Section 2358 of Title 10 U.S. Code, delegated to the HCA via the Assistant Secretary of the Army (Acquisition, Logistics, and Technology) (ASA(ALT)) Delegation of Authority Memorandum, to select and appoint contracting officers to engage in basic, applied, and advanced research and development projects that either relate to weapon systems and other military needs or are of potential interest to the Department of Defense (DoD) by contract, cooperative agreement, or grant. This delegation was effective 17 September 2014 and expires 18 August 2017, unless earlier rescinded. Actions under this delegation shall comply with the limitations specified in the ASA(ALT) delegation. This delegation does not apply to transactions for prototype projects awarded under the authority of Section 845 of the National Defense Authorization Act (NDAA) for Fiscal Year 1994, Public Law 103-160, as amended (codified at Title 10 U.S.C. Section 2371, note). This authority may not be delegated.

(2) The PARC is delegated the authority under Section 2371 of Title 10 U.S. Code, delegated to the HCA via the ASA(ALT) Delegation of Authority Memorandum, to select and appoint contracting officers to enter into transactions (other than contracts, cooperative agreements, and grants) in carrying out basic, applied, and advanced research projects. This delegation was effective 17 September 2014 and

expires 18 August 2017, unless earlier rescinded. Actions under this delegation shall comply with the limitations specified in the ASA(ALT) delegation. This delegation does not apply to transactions for prototype projects awarded under the authority of Section 845 of the NDAA for Fiscal Year 1994, Public Law 103-160, as amended (codified at Title 10 U.S.C. Section 2371, note). This authority may not be delegated.

(3) The PARC is delegated the authority under Section 2684a of Title 10 U.S. Code, delegated to the HCA via the ASA(ALT) Delegation of Authority Memorandum, to select and appoint contracting officers to enter into an agreement with an eligible entity to address the use or development of real property, in the vicinity of, or ecologically related to, a military installation or military airspace. The delegation was effective 24 September 2014 and expires 18 August 2017, unless earlier rescinded. Actions under this delegation shall comply with the limitations specified in the ASA(ALT) delegation. This authority may not be delegated.

(4) The PARC is delegated the authority under Section 2701d of Title 10 U.S. Code, delegated to the HCA via the ASA(ALT) Delegation of Authority Memorandum, to select and appoint contracting officers to enter into agreements to obtain the services of other entities to assist in carrying out responsibilities that arise under the Defense Environmental Restoration Program (DERP). The delegation was effective 22 December 2014 and expires 9 December 2017, unless earlier rescinded. Actions under this delegation shall comply with the limitations specified in the ASA(ALT) delegation. This authority may not be delegated.

(5) The PARC is delegated the authority under Section 670c-1 of Title 16 U.S. Code, delegated to the HCA via the ASA(ALT) Delegation of Authority Memorandum, to select and appoint grants officers to enter into cooperative agreements with States, local governments, Indian tribes, nongovernmental organizations, and individuals and into interagency agreements with the heads of other Federal departments and agencies when the use of a contract, grant, or other agreement is not feasible or appropriate. The delegation was effective 24 September 2014 and expires 18 August 2017, unless earlier rescinded. Actions under this delegation shall comply with the limitations specified in the ASA(ALT) delegation. This authority may not be delegated.

UAI 5101.603-3-100 Appointment.

(a) *ACO appointment.* An Administrative Contracting Officer (ACO) shall be warranted by the PARC with specified warrant authority. The warrant dollar threshold shall be \$500,000.

(1) An ACO shall be appointed by the PCO for contracts that are within the ACO warranted authorities. The ACO is authorized to obligate the Government only to the limits delegated in the individual contract appointment letter. The PCO shall ensure contract specific ACO delegations do not conflict with or exceed the amount/type of authority specified in the ACO warrant.

(2) The ACO may modify construction contracts within the scope of the contract under any of the following contract clauses, provided that no individual contract modification exceeds the ACO warrant threshold:

- (i) FAR 52.211-18, Variation in Estimated Quantity,
- (ii) FAR 52.236-2, Differing Site Conditions,
- (iii) FAR 52.242-14, Suspension of Work,
- (iv) FAR 52.243-4, Changes,
- (v) FAR 52.248-3, Value Engineering – Construction,
- (vi) Modify construction contract performance periods under FAR clause 52.249-10, Default (Fixed-Price Construction), when a delay is due to unforeseeable causes beyond the control and without the fault of the contractor, and
- (vii) Modify construction purchase orders under FAR clause 52.243-5, Changes and Changed Conditions, provided that the modification does not cause the total value of the purchase order to exceed the simplified acquisition threshold (SAT).

(b) *Request for proposal letters.* The ACO may sign request for proposal (RFP) letters for construction modifications within their warranted authority. For construction actions above the warrant threshold of the ACO, the PCO is the sole authority to sign RFP letters.

(c) *ACO performance objectives.* ACOs shall include a standard performance objective in their Total Army Performance Evaluation System (TAPES) that addresses contract quality and compliance. The PCO shall provide input on the ACO's performance annually to the ACO's supervisor.

(d) *Annual ACO file review.* PCOs shall ensure a review of all ACOs' files are conducted at least annually. If the period of performance is less than 12 months, the review should be conducted at least once during the performance period. A copy will be provided to the individual and their supervisor. The reviews must be documented on Annual ACO/COR/Ordering Officer File Inspection Checklist and shall be filed in the PCF.

UAI 5101.604-100 Contracting Officer's Representative (COR).

(a) *General.* Each Center/District shall have a sufficient number of trained CORs available to ensure that contractors comply with all contract requirements. The COR responsibilities should be tailored to be consistent with the magnitude, complexity and type of contract. See UDG 5101.604 for specific guidance on COR certification and training.

(b) *Request for proposal letters.* CORs are not authorized to sign RFP letters under any circumstance.

(c) *COR performance objectives.* CORs shall include a standard performance objective in their TAPES that addresses contract quality and compliance. The PCO shall provide input on the COR's performance annually to the COR's supervisor.

(d) *Annual COR file review.* PCOs shall ensure a review of CORs' files are conducted at least annually. If the period of performance is less than 12 months, the review should be conducted at least once during the performance period. A copy will be provided to the individual and their supervisor. The reviews must be documented using the Contracting Officer's Representative Tracking (CORT) Tool COR Annual Review checklist.

(e) *COR monthly reports.* CORs are required to submit a Monthly Status Report in CORT Tool by the 15th of each month. This report covers the actions for the preceding one-month period.

UAI 5101.690-100 Procurement management assistance. The HQ USACE Directorate of Contracting, Strategic Operations Division is the proponent for the USACE Procurement Management Review (PMR) Program. Refer to AFARS Appendix CC for Army checklists for support in PMRs.

UAI 5101.691-100 Management controls. Refer to AFARS Appendix BB for the Army Checklists for support in Center/District management reviews.

UAI 5101.692 HCA.

(b) The HCA retains the authority under AFARS 5101.692(b) to appoint PARC(s). This authority may not be delegated.

(2) The HCA retains the authority under AFARS 5101.692(b)(2) to establish appropriate business clearance procedures to ensure compliance with AFARS 5115.406-1(1). This authority may not be delegated.

Subpart 5101.90 – Non-Appropriated Funds

UAI 5101.9002 Contracting authority. Personnel with appropriated fund procurement authority are not required to have a separate certificate of appointment for non-appropriated funds (NAF).

UAI – PART 5102

DEFINITIONS OF WORDS AND TERMS

Subpart 5102.1 – Definitions

UAI 5102.101 Definitions.

“Absolute value” means the total value of a contract action, regardless of the increases and/or decreases of the dollar amounts. For example, a contract action that deobligates \$150,000 from one Contract Line Item Number (CLIN) and obligates \$400,000 onto another CLIN has an absolute value of \$550,000 (\$150,000 + \$400,000).

“Administrative Contracting Officer (ACO)”, in U.S. Army Corps of Engineers (USACE), typically means an individual occupying a mixed series 0800/1102 engineer/contracting officer position in an area engineer office who has been warranted by the Principal Assistant Responsible for Contracting (PARC) to administer construction contracts, task orders, and/or modifications. Prior to executing ACO authority on a specific contract, the ACO must have been appointed by the Procuring Contracting Officer (PCO) for post award contract administration.

“Center Contracting Chief (CCC)” means the chief of the contracting office, co-located with the Center. The CCC provides expert contracting advice to the senior leadership within the Center and is responsible for the successful execution of the contracting mission and the overall quality of contracting support to the Center.

"Chief of the Contracting Office (CCO)" means the Center Contracting Chief (CCC) or the District Contracting Chief (DCC).

“Compliance Review” means the initial step in the review process to ensure mandatory regulatory and statutory requirements are met from a procurement standpoint.

“Contracting Officer (KO)” is a general term used to refer to both Procuring Contracting Officers (PCOs) and Administering Contracting Officers (ACOs). When the contracting authority or responsibility resides with one or the other, the term PCO or ACO is specifically stated.

“Director of Contracting (DOC)” means the Director, USACE HQ Directorate of Contracting with responsibility for the oversight and management of all contract activities initiated and administered in support of the USACE mission.

“District Contracting Chief (DCC)” means the chief of the contracting office, co-located with the District. The DCC provides expert contracting advice to the senior leadership within the District and is responsible for the successful execution of the contracting mission and the overall quality of contracting support to the District.

“Head of the Contracting Activity (HCA)” means the Director, USACE HQ Directorate of Contracting, as designated by the Army Senior Procurement Executive.

“Instant value” means the net value of a contract action, taking into account the increases and/or decreases of the dollar amounts. For example, a contract action that deobligates \$150,000 from one CLIN and obligates \$400,000 onto another CLIN has an instant value of \$250,000 ($-\$150,000 + \$400,000$).

“Legally sufficient” means a determination of legality based on statute, regulation, and policy.

“Peer Review” means the final step in the review process, which includes the following phases for competitive acquisitions: issuance of the solicitation, request for final proposal revisions (if applicable), and contract award phase; the phases for noncompetitive acquisitions: negotiation and contract award. This review is intended to be advisory in nature and designed to assess whether sound business decisions are being made on a contract action.

“Policy Memorandum” means a HQ DOC memorandum written to reinforce compliance with existing policies and procedures in response to weaknesses or deficiencies identified by internal or external audits, investigations, or procurement management reviews. These memorandums are enduring until specifically rescinded or cancelled.

“Principal Assistant Responsible for Contracting (PARC)” means individuals appointed in accordance with AFARS 5101.692(b) and Department of Defense Instruction (DODI) 5000.66 and serving as the senior contracting official within a contracting activity for a major region. PARCs are responsible for oversight and execution of the contracting functions within their assigned mission area. There are three PARCs within USACE – PARC Atlanta, PARC Dallas, and PARC Winchester.

“Regional Contracting Chief (RCC)” means the principal contracting advisor to Division Commanders, as well as the principal advisor providing directed acquisition on-the-job training for the Districts within their Division area of responsibility (AOR).

“USACE Desk Guide (UDG)” means the central repository for USACE procurement procedures, guides, and templates, which promote standardization and efficiency. No documentation is required to deviate from any process or procedure in the UDG; however, contracting officers should exercise good business judgment to ensure the intended outcome is achieved.

UAI – PART 5103

IMPROPER BUSINESS PRACTICES AND PERSONAL CONFLICTS OF INTEREST

Subpart 5103.1 – Safeguards

UAI 5103.103 Independent pricing.

UAI 5103.103-2 Evaluating the certification.

(b) *Rejection of offers suspected of being collusive.*

(2) If the chief of the contracting office (CCO) is the contracting officer, the Principal Assistant Responsible for Contracting (PARC) makes the determination under Federal Acquisition Regulation (FAR) 3.103-2(b)(2).

UAI 5103.104 Procurement integrity. The U.S. Army Corps of Engineers (USACE) Chief Counsel is the Deputy Designated Agency Ethics Official (DDAEO) for USACE.

UAI 5103.104-2 General.

(c) All USACE employees shall be familiar with the Standards of Ethical Conduct (5 CFR 2365) and the Joint Ethics Regulation (DoD 5500.7-R).

(d) All USACE acquisition employees shall complete the Defense Acquisition University (DAU) Course, CLM 003, Overview of Acquisition Ethics. USACE acquisition employees includes, but is not limited to:

(1) Civilian and military professionals in the Office of the Assistant Secretary of the Army for Acquisition, Logistics and Technology (ASA(ALT)) Workforce and all Army Acquisition Corps members,

(2) All USACE warranted procuring contracting officers (PCOs), administrative contracting officers (ACOs), contracting officer's representatives (CORs), and contracting officer's technical representatives (COTRs),

(3) All Government Purchase Card holders and Billing Officials,

(4) All ordering officers, and

(5) Any significant acquisition-related position identified by a supervisor, manager, or commander.

UAI 5103.104-4 Disclosure, protection, and marking of contractor bid or proposal information and source selection information.

(a)(i) Personnel, on a need-to-know basis, who are performing Headquarters, USACE-level oversight functions.

UAI 5103.104-5 Disqualification.

(c) *Resumption of participation in a procurement.*

(2) The PARC is delegated the authority under FAR 3.104-5(c)(2) to authorize the disqualified official to resume participation in the procurement, or may determine that an additional disqualification period is necessary to protect the integrity of the procurement process.

UAI 5103.104-7 Violations or possible violations.

(g) The Head of the Contracting Activity (HCA), as a member of the Senior Executive Service, retains the authority under FAR 3.104-7(b-f) to obtain information of a violation or possible violation. This authority may not be further delegated.

UAI 5103.170 Business practices.

(d)(2) The HCA retains the authority under Defense Federal Acquisition Regulation Supplement (DFARS) 203.170(d)(2) to document source selection processes. This authority may not be further delegated.

Subpart 5103.2 – Contractor Gratuities to Government Personnel

UAI 5103.203 Reporting suspected violations of the Gratuities clause.

(a)(ii)(C) For USACE, reports for suspected violations shall be sent directly to the HCA and the Army Suspension and Debarment Official (SDO) by the Commander. Refer to the USACE Desk Guide (UDG) 5103.203 for processes.

Subpart 5103.7 – Voiding and Rescinding Contracts

UAI 5103.704 Policy.

(c) The HCA retains the authority under FAR 3.704(c) to consider declaring void and rescinding contracts, as appropriate, and recovering the amounts expended under the contracts and recommending the initiation of suspension or debarment proceedings.

UAI – PART 5104

ADMINISTRATIVE MATTERS

Subpart 5104.4 – Safeguarding Classified Information within Industry

UAI 5104.403 Responsibilities of contracting officers.

(b)(3) When requests for proposals (RFPs) and amendments are issued to contractors with sensitive information included, the following special language shall be added in the RFP as Information to Offerors or Terms and Conditions:

“This RFP contains sensitive information. Prime contractors shall not distribute pertinent information, i.e., plans and specifications, to any individuals or subcontractor(s) over an electronic system without security measures in place.”

(d) See U.S. Army Corps of Engineers (USACE) Desk Guide (UDG) 5104.403 for guidance related to references and training available for actions that would use the DD Form 254, Department of Defense Contract Security Classification Specification.

Subpart 5104.6 – Contract Reporting

UAI 5104.604 Responsibilities.

(a) The Head of the Contracting Activity (HCA) retains the authority under Federal Acquisition Regulation (FAR) 4.604(a) to coordinate with the Senior Procurement Executive to develop and monitor a process to ensure timely and accurate reporting of contractual actions to the Federal Procurement Data System (FPDS). This authority may not be further delegated.

Subpart 5104.8 – Government Contract Files

UAI 5104.802 Contract files.

(g) Compliance reviews shall be conducted by the contracting officer for every contract action, regardless of contract amount.

(h) USACE will utilize the Virtual Contracting Enterprise Paperless Contracting File (PCF) System as the official repository for all contract actions, as defined in FAR 4.601, unless documents with original signatures are to be kept in accordance with FAR 4.805(a). Transactions that are not defined as contract actions (e.g., grants, cooperative agreements, and other non-FAR based transactions) should be uploaded to PCF.

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(i) Signed documents (digitally signed, signed and scanned or electronic rendering) shall be filed in the PCF cabinet file folder pursuant to FAR 4.803. Signed documents shall be verified as accurate, complete, and legible and shall be uploaded as final versions in PCF. The documents shall not be altered in any manner.

(j) The procuring contracting officer (PCO) is responsible for maintenance of the official contract file, both pre-award and post-award. Contract specialists, PCOs, administrative contracting officers (ACOs), the Business Oversight Branch (BOB), and chiefs of the contracting office (CCOs) are responsible for ensuring that the contract files are accurate, documents are legible, and all documents are accurately labeled and filed under the appropriate folders in PCF.

(k) USACE Construction field offices will be provided access to PCF. USACE ACOs may use RMS to upload post-award construction contract administration documentation that is generated in RMS into PCF.

UAI 5104.802-100 Contract files and contract action reviews. Reviews for all contract actions (e.g. determinations, justifications, solicitations, awards) should take place within the PCF system. All reviewers (e.g. project managers, Office of Counsel, Small Business specialists) should be granted access for the specific contract action.

UAI 5104.804 Closeout of contract files.

(2) The Principal Assistant Responsible for Contracting (PARC) is delegated the authority under Defense Federal Acquisition Regulation Supplement (DFARS) 204.804(2) to assign the highest priority to close out of contracts awarded for performance in a contingency area.

UAI – PART 5105

PUBLICIZING CONTRACT ACTIONS

Subpart 5105.4 – Release of Information

UAI 5105.403 Requests from Members of Congress. Refer to the U.S. Army Corps of Engineers (USACE) Desk Guide (UDG) 5105.403 for procedures on processing congressional inquiries.

UAI 5105.404 Release of long-range acquisition estimates.

UAI 5105.404-1 Release procedures.

(a) The chief of the contracting office (CCO) is delegated the authority under Army Federal Acquisition Regulation Supplement (AFARS) 5105.404-1(a) to release long-range acquisition estimates.

Subpart 5105.5 – Paid Advertisements

UAI 5105.502 Authority.

(a) The CCO is delegated the authority under Defense Federal Acquisition Regulation Supplement (DFARS) 205.502(a) to approve the publication of paid advertisements in newspapers.

UAI – PART 5106

COMPETITION REQUIREMENTS

Subpart 5106.3 – Other than Full and Open Competition

UAI 5106.302 Circumstances permitting other than full and open competition.

UAI 5106.302-1 Only one responsible source and no other supplies or services will satisfy agency requirements.

(a)(2)(i)(1) The chief of the contracting office (CCO) is delegated the authority under Defense Federal Acquisition Regulation Supplement (DFARS) 206.302-1(a)(2)(i)(1) to make the determination that only one source is fully qualified to perform the proposed work for studies, analyses, or consulting services on the basis of an unsolicited proposal.

(d) *Limitations.* The Head of the Contracting Activity (HCA), as a member of the Senior Executive Service, retains the authority under DFARS Procedures, Guidance, and Information (PGI) 206.302-1(d) to waive the requirement to post a request for information or a sources sought notice. This authority may not be further delegated.

UAI 5106.302-2 Unusual and compelling urgency.

(c) *Limitations.* See U.S. Army Corps of Engineers (USACE) Desk Guide (UDG) 5106.302-2(1) for procedures on obtaining verbal approvals and reporting after-the-fact actions.

UAI 5106.302-4 International agreement.

(c) *Limitations.* The CCO is delegated the authority under DFARS 206.302-4(c) to prepare a document that describes the terms of an agreement or treaty or the written directions, such as a Letter of Offer and Acceptance, that have the effect of requiring the use of other than competitive procedures for the acquisition.

(1) *Procuring contracting officer (PCO) action.* This document shall be prepared as a Determinations and Findings (D&F) and shall be titled, "International Agreement Competitive Restrictions (IACR)." The PCO shall maintain the approved document in the official contract file. A copy of the agreement, treaty, or written directions, such as the Letter of Offer and Acceptance that have the effect of requiring the use of other than competitive procedures for the acquisition, shall be maintained in the contract file with this approved document.

(2) *Additional document may be required.* When a foreign military sales (FMS) customer requests that a defense article or defense service be obtained from a

particular contractor, the PCO shall ensure that the request is processed in accordance with the requirements of DoD 5105.38-M, Security Assistance Management Manual (SAMM). In addition to all SAMM requirements, the PCO shall ensure inclusion of an offshore procurement determination (22 U.S.C. 2791(c)), if required.

UAI 5106.303 Justifications.

UAI 5106.303-2 Content.

UAI 5106.303-2-90 Format and submission of the justification review and justification and approval documents.

(b) *Transmittal memorandum.* The HCA retains the authority under Army Federal Acquisition Regulation Supplement (AFARS) 5106.303-2-90(b) to sign the transmittal memorandum to the senior procurement executive for justification of other than full and open competition for a proposed contract over \$93 million.

UAI 5106.304 Approval of the Justification.

(a)(1) Contracting officers shall provide an email notification to the Special Advocate for Competition (SAFC) (HQCECT-AcquisitionSupport@usace.army.mil) of all justifications approved under Federal Acquisition Regulation (FAR) 6.304(a)(1). The SAFC will use the official contract file in the Paperless Contracting File (PCF) System when auditing approved justifications trends. See USACE Directorate of Contracting, Acquisition Support Division SharePoint site for process.

(2) The Deputy Director of Contracting (DDOC), serving as the USACE SAFC under UAI 5106.501(1), is the signatory authority for contract actions within the threshold identified in FAR 6.304(a)(2).

(i) The District Contracting Chief (DCC) and Deputy DCC of Baltimore District, serving as USACE Alternate SAFC – National Security Programs under UAI 5106.501(1), are also signatory authorities for contract actions identified in FAR 6.304(a)(2) for the National Security Program.

(ii) The HCA, as an official described under UAI 5106.304(a)(3), may also sign actions within the threshold identified in FAR 6.304(a)(2).

(3) The HCA, as a civilian serving in a position in a grade above GS-15 under the General Schedule, retains the authority under FAR 6.304(a)(3)(ii) to approve the justification for other than full and open competition for a proposed contract of \$13.5 million or more but less than \$93 million. This authority may not be further delegated.

UAI 5106.304-100 Approval of the Justification.

(a) See UDG Attachment 1 for the USACE Document Review and Approval Matrix. Approval authority for justifications based on dollar value are illustrated on the table below. The table also depicts *typical* roles and responsibilities associated with the preparation, coordination, and review of justifications.

<u>J&A Threshold</u>	<u>Prepared By</u>	<u>Coordinated By</u>	<u>Approved By</u>
< \$700K	Contract Specialist/PCO Technical Official Requirements Official	Small Business Specialist Legal Local Competition Advocate	PCO
> \$700K < \$13.5M	PCO Technical Official Requirements Official	Small Business Specialist Legal Local Competition Advocate	SAFC
> \$13.5M < \$93M	PCO Technical Official Requirements Official	Small Business Specialist Legal Local Competition Advocate PARC SAFC	DOC
> \$93M	PCO Technical Official Requirements Official	Small Business Specialist Legal Local Competition Advocate PARC SAFC DOC	SPE

Subpart 5106.5 – Advocates for Competition

UAI 5106.501 Requirement.

(1) The HCA retains the authority under AFARS 5106.501(1) to appoint a SAFC and any alternates.

(i) The DDOC is appointed as the USACE SAFC.

(ii) The HCA is appointed as USACE Alternate SAFC.

(iii) The DCC and Deputy DCC of Baltimore District are appointed as USACE Alternate SAFC for the National Security Programs.

(iv) The Deputy Center Directors/Deputy District Commanders are appointed as Local Advocates for Competition (LAFC) to perform the functions under AFARS 5106.502.

UAI – PART 5107

ACQUISITION PLANNING

Subpart 5107.1 – Acquisition Plans

UAI 5107.102 Policy.

(a) In general, there are two levels of acquisition planning:

(i) The annual Overall Acquisition Strategy (OAS) for the Center/District contracting activity's total anticipated workload; and

(ii) A formal or informal acquisition plan, as appropriate, for an individual acquisition.

(b) OAS.

(i) Prior to the beginning of each Fiscal Year (FY), the Program and Project Management Division (PPMD), with the assistance of Contracting and the Small Business Program Office, at each Center/District, may develop a written OAS covering all anticipated contracts over \$1 million. The OAS may be based on historical trends and shall include all known work, as well as reasonably expected work. The OAS should be updated in the middle of the FY and when major new projects are identified. Short notice acquisitions will be added to the OAS at the next regular update and will not delay processing the acquisition.

(ii) The OAS shall address and document all major technical and business issues. The anticipated workload will be compared to the remaining capacities or ongoing contracts to determine the need to award new contracts. Any new contracts needed shall be scheduled and their terms established based on a case-by-case basis considering factors such as the following:

- (1) Type of work,
- (2) Anticipated work load,
- (3) Impact on competition,
- (4) Most effective contract type (including, for example, fixed-price, cost-reimbursement, incentive, and indefinite delivery contracts (IDCs)),
- (5) Overall mix or contract sizes, and

(6) Impact on small business and other business participation and socio-economic concerns.

(c) The OAS shall assure a mix of contracts, including IDCs of various types and sizes to provide meaningful opportunities for small businesses to participate in the work. The OAS shall incorporate the Small Business Forecast required annually by the Department of Defense (DoD) and Army Directors, Office of Small Business Programs.

UAI 5107.102-100 Policy for USACE Acceptance of Work. Project managers (PMs) shall ensure all projects are accepted in compliance with Engineering Regulation (ER) 5-1-9, Assignment and Transfer of Project Responsibilities; ER 5-1-10, Corps-wide Area of Work Responsibility; and ER 5-1-11, U.S. Army Corps of Engineers Business Process. The PM must ensure the work being performed has been properly allocated by HQUSACE or, if applicable, appropriately brokered amongst the relevant commands. An action that involves the unauthorized solicitation of work, known as poaching, is prohibited.

UAI 5107.103 Agency-head responsibilities.

(d)(i) In addition to the requirements outlined in Defense Federal Acquisition Regulation Supplement (DFARS) 207.103(d)(i), a formal acquisition plan is required for:

(D) Any Early Contractor Involvement (ECI) contract, regardless of dollar value; and

(E) Any acquisition determined by the Head of Contracting Activity (HCA) to be of such significance so as to impact a major U.S. Army Corps of Engineers (USACE) initiative, various Small Business Programs, raise serious or unique environmental matters, implement a deviation from the Federal Acquisition Regulation (FAR), concerns significant Congressional or political interest beyond normal constituent service, and/or as otherwise requested by the HCA.

(ii) An informal acquisition plan is required for requirements below the thresholds in DFARS 207.103.

(A) For requirements extending beyond a Division's geographic boundaries to align with supported customers' specific needs in accordance with a signed Memorandum of Agreement (MOA), Memorandum of Understanding (MOU), or designation as the Center of Expertise, a copy of the MOA/MOU/designation and a copy of the Project Management Plan (PMP) may serve as the informal acquisition plan for these actions.

(B) For all other requirements below the thresholds in DFARS 207.103, the acquisition strategy from the PMP will serve as the informal acquisition plan and shall be made part of the official contract file.

UAI 5107.103-90 Acquisition Plan approvals.

(a)(2) The Head of the Contracting Activity (HCA) retains the authority under Army Federal Acquisition Regulation Supplement (AFARS) 5107.103-90(a)(2) to approve acquisition plans for all non-PEO/direct-reporting program manager acquisitions.

UAI 5107.104 General procedures

(a)(i) The HCA retains the authority under AFARS 5107.104(a)(i) to establish procedures for forecasting all significant, as defined by a specified monetary threshold, or sensitive contracting requirements anticipated for the upcoming fiscal year. This authority may not be further delegated.

(iv) The Chief of the Contracting Office (CCO), in conjunction with the Center/District Chief of Resource Management Division, is delegated the authority under AFARS 5107.104(a)(iv) to establish due dates for submission of procurement requests requiring action by the end of the fiscal year to the contracting office.

UAI 5107.105 Contents of written acquisition plans.

(b)(20)(C)(8)(iv) The HCA retains the authority under DFARS Procedures, Guidance, and Information (PGI) 207.105(b)(20)(C)(8)(iv) to plan to ensure that contingency contracts will be closed in a timely manner considering personnel turnover and preaward, contract administration, and other contracting workload when contracts are awarded for performance in a contingency area.

UAI 5107.170 Consolidation of contract requirements.

UAI 5107.170-3 Policy and procedures.

(a)(3)(B) The Principal Assistant Responsible for Contracting (PARC) is delegated the authority under AFARS 5107.170-3(a)(3)(B) to make the determination that the consolidation is necessary and justified.

(C) Construction requirements are not categorically exempt from the definition of "consolidation of contract requirements" under 15 U.S.C. 657q(a)(2). When one or more of the following conditions exist, contracting officers shall prepare the documentation and obtain approval for consolidation as outlined in DFARS 207.170. Specifically, when a solicitation will be used to obtain offers for a single contract or multiple award contract that:

(i) Satisfies two or more projects identified by separate project authorizations (e.g., DD 1391s, FY ____ Military Construction Project Data or the non-Army equivalent or decision documents (for civil works projects)), or

(ii) Satisfy a single project authorization or decision document that includes multiple work sites, even if those work sites are on a single installation, where the project work sites are not physically contiguous.

Subpart 5107.4 – Equipment Lease or Purchase

UAI 5107.470 Statutory requirements.

(b) ***Limitation on contracts with terms of 18 months or more.*** The CCO is delegated the authority under DFARS 207.470(b) to consider all costs of such a contract and to make the determination that the contract is in the best interest of the Government.

Subpart 5107.5 – Inherently Governmental Functions

UAI 5107.503 Policy.

(e)(i)(A) The designated requirements official shall provide the contracting officer, concurrent with transmittal of the formal work requirements package/statement of work (or any modification thereof), one of the following:

(1) For Army Services Requirements Including Civil Works: A RSCA form shall be provided for service contracts. The RSCA form shall also be provided for Army-funded Operations and Maintenance construction contracts, unless the contract is for Civil Works construction; if the contract is for Civil Works construction, a RSCA form is not required. A RSCA form shall be completed when one or more of the following apply:

i. When Army or Civil Works funds are being used to buy contractor labor, regardless of which organization is awarding or administering the contract;

ii. When Army or Civil Works is the requiring activity, or is the executive agent for the mission/organization requiring the services; or

iii. When Army or Civil Works funds are being transferred to contracts outside of the Army.

(2) For Non-Army DoD and Non-DoD Services Requirements: A written determination shall be provided, stating that none of the functions to be performed are inherently governmental in accordance with FAR 7.503(e). The determination may be provided by the agency requesting the service of USACE or prepared by the USACE requiring organization and certified at the GS-15 level. See USACE Desk Guide (UDG) 5107.503 for example determination language.

(3) A new RSCA form is not required for any subsequent task order or modification if it is within the scope of the base contract or original contract. A

determination shall be prepared by the designated requirements official and provided to the contracting officer, confirming that the action is within the original RSCA form's certification. The determination and a copy of the original RSCA form shall be retained in the official file.

(4) Programmatic RSCA forms are acceptable. The RSCA form shall include a list of all projects anticipated for the program.

Subpart 5107.90 – Independent Government Cost Estimates

UAI 5107.9001 Definitions.

“Independent Government cost estimates (IGCE) preparer” is a competent individual employed by the Government (or under contract to the Government) who is responsible for preparation of the estimate.

“IGCE reviewer” is a competent individual employed by the Government, one management level above or organizationally independent of the “IGCE preparer”.

“IGCE approver” is a competent individual employed by the Government, not the procuring contracting officer (PCO) or administrative contracting officer (ACO) for the acquisition, who is responsible for judging the validity of the IGCE.

UAI 5107.9002 Policy.

(a) This part supplements USACE policy regarding IGCEs and provides standard operating guidance for contracting officers and all project team members regarding the development, review, use, and maintenance of IGCEs.

(i) This part is applicable to all USACE contracting officers and Center/District project team members at all levels of USACE. It also applies to all contract types and for all contracted requirements. The contracting officer shall require the preparation of an IGCE in every procurement action in excess of the simplified acquisition threshold (SAT) and for all unilateral contractual actions regardless of value. The contracting officer may require an IGCE for actions less than the SAT.

(ii) An IGCE is a detailed estimate of the cost to the Government for services and/or supplies to be acquired. The estimate must be the Government's own in-house estimate and must not be based upon information obtained from contractors/offerors from which proposals will be solicited. An IGCE is the Government's estimate of what a responsible contractor should propose based on the performance work statement or specifications.

(iii) All IGCEs shall be prepared and reviewed by competent and knowledgeable individuals, who are familiar with the scope of work and shall be prepared independently from an offeror's proposal (or independently of incumbent offeror's contracted rates for

a new acquisition). The preparation and review of the IGCE shall be independent functions to assure quality and validity of the document. The IGCE will be approved by an authorized approving official. See UDG Attachment 3, IGE Signatory Matrix, for signatory authorities.

(iv) The Project Management Plan shall identify the organization that is responsible for the preparation and review of the IGCE.

(v) Prior to acceptance of an IGCE, the contracting officer shall review all IGCEs to ensure each contains the following items:

(1) Sufficient narrative and analytical description to substantiate how rates/price/costs were developed. The narrative shall explain the basis for the estimate and address specific issues such as delivery schedule, assumptions, site conditions, and other facts impacting the IGCE and contain enough detail to verify the validity of the contractor's proposal.

(2) Clear identification of reference materials used to support preparation of the IGCE.

(3) Signed (by hand or common access card) statement certifying that the initial estimate was developed independently by the Government.

(4) Ensure all amendments to a solicitation were acknowledged in writing by Cost Estimating engineer or other IGCE preparer and any required revision to the IGCE includes a narrative supporting the revisions made to reflect the amended solicitation.

(5) Signature, title, position, organization, and telephone number of the preparer and date prepared for all IGCEs.

(6) Signed (hand or common access card) and dated by the preparer's immediate supervisor.

(7) Signed (hand or common access card) and dated by the reviewer, including the reviewer's title, position, organization, and telephone number.

(vi) If the IGCE is received without the above details, the contracting officer shall return the IGCE and request correction before any further action is taken on the acquisition.

(vii) All IGCEs are procurement sensitive documents and shall be marked as "For Official Use Only (FOUO)". For sealed bid procurements, the FOUO markings shall be removed upon opening of bids, in accordance with DFARS PGI 236.203(2)(ii).

(viii) For actions conducted under FAR part 35 and being considered under a Broad Agency Announcement (BAA), in accordance with FAR 35.016(e), cost realism and reasonableness shall be considered to the extent appropriate during selection of

acceptable proposals. In lieu of an IGCE, a detailed analysis of cost/price reasonableness utilizing the full range of tools and techniques (i.e. field pricing assistance) identified in FAR 15.404, Proposal Analysis, will be conducted. The complete cost/price analysis will be documented in a Pre-Negotiation Objective Memorandum (POM) and in the final Price Negotiation Memorandum (PNM). The POM and the PNM will be signed by the technical Point of Contact (POC), the technical reviewer, the technical approving authority, and the PCO.

Subpart 5107.91 – Integrating Antiterrorism and Operations Security

UAI 5107.9101 Policy. USACE policy regarding Integrating Antiterrorism and Operations Security (AT/OPSEC) is available in Operations Order (OPORD) 2013-74.

UAI – PART 5108

REQUIRED SOURCES OF SUPPLIES AND SERVICES

Subpart 5108.4 – Federal Supply Schedules

UAI 5108.404 Use of Federal Supply Schedules.

(h)(3)(ii)(C) The Principal Assistant Responsible for Contracting (PARC) is delegated the authority under Federal Acquisition Regulation (FAR) 8.404(h)(3)(ii)(C) to approve determinations and findings when the total performance period, including options, is more than three years.

UAI 5108.405-6 Limited Sources.

(d)(2) The U.S. Army Corps of Engineers (USACE) Deputy Director of Contracting (DDOC), serving as the USACE Special Advocate for Competition (SAFC) under UAI 5106.501(1), is delegated authority for contract actions within the threshold identified in FAR 8.405-6(d)(2).

(i) The Head of the Contracting Activity (HCA), as an official described under UAI 5108.405-6(d)(3), may also sign actions within the threshold identified in FAR 8.405-6(d)(2).

(ii) The District Contracting Chief (DCC) and Deputy DCC of Baltimore District, serving as USACE Alternate SAFC – National Security Programs under UAI 5106.501(1), are also delegated authority for contract actions identified in FAR 8.405-6.

(d)(3)(ii) The HCA, as a civilian serving in a position in a grade above GS-15 under the General Schedule, retains the authority under FAR 8.405-6(d)(3) to approve limited sources justifications of \$13.5 million or more but less than \$93 million. This authority may not be delegated.

Subpart 5108.11 – Leasing of Motor Vehicles

UAI 5108.1102 Presolicitation requirements.

(c) The HCA retains the authority under FAR 8.1102(c) to limit solicitations to current models on the basis of overall economy.

Subpart 5108.74 – Enterprise Software Agreements

UAI 5108.7403-100 Acquisition Procedures.

(a) The contracting officer shall comply with the Army requirement to use the Computer Hardware, Enterprise Solutions (CHESS). See Army Federal Acquisition Regulation Supplement (AFARS) 5108.7403, UAI part 39, and AFARS 5139.101 for further policy.

(b) All Enterprise software agreements should include a review by the USACE Chief Information Officer (CIO)/G-6.

UAI – PART 5109

CONTRACTOR QUALIFICATIONS

Subpart 5109.2 – Qualifications Requirements

UAI 5109.202 Policy.

(a)(1) The chief of the contracting office (CCO) is delegated the authority under Army Federal Acquisition Regulation Supplement (AFARS) 5109.202(a)(1) to approve written justifications establishing a contractor qualification requirement.

(b) The Principal Assistant Responsible for Contracting (PARC) is delegated the authority under Federal Acquisition Regulation (FAR) 9.202(b) to waive the requirements of FAR 9.202(a)(1)(ii) through (4) for up to two years with respect to the item subject to the qualification requirement.

(e) The PARC is delegated the authority under AFARS 5109.202(e) to approve that a procurement need not be delayed in order to comply with FAR 9.202(a). This authority may not be further delegated.

UAI 5109.206 Acquisitions subject to qualification requirements.

UAI 5109.206-1 General.

(b) The Head of the Contracting Activity (HCA) retains the authority under AFARS 5109.206-1(b) to determine that an emergency exists, whenever an agency elects, whether before or after award, not to enforce a qualification requirement which it established.

Subpart 5109.4 – Debarment, Suspension, and Ineligibility

UAI 5109.404 System for Award Management Exclusions.

(c)(7) The HCA retains the authority under AFARS 5109.404(c)(7) to establish required procedures within the U.S. Army Corps of Engineers (USACE) contracting activity. This authority may not be delegated.

UAI 5109.406 Debarment.

UAI 5109.406-3 Procedures.

(a)(i) The PARC is delegated the authority under AFARS 5109.406-3(a)(i) to submit all necessary information relating to Investigation and referral to the procurement fraud advisor.

(a)(ii) The PARC is delegated the authority under AFARS 5109.406 to determine whether to withhold all funds due the contractor on a specific contract when the Procurement Flash Report recommends suspension or debarment because of contractor fraud or criminal conduct involving a current contract.

Subpart 5109.5 – Organizational and Consultant Conflicts of Interests

UAI 5109.504 Organizational and Consultant Conflicts of Interest.

(c) The Deputy Director of Contracting (DDOC) is delegated the authority under FAR 9.504(c) to approve a course of action for resolving a significant potential conflict of interest before the contracting officer issues a solicitation.

UAI 5109.506 Procedures.

(d)(3) The HCA retains the authority under FAR 9.506(d)(3) to approve or provide other direction regarding the contracting officer's resolution of a conflict or potential conflict.

UAI – PART 5110

MARKET RESEARCH

UAI 5110.002 Procedures.

(e) Market research findings shall be documented in the pre-award section of the contract file.

(f) An illustration of a market research report format is shown at U.S. Army Corps of Engineers (USACE) Desk Guide (UDG) part 5110.

UAI – PART 5111

DESCRIBING AGENCY NEEDS

Subpart 5111.2 – Using and Maintaining Requirements Documents

UAI 5111.274 Item identification and valuation requirements.

UAI 5111.274-2 Policy for item unique identification.

(b)(2)(i)(B) The Principal Assistant Responsible for Contracting (PARC) is delegated the authority under Defense Federal Acquisition Regulation Supplement (DFARS) 211.274-2(b)(2)(i)(B) to approve a determination that it is more cost effective for the Government requiring activity to assign, mark, and register the unique item identifier after delivery, and the item is either acquired from a small business concern, or is a commercial item under Federal Acquisition Regulation (FAR) part 12 or part 8.

Subpart 5111.6 – Priorities and Allocations

UAI 5111.600 Scope of subpart. See U.S. Army Corps of Engineers (USACE) Desk Guide (UDG) 5111.600 for more information on the Defense Priorities and Allocations System (DPAS) Officer.

UAI 5111.602-100 General.

(a) In accordance with the Department of Homeland Security (DHS) Delegation of Authority regarding the DPAS memorandum, dated 2 December 2015, the Administrator of the Federal Emergency Management Agency (FEMA) has delegated certain authorities under the Department of Commerce's DPAS Delegation 4 to the Commanding General, USACE. The authority is to place "D0" priority-rated contracts and orders as provided in the DPAS regulations at 15 CFR part 700 and DPAS Delegation 4.

(1) This delegation may be used only in support of the following DHS approved programs:

(i) Programs involving emergency preparedness activities conducted pursuant to title VI of the Stafford Act. When placing priority ratings under this approved program, the Program Identification Symbol N1 shall be used.

(ii) Programs to protect or restore critical infrastructure. When placing priority ratings under this approved program, the Program Identification Symbol N7 shall be used.

(2) This delegation shall be valid through 1 December 2018.

(b) The President has delegated the Defense Production Act (DPA) priorities authority under Executive Order 12919 for water resources to Department of Defense (DoD), who has further delegated the authority to the USACE.

(c) USACE continues to assist DHS as the Emergency Support Function (ESF) Coordinator and Primary Agency for executing ESF #3, Public Works and Engineering.

Subpart 5111.7 – Variation in Quantity

UAI 5111.703 Contract clauses.

(d) The procuring contracting officer (PCO) shall insert the provision at UAI 5152.211-9000, Evaluation of Subdivided Items, in solicitations when a fixed-price construction contract is contemplated and will include the clause at UAI 5152.211-9001.

(e) The PCO shall insert the clause at UAI 5152.211-9001, Variations in Estimated Quantities – Subdivided Items, in solicitations and contracts when a fixed-price construction contract is contemplated and when subdivided items are to be separately priced for payment purposes.

UAI – PART 5112

ACQUISITION OF COMMERCIAL ITEMS

Subpart 5112.3 – Solicitation Provisions and Contract Clauses for the Acquisition of Commercial Items

UAI 5112.302 Tailoring of provisions and clauses for the acquisition of commercial items.

(c) The chief of the contracting office (CCO) is delegated the authority under Defense Federal Acquisition Regulation Supplement (DFARS) 212.302(c) to approve a waiver to tailor any clause or otherwise include any additional terms or conditions in a solicitation or contract for commercial items in a manner that is inconsistent with customary commercial practice for the item being acquired.

(1) The prohibition at Federal Acquisition Regulation (FAR) 12.302(c) on tailoring contract terms and conditions without a waiver in a manner inconsistent with customary commercial practice does not negate the Competition in Contracting Act (CICA) requirement for price competition and a determination under FAR 15.403-3(c) that a price is fair and reasonable.

UAI – PART 5113

SIMPLIFIED ACQUISITION PROCEDURES

Subpart 5113.2 – Actions At or Below the Micro-Purchase Threshold

UAI 5113.201 General.

(a)(i) The Head of the Contracting Activity (HCA) retains the authority under Army Federal Acquisition Regulation Supplement (AFARS) 5113.201(a)(i) to manage the agency-wide U.S. Army Corps of Engineers (USACE) purchase card program. The chief of the contracting office (CCO) is delegated the authority to manage the daily responsibilities of the program at their respective center or district. This authority may not be further delegated.

UAI 5113.270 Use of the Governmentwide commercial purchase card. The HQ USACE Directorate of Contracting, Strategic Operations Division is the proponent for the Government Purchase Card (GPC) program. Refer to AFARS Appendix EE for Army GPC operating procedures.

(b)(1) The HCA, as a member of the Senior Executive Service, is authorized to make a determination not to use the GPC as a method of purchase and/or method of payment for purchases valued at or below the micro-purchase threshold under Defense Federal Acquisition Regulation Supplement (DFARS) 213.270(b)(1). This authority may not be further delegated.

Subpart 5113.5 – Simplified Procedures for Certain Commercial Items

UAI 5113.501 Special documentation requirements.

(a)(2)(iii) The HCA retains the authority under Federal Acquisition Regulation (FAR) 13.501(a)(2)(iii) to approve the justification and approval for sole-source (including brand-name) acquisitions or portions of an acquisition requiring a brand-name. This authority may not be further delegated.

UAI – PART 5114

SEALED BIDDING

Subpart 5114.2 – Solicitation of Bids

UAI 5114.201 Preparation of invitations for bids.

UAI 5114.201-1 Uniform contract format.

(a) For U.S. Army Corps of Engineers (USACE) construction solicitations issued as invitations for bids (IFBs), use the Construction Specifications Institute (CSI) Master Format in USACE Desk Guide (UDG) 5114.201-1 in lieu of the Uniform Contract Format (UCF) specified in Federal Acquisition Regulation (FAR) 14.201-1(a).

UAI 5114.201-7 Contract clauses.

(b)(2) The Principal Assistant Responsible for Contracting (PARC) is delegated the authority under FAR 14.201- 7(b)(2) to waive the requirement for inclusion of FAR clause 52.214-27, Price Reduction for Defective Certified Cost of Pricing Data – Modifications – Sealed Bidding, in a contract with a foreign government or agency of that government.

(c)(2) The PARC is delegated the authority under FAR 14.201- 7(c)(2) to waive the requirement for inclusion of FAR clause 52.214-28, Subcontractor Certified Cost of Pricing Data – Modifications – Sealed Bidding, in a contract with a foreign government or agency of that government.

Subpart 5114.4 – Opening of Bids and Award of Contract

UAI 5114.407 Mistakes in bids.

UAI 5114.407-3 Other mistakes disclosed before award.

(c) The chief of the contracting office (CCO) is delegated the authority under Army Federal Acquisition Regulation Supplement (AFARS) 5114.407-3(c) to make a determination permitting a bidder to withdraw a bid.

UAI 5114.407-4 Mistakes after award.

(b) The PARC is delegated the authority under AFARS 5114.407- 4(b) to make a determination to rescind a contract, to reform a contract, or that no change shall be made in the contract as awarded.

UAI – PART 5115

CONTRACTING BY NEGOTIATION

Subpart 5115.2 – Solicitation and Receipt of Proposals and Information

UAI 5115.204 Contract format.

(c) For U.S. Army Corps of Engineers (USACE) construction solicitations issued as negotiated acquisitions, use the Construction Specifications Institute (CSI) Master Format in USACE Desk Guide (UDG) 5114.201-1 in lieu of the Uniform Contract Format (UCF) specified in Federal Acquisition Regulation (FAR) 14.201-1(a).

(e) The Head of the Contracting Activity (HCA) retains the authority under Army Federal Acquisition Regulation Supplement (AFARS) 5115.204(e) to exempt individual contracts from the use of the uniform contract format.

Subpart 5115.3 – Source Selection

UAI 5115.300-100 Scope of subpart.

(a) The Army Source Selection Supplement (AS3) Manual supplements the mandatory Department of Defense (DoD) Source Selection Procedures for all competitive acquisitions utilizing FAR part 15 procedures (including stand-alone/base contracts and applicable task/delivery orders that utilize aspects of FAR part 15 procedures).

(b) *Source selection.*

(1) *Informal or streamlined source selection.* Informal or streamlined source selection is the process used when the procuring contracting officer (PCO) is the source selection authority (SSA) and may or may not use an evaluation board to reach final selection and award decision.

(2) *Formal or complex source selection.* Formal source selection means the source selection process used where someone other than the PCO is the SSA, normally for high dollar value or complex acquisitions.

(c) *Training, ethics, and non-disclosure statements.* Source selection evaluation board (SSEB) members on formal source selections are strongly encouraged to take Defense Acquisition University (DAU) CLC 007, Contract Source Selection, and the USACE PROSPECT Course 183, Formal Source Selection. The PCO is responsible for providing source selection training tailored to the solicitation and ensuring that the source selection plan (SSP) is fully understood and followed by all members of the source selection team. SSEB members shall receive a standards of conduct briefing

provided by the Office of Counsel. Upon completion of SSEB training and prior to the commencement of the evaluation board, each SSEB member shall execute a non-disclosure statement.

(d) *Non-federal sponsor participation on source selection teams.* When the DoD Source Selection Procedures 1.4.6, Other Advisors, refers to "Government advisors", the intent is to mean "Federal Government Employees" and not state or local government employees. As state and/or local government employees are not considered "Government employees", they are non-Government personnel and should be viewed as such when selecting members for the SSEB.

(e) *SSA hierarchy.*

(1) For SSA appointments made on formal source selections, additional items must be addressed in the nomination for SSA appointment in accordance with AFARS 5115.303(a)(v).

(2) For actions over \$250 million, the SSA nomination package shall be processed through the Principal Assistant Responsible for Contracting (PARC) to HQ USACE Directorate of Contracting, Acquisition Support Division at HQCECT-AcquisitionSupport.HQCECT-AcquisitionSupport@usace.army.mil, who will submit the action to the approval authority for review and approval.

(3) *SSA appointments outside the contracting chain.* The appointment of the SSA can be outside the contracting chain when it is determined to be in the best interest of the Government and when the approval authority makes a specific written statement indicating that the approval authority has approved the nominee being outside of the contracting chain and why the nominee is qualified.

(4) The following SSA appointment hierarchy applies within USACE:

Threshold	SSA	Appointment Authority
Less than \$100M*	PCO or individual other than the PCO	If the PCO is not the SSA, the PARC must appoint another individual to serve as the SSA.
Over \$100M to \$250M*	Individual other than the PCO	Appointed by PARC
Over \$250M to \$500M*	Individual other than the PCO	Appointed by HCA
Greater than \$500M* - Construction or Supplies	Individual other than the PCO	Appointed by HCA
Greater than \$500M* - Services	Individual other than the PCO	Appointed by DASA(P)

*Note: Refer to UAI 5115.300-100(e)(3) regarding an SSA appointment outside the contracting chain.

UAI 5115.303 Responsibilities.

(a)(iii) The HCA retains the authority under AFARS 5115.303(a)(iii) to appoint the SSA for acquisition categories (ACAT) II and III programs and for acquisitions not managed in accordance with DoD Instruction 5000.02, Operation of the Defense Acquisition System, for which formal source selection procedures are used. This authority may not be further delegated.

(d) *Disclosure of Proprietary and Source Selection Information.* It is imperative that the SSA coordinates with their PDT legal representative when disclosure of source selection information is being requested.

UAI 5115.304-100 Evaluation factors and significant subfactors. Contractor Performance Assessment Reporting System (CPARS) and Past Performance Information Retrieval System (PPIRS) are the required sources of past performance information, when available. In addition to CPARS and PPIRS, the contracting officer may use Past Performance Questionnaire (PPQ) to collect relevant and recent past performance information on prospective offerors for use in source selections. See UDG Attachment 4 for the Naval Facilities Engineering Command (NAVFAC)/USACE Past Performance Questionnaire (PPQ) Instructions and Form.

UAI 5115.371 Only one offer.

UAI 5115.371-5 Waiver.

(a) The chief of the contracting office (CCO) is delegated the authority under Defense Federal Acquisition Regulation Supplement (DFARS) 215.371-5(a) to waive the requirement at DFARS 215.371-2 to resolicit for an additional period of at least 30 days.

Subpart 5115.4 – Contract Pricing

UAI 5115.403 Obtaining certified cost or pricing data.

UAI 5115.403-3 Requiring data other than certified cost or pricing data.

(a)(4) The PARC is delegated the authority under FAR 15.403-3(a)(4) to determine that it is in the best interest of the Government to make award to an offeror who does not comply with a requirement to submit other than certified cost or pricing data for a contract or subcontract.

UAI 5115.404 Proposal analysis.

UAI 5115.404-1 Proposal analysis techniques.

(a)(i)(D) The HCA retains the authority under DFARS Procedures, Guidance, and Information (PGI) 215.404-1(a)(i)(D) to determine that it is in the best interest of the Government to make award to an offeror who does not comply with the requirement to submit other than certified cost or pricing data when the offeror continues to refuse to provide data to the contracting officer.

UAI 5115.404-4 Profit.

(c)(2)(C)(2) The CCO is delegated the authority under DFARS 215.404-4(c)(2)(C)(2) to approve use of the alternate structured approach when weighted guidelines method does not produce a reasonable profit objective.

UAI 5115.404-73 Alternate structured approaches.

(b)(2)(iii) Facilities capital cost of money shall not apply to contracts where reimbursement is provided to contractors through construction equipment use rates or allowances. In other situations where facilities capital cost of money is proposed and verified, follow the offset procedures in DFARS 215.404-73(b)(2). See UDG 5115.404-73 for alternate structured approach guidelines for firm-fixed price construction and architect-engineer (A-E) contracts.

UAI 5115.407 Special cost or pricing areas.

UAI 5115.407-3 Forward pricing rate agreements.

(b)(i) The CCO is delegated the authority under DFARS 215.407-3(b)(i) to waive, on a case-by-case basis, the forward pricing rate agreement rates when such rates are available.

UAI 5115.407-4 Should-cost review.

(c)(2)(B) The PARC is delegated the authority under DFARS PGI 215.407-4(c)(2)(B) to request an overhead should-cost review for a contractor's business unit that does not meet the criteria found in DFARS PGI 215.407-4(c)(2)(A).

Subpart 5115.5 – Preaward, Award, and Postaward Notifications, Protests, and Mistakes

UAI 5115.504 Award to successful offeror.

(d) All award letters issued by the contracting officer to contractors will include the following statement. This statement shall also be read to the contractor at the

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postaward conference by a USACE official, preferably the PCO. The names and contact information of both the PCO and administrative contracting officer (ACO), if one has been appointed, shall also be provided to the contractor.

“Only a warranted Contracting Officer (either a Procuring Contracting Officer (PCO) or an Administrative Contracting Officer (ACO)), acting within their appointed limits, has the authority to issue modifications or otherwise change the terms and conditions of this contract. If an individual other than the Contracting Officer attempts to make changes to the terms and conditions of this contract, you shall not proceed with the change and shall immediately notify the Contracting Officer. Proceeding with any work not authorized by the Contracting Officer will be at the Contractor’s own risk.”

UAI – PART 5116

TYPES OF CONTRACTS

Subpart 5116.4 – Incentive Contracts

UAI 5116.401 General.

(d) The chief of the contracting office (CCO) is delegated the authority under Federal Acquisition Regulation (FAR) 16.401(d) to approve a determination and finding for all incentive contracts justifying that the use of this type of contract is in the best interest of the Government.

(e)(iii) The Head of the Contracting Activity (HCA) retains the authority under Defense Federal Acquisition Regulation Supplement (DFARS) Procedures, Guidance, and Information (PGI) 216.401(e)(iii) to sign the determination and findings for all award-fee contracts, justifying that the use of this type of contract is in the best interest of the Government. This authority may not be further delegated.

Subpart 5116.5 – Indefinite-Delivery Contracts

UAI 5116.505 Ordering.

(b)(2)(ii)(C)(3) The HCA retains the authority under FAR 16.505(b)(2)(ii)(C)(3) to approve the justification for an exception to fair opportunity for a proposed order \$13.5 million or more but less than \$93 million. This authority may not be further delegated.

UAI 5116.505-90 Ombudsman. The HCA retains the authority under Army Federal Acquisition Regulation Supplement (AFARS) 5116.505-90 to designate a task and delivery order ombudsman for the contracting activity.

(a) The HQ U.S. Army Corps of Engineers (USACE) Directorate of Contracting, Deputy Director of Contracting is appointed as the USACE task order and delivery order ombudsman.

Subpart 5116.6 – Time-and-Material, Labor-Hour, and Letter Contracts

UAI 5116.603 Letter contracts.

UAI 5116.603-2 Application.

(c) The PARC is delegated the authority under FAR 16.603-2(c) to approve the contracting officer's determination of a reasonable price or fee to definitize the letter contract under certain circumstances.

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UAI 5116.603-3 Limitations. The PARC is delegated the authority under FAR 16.603-3 to determine that no other contract but a letter contract is suitable for use.

UAI – PART 5117

SPECIAL CONTRACTING METHODS

Subpart 5117.1 – Multiyear Contracting

UAI 5117.106 Procedures.

UAI 5117.106-3 Special procedures applicable to DoD, NASA, and the Coast Guard.

(f) The Head of the Contracting Activity (HCA) retains the authority under Federal Acquisition Regulation (FAR) 17.106-3(f) to authorize the use of a solicitation requesting only multi-year prices, provided that dual proposals are not necessary to meet the objectives in FAR 17.105-2.

(g) The HCA retains the authority under FAR 17.106-3(f) to approve the use of variable unit prices on multi-year contracts, provided that, for competitive proposals, there is a valid method of evaluation.

UAI 5117.172 Multiyear contracts for supplies.

(f)(2) The Principal Assistant Responsible for Contracting (PARC) is delegated the authority under Defense Federal Acquisition Regulation Supplement (DFARS) 217.172(f)(2) to determine that conditions required in DFARS 217.172(h)(2)(i) thru (vii) will be met for multiyear supply contracts equal to or greater than \$678.5 million.

UAI 5117.174 Multiyear contracts for electricity from renewable energy sources.

(a) The PARC is delegated the authority under DFARS 217.174(a) to enter into a contract for a period not to exceed 10 years for the purchase of electricity from sources of renewable energy.

(b) The PARC is delegated the authority under DFARS 217.174(b) to enter into a contract for a period in excess of five years for the purchase of electricity from sources of renewable energy on the basis of a business case analysis prepared by the requiring activity.

Subpart 5117.5 – Interagency Acquisitions

UAI 5117.502 Procedures.

UAI 5117.502-1 General.

(a)(ii)(A) The contracting officer is delegated the authority under Army Federal Acquisition Regulation Supplement (AFARS) 5117.502-1(a)(ii)(A) to concur with the determination of best procurement approach prior to public announcement of the requirement for acquisitions valued at or above the simplified acquisition threshold, but less than \$50 million.

(B) The chief of the contracting office (CCO) is delegated the authority under AFARS 5117.502-1(a)(ii)(B) to concur with the determination of best procurement approach prior to public announcement of the requirement for acquisitions valued \$50 million or more but less than \$250 million.

(C) The PARC is delegated the authority under AFARS 5117.502-1(a)(ii)(C) to concur with the determination of best procurement approach prior to public announcement of the requirement for acquisitions valued \$250 million or more but less than \$1 billion.

Subpart 5117.74 – Undefined Contract Actions

UAI 5117.7404 Limitations.

UAI 5117.7404-1 Authorization. The PARC is delegated the authority under DFARS 217.7404-1 to approve the use of undefinitized contract actions (UCAs).

UAI 5117.7404-6 Allowable profit. The PARC is delegated the authority under DFARS 217.7404-6 to ensure the profit allowed reflects risk when the final price of a UCA is negotiated after a substantial portion of the required performance has been completed.

UAI 5117.7405 Plans and reports.

(c) All UCAs, regardless of amount, must be submitted with documentation and definitization schedule to the PARC.

UAI 5117.7406 Contract Clauses

(b)(1) The CCO is delegated the authority under DFARS clause 252.217-7027(c) to approve a determination for a reasonable price or fee in accordance with Subpart 15.4 and FAR part 31, subject to Contractor appeal as provided in the Disputes clause.

Subpart 5117.75 – Acquisition of Replenishment Parts

UAI 5117.7504 Acquisition of parts when data is not available.

(4)(ii) The PARC is delegated the authority under DFARS Procedures, Guidance, and Information (PGI) 217.7504(4)(ii) to authorize reverse engineering.

UAI 5117.7505 Limitations on price increases.

(b) The PARC is delegated the authority under DFARS 217.7505(b) to receive the contracting officer certification of certain requirements before award of a sole source contract for a centrally managed replenishment part when the price of the part has increased by 25 percent or more over the most recent 12-month period.

UAI – PART 5118

EMERGENCY ACQUISITIONS

Subpart 5118.2 – Emergency Acquisition Flexibilities

UAI 5118.201 Contingency operation.

(b) The Principal Assistant Responsible for Contracting (PARC) is delegated the authority under Federal Acquisition Regulation (FAR) 18.201(b), in accordance with Defense Federal Acquisition Regulation Supplement (DFARS) 218.271(e), to determine the supplies or services to be used to support a contingency operation. This authority may not be further delegated.

(c) The PARC is delegated the authority under FAR 18.201(c), in accordance with DFARS 218.271(e), to determine the supplies or services to be used to support a contingency operation. This authority may not be further delegated.

UAI 5118.202 Defense or recovery from certain attacks.

(a) The PARC is delegated the authority under FAR 18.202(a), in accordance with DFARS 218.271(e), to determine the supplies or services to be used to facilitate defense against or recovery from nuclear, biological, chemical, or radiological attack. This authority may not be further delegated.

(b) The PARC is delegated the authority under FAR 18.202(b), in accordance with DFARS 218.271(e), to determine the supplies or services to be used to facilitate defense against or recovery from nuclear, biological, chemical, or radiological attack. This authority may not be further delegated.

(c) The PARC is delegated the authority under FAR 18.202(c), in accordance with DFARS 218.271(e), to determine the supplies or services to be used to facilitate defense against or recovery from nuclear, biological, chemical, or radiological attack. This authority may not be further delegated.

UAI – PART 5119

SMALL BUSINESS PROGRAMS

Subpart 5119.1 – Size Standards

UAI 5119.101 Explanation of terms.

“Other-than-small” business refers to any entity that is not classified as a small business. This includes: large businesses, state and local governments, and non-profit organizations including all AbilityOne (formerly Javits-Wagner-O’Day (JWOD)) entities as well as Federal Prison Industries, Inc. (also known as UNICOR) as these entities are not on the exceptions listed in Federal Acquisition Regulations (FAR) 19.702(b) (48 CFR 19.702(b)). In most cases, the term also includes public utilities, educational institutions, and foreign-owned firms. However, there may be certain instances where a public utility, educational institution, or foreign-owned firm could be considered a small business. When in doubt, you should contact your local Small Business Administration (SBA) area office.

Subpart 5119.2 – Policies

UAI 5119.201 General policy.

(c)(8) The Deputy Center Director/District Deputy for Programs and Project Management is delegated the authority under Defense Federal Acquisition Regulation Supplement (DFARS) 219.201(c)(8) to assign small business technical advisors. The Center Director/District Commander is delegated the authority if the Deputy Center Director/District Deputy for Programs and Project Management is a disqualified individual or if the contract action is designated as a special interest.

(13) The below acquisition actions require U.S. Army Corps of Engineers (USACE) Small Business personnel involvement.

(i) Peer reviews require participation in accordance with DFARS Procedures, Guidance, and Information (PGI) 201.170-4(b).

(ii) Solicitation review boards and contract review boards require participation in accordance with Army Federal Acquisition Regulation Supplement (AFARS) 5101.170(b)(i).

(iii) Acquisition plans require concurrence in accordance with AFARS 5107.103-90(d)(3).

(iv) DD 2579s, Small Business Coordination Records, require concurrence/non-concurrence in accordance with AFARS 5119.201(d)(10)(B)(ii). If the

Small Business Professional and/or Small Business Administration (SBA) Procurement Center Representative have non-concurred, the contracting officer must complete Blocks 18 through 18c on the DD 2579 to document the rationale for decision.

(v) Subcontracting plans require participation in accordance with AFARS 5119.705-4(d)(i).

UAI 5119.202 Specific policies.

UAI 5119.202-1 Encouraging small business participation in acquisitions.

(1) The Principal Assistant Responsible for Contracting (PARC) is delegated the authority under AFARS 5119.202-1(1) to determine that a consolidated requirement cannot be placed under one of the preference programs prior to release of the solicitation.

Subpart 5119.5 – Set-Asides for Small Business

UAI 5119.502 Setting aside acquisitions.

UAI 5119.502-3 Partial set-asides.

(a)(5) The chief of the contracting office (CCO) is delegated the authority under FAR 19.502-3(a)(5) to authorize on a case-by-case basis partial set-asides when there is a reasonable expectation that only two concerns (one large and one small) with capability will respond with offers.

UAI 5119.505 Rejecting SBA recommendations.

(b) The CCO is delegated the authority under FAR 19.505(b) to issue a decision in response to an appeal of a contracting officer's rejection of a SBA procurement center representative's recommendation.

(d) The PARC is delegated the authority under FAR 19.505(d) to determine to forward justification of its decision to reject SBA recommendations to the agency head.

Subpart 5119.13 – Historically Underutilized Business Zone (HUBZone) Program

UAI 5119.1305 HUBZone set-aside procedures.

(d)(2) The PARC is delegated the authority under FAR 19.1305(d)(2) to determine that urgent and compelling circumstances, which significantly affect the interests of the Government, exist and the contracting officer shall proceed with the acquisition upon receipt of notice of SBA's intent to appeal the decision to reject a recommendation to set aside an acquisition for competition restricted to HUBZone small business concerns.

**Subpart 5119.14 – Service-Disabled Veteran-Owned Business Small Business
Procurement Program**

**UAI 5119.1405 Service-disabled veteran-owned small business set-aside
procedures.**

(d) The PARC is delegated the authority under FAR 19.1405(d) to determine that urgent and compelling circumstances, which significantly affect the interests of the Government, exist and the contracting officer shall proceed with the acquisition upon receipt of notice of SBA's intent to appeal the decision to reject a recommendation to set aside an acquisition for competition restricted to service-disabled veteran-owned small business concerns.

UAI – PART 5120

Reserved

UAI – PART 5121

Reserved

UAI – PART 5122

APPLICATION OF LABOR LAWS TO GOVERNMENT ACQUISITIONS

UAI 5122.000 Scope of part.

(d) This part references the Positive Law Codification of Title 41, which changed the names of several laws. To remain consistent with the U.S. Department of Labor's terminology for these laws, which have not been updated at the time of this revision, each law will be referenced using its traditional name. This also affects clauses in UAI part 5152.

Subpart 5122.1 – Basic Labor Policies

UAI 5122.101 Labor relations.

UAI 5122.101-1 General. The Principal Assistant Responsible for Contracting (PARC) is delegated the authority under Army Federal Acquisition Regulation Supplement (AFARS) 5122.101-1 to contact a regional office of the Federal Mediation and Conciliation Service, National Mediation Board, or National Labor Relations Board for information.

(e) The PARC is delegated the authority under Federal Acquisition Regulation (FAR) 22.101-1(e) to designate programs or requirements for which it is necessary that contractors be required to notify the Government of actual or potential labor disputes.

UAI 5122.101-3 Reporting labor disputes.

UAI 5122.101-3-70 Impact of labor disputes on defense programs.

(b) The PARC is delegated the authority under Defense Federal Acquisition Regulation Supplement (DFARS) 222.101-3-70 to obtain and develop data reflecting the impact of a labor dispute on its requirements and programs.

Subpart 5122.3 – Contract Work Hours and Safety Standards Act

UAI 5122.302 Liquidated damages and overtime pay.

(c) The contracting officer, in conjunction with the Center/District Labor Advisor, has the authority to waive or adjust Contract Work Hours and Safety Standards Act liquidated damages totaling \$500 or less when such damages occurred despite the exercise of due care by the contractor. As deemed appropriate, the HQ U.S. Army Corps of Engineers (USACE) Labor Advisor may be consulted.

Subpart 5122.4 – Labor Standards for Contracts Involving Construction

UAI 5122.406 Policy.

UAI 5122.406-13 Semiannual enforcement reports. The PARC is delegated the authority under DFARS 222.406-13 to forward the semiannual report on compliance with and enforcement of the construction labor standards requirements of the Construction Wage Rate Requirements statute and Contract Work Hours and Safety Standards statute to the labor advisor.

UAI 5122.407 Solicitation provision and contract clauses.

(b) The chief of the contracting office (CCO) is delegated the authority under FAR clause 52.222-16, Approval of Wage Rates, to approve all straight time wage rates, and overtime rates based thereon, for laborers and mechanics engaged in work under this contract where the straight time wages exceed the rates for corresponding classifications contained in the applicable Construction Wage Rate Requirements minimum wage determination included in the contract.

(i) The procuring contracting officer (PCO) shall insert the clause at 5152.222-9000, Contractor Supply and Use of Electronic Software for Processing Davis-Bacon Act Certified Labor Payrolls, when contractors are required to process and submit certified Davis-Bacon Act (DBA) payrolls electronically to the Government.

Subpart 5122.5 – Use of Project Labor Agreements on Federal Construction Projects

UAI 5122.501 Scope of subpart. For implementation language of Executive Order 13502, Use of Project Labor Agreements for Federal Construction Projects, see FAR subpart 22.5, Use of Project Labor Agreements for Federal Construction Projects.

UAI 5122.503-100 Policy.

(a) *PLA applicability.* Project labor agreements (PLAs) typically apply to large-scale construction projects, including task order request for proposals (RFPs), with performance in the United States and an anticipated contract value of \$25 million or greater.

(b) The PCO shall insert the following language in Section 00 73 00, Supplementary Conditions, of the technical specifications for construction solicitations that will result in a single-award task order contract (SATOC) or multiple-award task order contract (MATOC) with performance in the United States and an anticipated contract value of \$25 million or greater:

Pursuant to FAR 22.503, a PLA may be considered for certain projects as task orders meeting the criteria set forth in Executive Order 13502. Each Task Order may be evaluated on a project-by-project basis for possible application of a PLA.

(c) Since USACE is not an employer engaged primarily in the building and construction industry, USACE will neither negotiate nor become signatory to a PLA. See USACE Desk Guide (UDG) 5122.503-1 for PLA Frequently Asked Questions (FAQs).

(d) *PLAs and acquisition planning.* During acquisition planning, the project delivery team (PDT) shall consider the use of a PLA for construction acquisitions on a project-by-project basis by conducting market research in accordance with the instructions provided in the PLA Determination Tool (See UDG 5122.503-2). The PDT should consider the factors identified at FAR 22.503(b) and (c). Additional factors for consideration include:

(1) The unique and compelling schedule requirements of a particular project. In this regard, projects that are tied to court-imposed deadlines or mission-critical schedules may also provide a basis for a PLA requirement.

(2) Skilled labor shortages might be anticipated for projects located in a remote location where a contractor may encounter difficulties in recruiting and retaining a skilled workforce for an extended period.

(3) Skilled labor shortages may also result where there may be competition within the contractor community for skilled labor arising from concurrent large-scale construction contracts in the project vicinity.

(e) *PCO responsibilities to determine use of PLA.* The PCO shall prepare a PLA Decision Memorandum for all construction projects with an anticipated contract value of \$25 million and above. The memorandum shall address whether or not the particular project satisfies the criteria set forth in FAR 22.503(b) and (c) and shall follow the checklist in the PLA Determination Tool. The PCO's decision memoranda shall be included in each applicable contract file, accompanied by the market research report, and other research information applicable to the decision whether or not an action is appropriate for a PLA.

(f) *Determination to include PLA in solicitation.* If the PCO determines, in (e) above, that a PLA may be feasible for the contract action, the PCO shall ensure:

Pursuant to FAR 22.503, a PLA may be considered for certain projects as task orders meeting the criteria set forth in Executive Order 13502. Each Task Order may be evaluated on a project-by-project basis for possible application of a PLA.

(1) Insertion of the following language into the synopsis:

“Offerors will be invited to submit a proposal subject to Project Labor Agreement (PLA) requirements (a PLA proposal), a proposal not subject to PLA requirements, or both. If a PLA proposal is accepted by USACE, the awardee shall be required to execute a PLA with one or more appropriate labor organizations for the term of the resulting Contract.”

(2) Insertion at Section 00 73 00, Supplementary Conditions, of the technical specifications:

“Offerors may submit a price proposal subject to the Project Labor Agreement (PLA) requirements set forth in *[insert section]* of this solicitation (a PLA proposal), a price proposal not subject to the PLA requirements set forth in *[insert section]* of this solicitation, or both. Any price proposal submitted shall clearly identify whether it is subject to such PLA requirements.”

“Note: FAR Provision 52.222-33, Alternate II only applies to proposals submitted subject to the PLA requirements of this solicitation.” *[Insert FAR Provision 52.222-33, Alternate II]*

(3) Insertion at an appropriate location in the solicitation (or in the Task Order RFP):

“Note: FAR clause 52.222-34, Alternate I and the included supplementary requirements are binding on the Contractor if the proposal selected for award was subject to PLA Requirements. If the proposal selected for award was not subject to PLA requirements, this section is not binding on the Contractor.” *[Insert FAR clause 52.222-34, Alternate I]* Supplementary Requirements to 52.222-34(c) Alternate I IAW FAR 22.504(c): “1. Within 30 calendar days following award, or such other time as agreed to by the Contracting Officer, the Contractor shall furnish the Contracting Officer with an executed PLA meeting the minimum requirements, and containing the mandatory terms, of this section. The Contractor shall not be entitled to issuance of Notice to Proceed (NTP) until it has *furnished such evidence of an executed PLA*. Note: The number of days for submission of the executed PLA cannot be more than the number of days to NTP.”

(g) *Evaluation of proposed use of PLA.* The proposed use of a PLA must be evaluated during the source selection process. The source selection plan (SSP) shall address how an offeror’s proposed use of a PLA will be evaluated during the source selection. When the determination is made that a PLA will be pursued on the project, tradeoff procedures in accordance with FAR part 15 shall be used to enable the source selection authority (SSA) to weigh an offeror’s proposed use of a PLA. The weight of importance given to the use of a PLA will vary depending on the project and the perceived benefit of the use of a PLA to the Government. The PCO will have discretion

in determining how best to consider the proposed use of a PLA during source selection. Possible areas of evaluation include requiring the submission of a PLA Implementation Plan Narrative and/or previous experience with projects that include PLAs as part of the offeror's technical proposal, which will be rated during source selection.

(h) *Review of the PLA.* When the Contractor submits the fully executed PLA after contract award, the PCO, Office of Counsel, Contractor Industrial Relations (CIR) Officer, and any other parties deemed necessary by the PDT will review the PLA for compliance with the contract requirements. Identified areas of non-compliance will be addressed with the Contractor and corrected. NTP shall not be issued until a PLA that is fully compliant with the contract requirements is received by the PCO.

(i) *Mandatory PLA terms.* The PLA must establish wage rates applicable for the duration of the PLA, regardless of whether corresponding collective bargaining agreements expire. The PLA shall also include the following terms (or substantially identical language as approved by the PCO):

(1) During the term of this PLA, there shall be no strikes, pickets, work stoppages, or other disruptive activity for any reason by Labor Organizations or their members, and there shall be no lock out by the Contractor or its subcontractors. The Labor Organizations agree that they shall not incite or encourage participation in any such disruptive activity and shall undertake all reasonable means to prevent or terminate it.

(2) This PLA supersedes any other collective bargaining agreement that may conflict or differ from the terms of this PLA. In the event of a conflict between the terms of this PLA and any collective bargaining agreement, this PLA shall govern. If any collective bargaining agreement contains provisions that are not covered by this PLA, such collective bargaining agreement provisions shall bind the parties to the collective bargaining agreement with respect to employees covered thereby.

(3) Deductions for Labor Organization dues, if any, for employees who are not members of Labor Organizations shall not be more than an amount necessary to cover the Labor Organization's costs of collective bargaining, contract administration, and grievance adjustment. Contributions to employee benefit funds of a Labor Organization from employees who are not members of that Labor Organization may

(j) *PLA quarterly reporting requirement.* USACE must report quarterly all actions relating to Executive Order 13502. The report is pulled by the HQ USACE Directorate of Contracting via the Army Business Intelligence System (ACBIS). The data is given to the HQ USACE CIR Officer, who coordinates with Center/District contracting officers to verify the market research action taken and the outcome. The HQ USACE CIR Officer shall submit the USACE report to the Office of the Secretary of Defense for final review and submission to the Office of Management and Budget.

Subpart 5122.8 – Equal Employment Opportunity

UAI 5122.805 Procedures.

(a)(8) The PARC is delegated authority under FAR 22.805(a)(8) to approve award without preaward clearance.

Subpart 5122.13 – Equal Opportunity for Veterans

UAI 5122.1302-100 Scope of subpart. For contracts that require the inclusion of FAR clause 52.222-35, Equal Opportunity for Veterans, the requiring activity shall incorporate the following text in the general requirements section of the specification/performance work statement/statement of work/statement of objectives.

Veterans Employment Emphasis for U.S. Army Corps of Engineers Contracts

In addition to complying with the requirements outlined in FAR Part 22.13, FAR Provision 52.222-38, FAR Clause 52.222-35, FAR Clause 52.222-37, DFARS 222.13 and Department of Labor regulations, U.S. Army Corps of Engineers (USACE) contractors and subcontractors at all tiers are encouraged to promote the training and employment of U.S. veterans while performing under a USACE contract. While no set-aside, evaluation preference, or incentive applies to the solicitation or performance under the resultant contract, USACE contractors are encouraged to seek out highly qualified veterans to perform services under this contract. The following resources are available to assist USACE contractors in their outreach efforts:

U.S. Department of Labor Veterans employment: www.vets.gov/

Federal veteran employment information: www.fedshirevets.gov/index.aspx

Veterans' Employment and Training Service (VETS): <http://www.dol.gov/vets/>

Veterans Opportunity to Work (VOW) Program: <http://benefits.va.gov/vow/>

U.S. Army Warrior Transition Command Employment Index:

wtc.army.mil/modules/employers/index.html

Hiring Our Heroes initiative: www.uschamberfoundation.org/hiring-our-heroes

Guide to Hiring Veterans:

www.whitehouse.gov/sites/default/files/docs/white_house_business_council_-_guide_to_hiring_veterans_0.pdf

UAI – PART 5123

ENVIRONMENT, ENERGY AND WATER EFFICIENCY, RENEWABLE ENERGY TECHNOLOGIES, OCCUPATIONAL SAFETY, AND DRUG-FREE WORKPLACE

Subpart 5123.1 – Sustainability Acquisition Policy

UAI 5123.103-100 Sustainable acquisition.

(a) The emphasis on environmental considerations should be considered in the primary stages of requirement package development phase. Requirement packages should contain information documenting that sustainability was considered in the formulation of the package to the greatest extent practicable.

(b) *Reporting sustainable acquisition.* The contracting officer shall ensure that each Contract Action Report (CAR) in Federal Procurement Data System – Next Generation (FPDS-NG) includes the appropriate data element for “Recovered Materials/Sustainability” and “Use of EPA Designated Products”.

(c) Contracting officers are responsible for:

(1) Ensuring that applicable Federal Acquisition Regulation (FAR) clauses on sustainable acquisition requirements are inserted appropriately in all new solicitations;

(2) Maintaining required documents in the contract file, to include certifications, and written justifications for exceptions when required, to include justifications that are authorized by the requiring activity;

(3) Accurately completing the CAR for data input to FPDS-NG;

(4) Providing guidance to technical personnel on applicable procurement requirements and clauses relative to sustainable products and services; and

(5) Reviewing with appropriate vendors their role in the procurement of sustainable products and services during the initial contract kickoff and reinforcing with the contractor when appropriate during contract performance if applicable.

(d) The implementation of sustainable acquisition is a shared responsibility among all Project Delivery Team members, including the program manager and the requiring activity. Government purchase card users are also responsible for sustainable acquisition.

Subpart 5123.2 – Energy and Water Efficiency and Renewable Energy

UAI 5123.204 Procurement exemptions. The chief of the contracting office (CCO) is delegated the authority under Army Federal Acquisition Regulation Supplement (AFARS) 5123.204 to make the determination at FAR 23.204 that no such ENERGY STAR- or Federal Energy Management Program-designated products are reasonably available or cost effective.

Subpart 5123.3 – Hazardous Material Identification and Material Safety Data

UAI 5123.370 Safety precautions for ammunition and explosives.

UAI 5123.370-4 Procedures.

(1)(i)(A)(2) The Head of the Contracting Activity (HCA) retains the authority under Defense Federal Acquisition Regulation Supplement (DFARS) Procedures, Guidance, and Information (PGI) 223.370-4(1)(i)(A)(2) to approve either omitting DFARS clause 252.223-7002, Safety Precautions for Ammunition and Explosives, from solicitations and contracts or waiving the mandatory requirements of DoD 4145.26-M, DoD Contractors' Safety Manual for Ammunition and Explosives.

UAI – PART 5124

PROTECTION OF PRIVACY AND FREEDOM OF INFORMATION

Subpart 5124.1 – Protection of Individual Privacy

UAI 5124.101 Definitions.

“Personally Identifiable Information (PII)” is information which can be used to distinguish or trace an individual’s identity, such as his or her name, social security number, military rank or civilian grade, salary, date and place of birth and mother’s maiden name, or biometric data, including any other personal information which is linked or linkable to a specified individual.

“System of records” is a group of records under the control of the Government from which personal information about an individual is retrieved by the name of the individual, or by some other identifying number, symbol, or other identifying particular assigned, that is unique to the individual.

UAI 5124.103 Procedures.

(a) PII breaches shall be immediately report to U.S. Army Corps of Engineers (USACE) Chief Information Officer (CIO)/G-6 Privacy Officer.

(b) See USACE Desk Guide (UDG) 5124.103 for sample PII requirements language and sample PII data breach notification language for insertion into the performance work statement. This language is advisory only; requiring activities are encouraged to tailor the language as necessary to fit each unique requirement.

Subpart 5124.2 – Freedom of Information Act

UAI 5124.203 Policy.

(a) The procuring contracting officer (PCO) must ensure that all Freedom of Information Act (FOIA) requests are provided to the local FOIA officer in the Office of Counsel for processing. The PCO will provide the requested documents and a recommendation on release or denial to the local FOIA officer. The Office of Counsel will coordinate the request with the PCO and the Director of Contracting (DOC) as necessary and respond to the requester.

(b)(i) The Chief Counsel is delegated the initial denial authority under Army Federal Acquisition Regulation Supplement (AFARS) 5124.203(b)(i) to act on requests for procurement records under FOIA.

UAI – PART 5125

FOREIGN ACQUISITION

Subpart 5125.1 – Buy American – Supplies

UAI 5125.103 Exceptions.

(a)(ii)(B)(2) The Principal Assistant Responsible for Contracting (PARC) is delegated the authority under Defense Federal Acquisition Regulation Supplement (DFARS) 225.103(a)(ii)(B)(2) to approve a determination for a public interest exception if the purposes of the Buy American statute are not served for acquisitions with a value greater than the simplified acquisition threshold but less than \$1.5 million.

(b)(2)(i) The PARC is delegated the authority under Federal Acquisition Regulation (FAR) 25.103(b)(2)(i) to determine that an article, material, or supply is not mined, produced, or manufactured in the United States in sufficient and reasonably available commercial quantities of a satisfactory quality.

(ii)(C) The Head of the Contracting Activity (HCA) retains the authority under DFARS 225.103(b)(ii)(C) to approve the determination that an article, material, or supply is not reasonably available when domestic offers are insufficient to meet the requirement and award is to be made on other than a qualifying country or eligible end product for acquisitions valued at \$1.5 million or more. This authority may not be further delegated.

Subpart 5125.2 – Buy American – Construction Materials

UAI 5125.202 Exceptions.

(a)(2) *Nonavailability.* The PARC is delegated the authority under FAR 25.202(a)(2) to determine that a particular construction material is not mined, produced, or manufactured in the United States in sufficient and reasonably available commercial quantities of a satisfactory quality.

Subpart 5125.3 – Contracts Performed Outside the United States

UAI 5125.301 Contractor personnel in a designated operational area or supporting a diplomatic or consular mission outside the United States.

UAI 5125.301-1 Scope. For information specifically regarding contracts performed in a contingency environment, see the Defense Procurement Acquisition Policy (DPAP) website for Contingency Contracting (<http://www.acq.osd.mil/dpap/pacc/cc/index.html>), the Department of Defense Instruction 3020.41, Operational Contract Support, and Army Regulation 715-9, Operational Contract Support Planning and Management.

UAI 5125.302 Contracting reachback in support of forward districts operating in OCO within CENTCOM. The procuring contracting officers (PCOs) shall follow the procedures for contracting reachback in support of forward districts operating in Overseas Contingency Operations (OCO) within the U.S. Central Command (CENTCOM) area of responsibility (AOR). The Transatlantic Division (TAD) is responsible for all reachback actions in the CENTCOM AOR. Issues or questions that arise between the forward supported district and the reachback district are addressed to the TAD Regional Contracting Chief. The Transatlantic Middle East District (TAM) will determine capability to fulfill all reachback requests originating in the CENTCOM AOR and may authorize other elements of U.S. Army Corps of Engineers (USACE) to fulfill a requirement(s) subject to TAM oversight and coordination. All acquisition documents and actions, including Peer Reviews, Acquisition Strategies and Plans, Determinations and Findings, etc. will be accomplished through the reachback district's PARC. For guidance on the acquisition process in OCO, see USACE Desk Guide (UDG) 5125.3.

Subpart 5125.4 – Trade Agreements

UAI 5125.403 World Trade Organization Government Procurement Agreement and Free Trade Agreements.

(c)(ii)(A) The PARC is delegated the authority under DFARS 225.403(c)(ii)(A) to approve a national interest waiver for a purchase by an overseas purchasing activity, if the waiver is supported by a written statement from the requiring activity that the products being acquired are critical for the support of U.S. forces stationed abroad.

Subpart 5125.6 – American Recovery and Reinvestment Act – Buy American Statute – Construction Materials

UAI 5125.603 Exceptions.

(a)(1)(i) Nonavailability. The PARC is delegated the authority under FAR 25.603(a)(1)(i) when determining that a particular construction material is not mined, produced, or manufactured in the United States in sufficient and reasonably available commercial quantities of a satisfactory quality.

Subpart 5125.8 – Other International Agreements and Coordination

UAI 5125.870 Contracting with Canadian contractors.

UAI 5125.870-4 Contracting procedures.

(c)(2)(ii) The PARC is delegated the authority under DFARS 225.870-4(c)(2)(ii) to determine that data other than certified cost or pricing data from a Canadian Commercial Corporation is needed in order to determine that price is fair and reasonable. If the Chief of the Contracting Office (CCO) is the contracting officer for the

contract action, the HCA, in a position two levels above the contracting officer, retains the authority under DFARS 225.870-4(c)(2)(ii).

(5) The PARC is delegated the authority under DFARS 225.870-4(c)(5) to determine that it is in the best interest of the Government to make the award to the offeror who does not comply with a requirement to submit data that the contracting officer has deemed necessary to determine price reasonableness or cost realism is ineligible for award.

Subpart 5125.70 – Authorization Acts, Appropriations Acts, and Other Statutory Restrictions on Foreign Acquisitions

UAI 5125.7008 Waiver of restrictions of 10 U.S.C. 2534.

(a)(2) The PARC is delegated the authority under DFARS 225.7008(a)(2) to waive a restriction on certain foreign purchases on a case-by-case basis.

Subpart 5125.73 – Acquisitions for Foreign Military Sales

UAI 5125.7301 General.

(a) For more information, see DFARS 225.7301 and the Defense Security Cooperation Agency (DSCA) Security Assistance Management Manual (DSCA 5105.38-M).

Subpart 5125.77 – Acquisitions in Support of Operations in Afghanistan

UAI 5125.7703 Enhanced authority to acquire products or services from Afghanistan.

UAI 5125.7703-2 Determination requirements.

(b)(2)(i) The PARC is delegated the authority under DFARS 225.7703-2(b)(2)(i) to determine it is in the national security interest of the United States to use a procedure specified in DFARS 225.7703-1(a) that applies to an individual acquisition with a value of less than \$93 million.

UAI – PART 5126

OTHER SOCIOECONOMIC PROGRAMS

Reserved

UAI – PART 5127

PATENTS, DATA, AND COPYRIGHTS

Subpart 5127.4 – Rights in Data and Copyrights

UAI 5127.404-5 Unauthorized, omitted, or incorrect markings.

(a)(2)(ii)(B) The Principal Assistant Responsible for Contracting (PARC) is delegated the authority under Federal Acquisition Regulation (FAR) 27.404-5(a)(2)(ii)(B) to concur with the contracting officer's determination that the markings are not authorized.

Subpart 5127.70 – Infringement Claims, Licenses, and Assignments

UAI 5127.7004 Requirements for filing an administrative claim for patent infringement.

(c)(2) The PARC is delegated the authority under Army Federal Acquisition Regulation Supplement (AFARS) 5127.7004(c)(2) to process claims for compensation regarding the manufacture, use, or disposition of any article, material, or process by or for any agency or component of the Army, except for Army Materiel Command, that involves the use of any invention, whether patented or un-patented.

UAI 5127.7103-1 Policy.

(e) If the chief of the contracting office (CCO) is the contracting officer for the contract action, the PARC, in a position one level above the contracting officer, will make the determination under Defense Federal Acquisition Regulation Supplement (DFARS) 227.7103-1(e).

UAI – PART 5128

BONDS AND INSURANCE

Subpart 5128.1 – Bonds and Other Financial Protections

UAI 5128.105 Other types of bonds. The chief of the contracting office (CCO) is delegated the authority under Federal Acquisition Regulation (FAR) 28.105 to approve using other types of bonds (e.g., advance payment bonds and patent infringement bonds) in connection with acquiring particular supplies or services.

UAI 5128.106 Administration.

UAI 5128.106-2 Substitution of surety bonds.

(a) The CCO is delegated the authority under FAR 28.106-2(a) to approve substitution of a previously approved bond with a new surety bond covering all or part of the obligations.

Subpart 5128.3 – Insurance

UAI 5128.305-100 Overseas workers' compensation and war-hazard insurance.

(a) U.S. Army Corps of Engineers (USACE) contractors shall obtain commercially available Defense Base Act (DBA) insurance from an insurance carrier authorized by Department of Labor (DOL), unless the contractor is under a self-insurance program approved by DOL or performance of work is in a location country with a current DOL waiver. DOL-approved carriers and self-insured employers that are currently authorized to write coverage under the Longshore and Harbor Workers' Compensation Act and/or extensions for DBA insurance are listed at <http://www.dol.gov/owcp/dlhwc/lscarrier.htm> with "DB" in the "Acts Covered" column. See USACE Desk Guide 5128.305-2 for required documentation for open market DBA insurance carriers.

(b) The procuring contracting officer (PCO) is responsible to ensure that the contractor obtains and maintains valid DBA insurance before allowing performance or issuing a notice to proceed (NTP) by requesting proof of confirmation of coverage from the contractor. PCOs shall ensure that there is a valid insurance policy or endorsement to an existing policy for the prime contractor and each subcontractor.

(c) *DBA waivers.*

(1) Active DBA waivers can be viewed at either the Office of Workers' Compensation Program (OWCP) website, <http://www.dol.gov/owcp/dlhwc/dbawaivers/dbawaivers.htm>, which is the official repository for DBA waivers, or at the Defense Procurement and Acquisition Policy

(DPAP) website,
http://www.acq.osd.mil/dpap/cpic/cp/waivers_for_defense_base_act_insurance.html.

(2) DBA waivers release the contracting agencies and contractors from the requirement to purchase DBA insurance for foreign workers as stated in FAR clauses 52.228-3, Workers' Compensation Insurance (Defense Base Act), and 52.228-4, Workers' Compensation and War-Hazard Insurance Overseas. These waivers apply to employees other than U.S. citizens, residents of the U.S., or those hired in the U.S. Such employees to whom the waiver will apply receive compensation benefits pursuant to the provisions of the host country workers' compensation laws, providing occupational injury and death benefits without exception, inclusive of war-related injury and death.

(3) If, after investigating the host country's workers' compensation program, a waiver is necessary, the PCO shall request a waiver from DOL through the USACE Contractor Industrial Relations (CIR) Officer. The PCO:

(i) Should use the DBA Waiver Comparison Chart
<https://www.dol.gov/owcp/dlhwc/lbdba.htm>,

(ii) Shall use DOL Form BEC-565, Request for Waiver–DBA, and

(iii) Shall allow a response time of not less than 30 business days.

(4) PCOs are reminded that waivers not listed at the OWCP or DPAP website should be reinvestigated to ensure current DBA coverage by the host country's workers' compensation laws. Supporting documentation for the waiver renewal requests should follow the same process as noted above in (2). If approved, the renewed waiver will be posted at the OWCP and DPAP websites.

UAI 5128.311 Solicitation provision and contract clause on liability insurance under cost-reimbursement contracts.

UAI 5128.311-1 Contract clause. The Principal Assistant Responsible for Contracting (PARC) is delegated the authority under Defense Federal Acquisition Regulation Supplement (DFARS) 228.311-1 to waive the requirement to use FAR clause 52.228-7, Insurance – Liability to Third Persons, when a cost-reimbursement contract is contemplated.

UAI 5128.370 Additional clauses.

(a)(2) The PARC is delegated the authority under DFARS 228.370(a)(2) to make the decision not to allow contractors to buy insurance for war-hazard losses.

UAI – PART 5129

TAXES

Reserved

USACE Acquisition Instruction (UAI)
Version 4 dated 25 JAN 2017

UAI – PART 5130

COST ACCOUNTING STANDARDS ADMINISTRATION

Reserved

UAI – PART 5131

CONTRACT COST PRINCIPLES AND PROCEDURES

Subpart 5131.1 – Applicability

UAI 5131.100 Scope of subpart.

UAI 5131.100-70 Contract clause. The procuring contracting officer (PCO) shall insert the clause at UAI 5152.231-9000, Equipment Ownership and Operating Expense Schedule, in all solicitations and contracts for construction within the United States that are expected to exceed the micro-purchase threshold.

DoD Class Deviation 2011-O0006, Utilities Privatization.

Section 1, General Deviation from FAR part 31. The Principal Assistant Responsible for Contracting (PARC) is delegated the authority under Department of Defense (DoD) Class Deviation 2011-O0006, Utilities Privatization, to waive the requirements of Federal Acquisition Regulation (FAR) part 31 for Government contracts awarded in conjunction with the conveyance of a utility system under 10 U.S.C. 2688, provided all of the conditions listed in the deviation are met.

Section 3, FAR 31.205-41 – Taxes. The PARC is delegated the authority under DoD Class Deviation 2011-O0006 to waive the requirements of FAR 31.205-41(b)(1) to allow Federal income and excess profits taxes as selected costs.

UAI 5131.105 Construction and architect-engineer (A-E) contracts.

(d)(2)(i)(B) For the predetermined schedule of construction equipment use rates, use Engineer Pamphlet (EP) 1110-1-8, Construction Equipment Ownership and Operating Expense Schedule.

UAI – PART 5132

CONTRACT FINANCING

Subpart 5132.1 – Non-Commercial Item Purchase Financing

UAI 5132.111 Contract clauses for non-commercial purchases.

(d) The procuring contracting officer (PCO) shall insert the clause at 5152.232-9000, Payment for Material Delivered Off-Site, in all solicitations and contracts when the PCO determines that payment for materials delivered to a location other than the work site during a construction contract is in the Government's best interest.

Subpart 5132.2 – Commercial Item Purchase Financing

UAI 5132.202 General.

UAI 5132.202-1 Policy.

(d) The Principal Assistant Responsible for Contracting (PARC) is delegated the authority under Federal Acquisition Regulation (FAR) 32.202-1(d) to approve any contract financing arrangement not in accord with the requirements of agency regulations or FAR part 32 in accordance with agency procedures.

Subpart 5132.7 – Contract Funding

UAI 5132.702 Policy.

(a)(ii)(D) The PARC is delegated the authority under Army Federal Acquisition Regulation Supplement (AFARS) 5132.702(a)(ii)(D) to approve an exception to issue a research and development solicitation for a contract that is incrementally funded over successive years without sufficient planned funds (Future Years Defense Program) to cover the entire period of the multi-year performance.

UAI 5132.705 Contract clauses.

(a) The PCO, when appropriate, shall insert the clause at 5152.232-9001, Special Continuing Contract for Civil Works Project Managed by the U.S. Army Corps of Engineers (USACE) [DEVIATION], in solicitations and contracts for civil works water resource projects that have been specifically adopted by Congress in authorizing legislation and for which future Fiscal Year (FY) funding is provided in the budget. See Engineering Circular (EC) 11-2-211, Execution of the Annual Civil Works Program, for additional guidance and restrictions on the use of this clause.

(b) The PCO shall insert Alternate I of clause 5152.232-9001, Special Continuing Contract for Civil Works Project Managed by the USACE [DEVIATION], in solicitations and contracts for civil works water resource projects that have been specifically adopted by Congress in authorizing legislation but for which future FY funding is not provided in the budget or when use of the clause at Defense Federal Acquisition Regulation Supplement (DFARS) 252.232-7007, Limitation of Government's Obligation, could be used.

Subpart 5132.9 – Prompt Payment

UAI 5132.901 Applicability.

(1)(ii) The PARC is delegated the authority under DFARS 232.901(1)(ii) to determine, after consultation with the cognizant comptroller, that conditions exist that limit normal business operations and that FAR subpart 32.9, Prompt Payment, does not apply.

(3) The PARC is delegated the authority under DFARS 232.901(3) to make subsequent determinations, after consultation with the cognizant comptroller, as the operational area evolves into either a more stable or less stable environment.

UAI – PART 5133

PROTESTS, DISPUTES, AND APPEALS

Subpart 5133.1 – Protests

UAI 5133.102 General.

(b)(i) The U.S. Army Corps of Engineers (USACE) Chief Counsel is delegated the authority under Army Federal Acquisition Regulation Supplement (AFARS) 5133.102(b)(i) to make agency head determinations regarding actions described in Federal Acquisition Regulation (FAR) 33.102(b)(1) through (b)(3).

UAI 5133.102-100 General.

(a) The procuring contracting officer (PCO) retains the inherent authority to resolve protests by taking corrective action. The PCO may also communicate with the protester to achieve withdrawal of the protest.

(b) See USACE Desk Guide (UDG) Attachment 5, Contract Requests, Claims, and Appeals, for guidance on coordinating contract requests, claims, and appeals.

UAI 5133.103 Protests to the agency.

(d)(4)(ii) The USACE Chief Counsel is delegated the authority under AFARS 5133.103(d)(4)(ii) to handle requests for an independent review of a protest.

UAI 5133.103-90 Annual agency bid protest report. The USACE Chief Counsel is delegated the authority under AFARS 5133.103-90 to prepare and submit an annual report of agency bid protests to Deputy Assistant Secretary of the Army (Procurement) (DASA(P)).

UAI 5133.103-100 Protests to the agency.

(a) The USACE Chief Counsel has the authority to decide all agency protests. The USACE Chief Counsel has delegated the authority, without power of redelegation, to decide agency protests to the following Center/Division Counsels: Huntsville Engineering and Support Center (HNC), Lakes and Rivers Division (LRD), Mississippi Valley Division (MVD), North Atlantic Division (NAD), Northwestern Division (NWD), Pacific Ocean Division (POD), South Atlantic Division (SAD), South Pacific Division (SPD), Southwestern Division (SWD), and Transatlantic Division (TAD).

(b) The USACE Chief Counsel has delegated the authority to decide agency protests for Army Geospatial Center (AGC), Engineer Research Development Center

(ERDC), and Humphreys Engineer Center Support Activity (HEC) to the USACE Assistant Chief Counsel for Procurement Law and Contract Disputes (CECC-C).

(c) Divisions/Centers with delegated authority shall furnish copies of all final agency decisions to the Office of the Chief Counsel within five days after the decision is signed.

(d) The Office of the Chief Counsel shall be advised of any protest of national significance or precedential nature. The USACE Chief Counsel may choose to intervene in any case, to include removing the case from the general delegation. Center/Division Counsel may consult with the Office of the Chief Counsel in any protest as deemed necessary.

(e) In those cases where the USACE Chief Counsel has retained the authority to decide the agency bid protest, the District Counsel shall submit the PCO's report to the Division Counsel for review and comment. The Division Counsel then furnishes the report with comments to the Office of the Chief Counsel for final decision. For Centers without delegation of authority, the Center Counsel shall submit the PCO's report to CECC-C for final decision.

UAI 5133.104 Protests to GAO.

(b) Protests Before Award.

(1)(B) All requests to DASA(P) for approval to award a contract or issue a notice to proceed, notwithstanding a protest, shall be forwarded through the appropriate Principal Assistant Responsible for Contracting (PARC) to the USACE Director of Contracting (DOC) for processing and transmittal to DASA(P). Generally such request shall be submitted to the USACE DOC within three days of notice of the protest. The request shall include a complete explanation for the need to award or proceed with performance of the contract, including costs and other impacts, and the PCO's report with the analysis and documentation set forth in FAR 33.104(a)(3). In addition, the request shall address the likelihood of the agency successfully defending the protest on the merits. The request shall be reviewed for legal sufficiency at the originating office and at each office required to concur with the request. Note: Use the Competition in Contracting Act (CICA) Override Guidebook (June 2008) for reference and additional policy guidance for GAO protests both prior to award and after award.

(g) *Notice to GAO.* The USACE Chief Counsel is delegated the authority under FAR 33.104(g) to report to GAO the agency's failure to fully implement GAO's recommendations regarding a solicitation or contract award.

UAI 5133.104-100 Protests to GAO.

(a) The USACE Chief Counsel has the authority to determine the final agency position for GAO protests. The USACE Chief Counsel has delegated the authority, with power of redelegation from the Divisions to the Districts, to determine the final Agency

position to the following Center/Division Counsels: ERDC, HNC, LRD, NAD, NWD, POD (for Alaska District only), SAD, SPD, SWD, and TAD. Delegated protests shall be processed in accordance with procedures established by the respective Division Counsel.

(1) Offices with delegated authority must furnish copies of all final agency positions (excluding exhibits) to the Office of the Chief Counsel, as soon as practicable after the position is signed. At the discretion of the USACE Chief Counsel, draft copies may be requested for review prior to transmission to GAO.

(2) Final agency positions include the agency report and agency response to protester comments, as well as any dispositive motion submitted by the agency.

(3) Division Counsels who have redelegated their authority shall determine oversight requirements and issue policies to effect those requirements.

(b) The USACE Chief Counsel has retained authority to determine the final agency position for GAO bid protests for AGC, HEC, MVD, and POD (for all Districts except Alaska). Counsel at such offices shall forward the PCO's report directly to the Office of the Chief Counsel within 15 days of the telephonic notification from GAO for determination of the final agency position on the protest. A copy shall be simultaneously sent to the Division Counsel for review and comment. Each PCO's report submitted shall include the analysis and documentation set forth in USACE Acquisition Instruction (UAI) 5133.190-1-100.

(c) The Office of the Chief Counsel shall be advised of any protest of national significance or precedential nature. The USACE Chief Counsel may choose to intervene in any case, to include removing the case from the general delegation. The Center/Division Counsel may consult with the Office of the Chief Counsel in any protest as deemed necessary.

(d) Immediately after receipt of a complete copy of the protest, counsel assigned to the case should consider whether a request for summary dismissal is appropriate. If summary dismissal of the protest or certain grounds of the protest is warranted, a request must be submitted to the GAO within five days, with a copy provided to each interested party.

(1) The written request should clearly indicate the protest number, the grounds of the protest that should be dismissed, and the reasons for dismissal.

(2) Where appropriate, counsel with delegated bid protest authority should contact the assigned GAO attorney by telephone to inform them of the agency's intent to submit a request for summary dismissal. Subsequently, the request and supporting documents should be transmitted to the GAO attorney and each interested party.

(3) Center/Division Counsel without delegated bid protest authority should advise the CECC-C attorney assigned to the protest of any known basis for summary dismissal. Documents supporting the summary dismissal request should be transmitted via e-mail to Office of the Chief Counsel.

(e) Each Center/District/Division Counsel responsible for responding to protests at GAO must transmit a written notice of appearance to GAO, the protester, CECC-C, and intervener not later than three days after being notified of the protest by the Office of the Chief Counsel.

(1) The notice shall include the name, address, phone number, and e-mail address of the attorney who will represent USACE in the protest.

UAI 5133.190-100 Contracting officer's reports on GAO and agency protests.

(a) In addition to the documents described in FAR 33.103(d) and 33.104(a)(3), each PCO's report on an agency or GAO protest shall include:

(1) Findings of fact prepared with complete supporting documentation addressing all facts, favorable and unfavorable to the PCO's position.

(2) Analysis by legal counsel with citation to pertinent decisions of the Comptroller General and other relevant authority.

(b) The PCO's report shall not be released to any member of the public, including the protester and other interested parties, without the prior approval of the office having authority to decide an agency protest or to determine the final agency position on a GAO protest.

UAI 5133.190-1-100 Bid protest action report. The requirement for after action reporting will be satisfied by promptly entering the required data in the Matter Tracking System (MTS/LawManager) Procurement Bid Protest Notebook.

Subpart 5133.2 – Disputes and Appeals

UAI 5133.204 Policy.

(e) The Armed Services Board of Contract Appeals is the agency board having jurisdiction over appeals arising from final decisions of the PCO on USACE contracts.

UAI 5133.212-93 Review of appeal. The USACE Chief Counsel is delegated the HCA task under AFARS 5133.212-93 to furnish technical and legal assistance to the contracting officer as required, and establish procedures to ensure that review of all appeals filed under the disputes clause occur at a level higher than the contracting officer.

UAI 5133.213 Obligation to continue performance.

(a) The chief of the contracting office (CCO) is delegated the authority under AFARS 5133.213(a) to determine, after consultation with Office of Counsel, to use the alternate paragraph in the clause at FAR 52.233-1.

UAI 5133.215 Contract clauses.

(3) The PARC is delegated the authority under the Defense Federal Acquisition Regulation Supplement (DFARS) 233.215(3) to determine that continued performance is necessary pending resolution of any claim that might arise under or be related to the contract.

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UAI – PART 5134

MAJOR SYSTEM ACQUISITION

Reserved

UAI – PART 5135

RESEARCH AND DEVELOPMENT CONTRACTING

UAI 5135.015 Contracts for research with educational institutions and nonprofit organizations.

UAI 5135.015-70 Special use allowances for research facilities acquired by educational institutions.

(c) *Authorization for special use allowance.* The Principal Assistant Responsible for Contracting (PARC) is delegated the authority under Defense Federal Acquisition Regulation Supplement (DFARS) 235.015-70(c) to approve special use allowances.

(d)(3)(ii) The PARC is delegated the authority under DFARS 235.015-70(d)(3)(ii) to consent that the research facility can be put to any significant use other than that which justified the special use allowance.

UAI – PART 5136

CONSTRUCTION AND ARCHITECT-ENGINEER CONTRACTS

Subpart 5136.1 – General

UAI 5136.104 Policy.

(c) The chief of the contracting office (CCO) will ensure the required Biddability, Constructability, Operability, Environmental and Sustainability (BCOES) written certification is received prior to bid opening or start of proposal evaluation, unless waived in accordance with (IAW) Engineering Regulation (ER) 415-1-11, Biddability, Constructability, Operability, Environmental and Sustainability (BCOES) Reviews.

(d) The CCO will ensure the required real estate certification is obtained prior to solicitation of a construction contract IAW ER 405-1-12, Real Estate Handbook.

(e) Informal partnering is required for non-complex projects with small dollar values. Formal, facilitated partnering is required for technically complex projects, for compressed durations, and for larger dollar values.

Subpart 5136.2 – Special Aspects of Contracting for Construction

UAI 5136.201 Evaluation of contractor performance.

(a) The contracting officer shall notify the contractor at the preconstruction conference of the elements that will be used to evaluate performance.

(b) For U.S. Army Corps of Engineers (USACE) specific guidance on construction and architect-engineer (A-E) contracts, refer to ER 415-1-17, Construction Contractor Performance Evaluations, and Engineering Pamphlet (EP) 715-1-7, Architect-Engineer Contracting in USACE.

UAI 5136.203 Government estimate of construction costs.

UAI 5136.203-100 Government estimate for Civil Works construction contracts. See ER 1110-2-1302, Civil Works Cost Engineering, for requirements on preparing estimates for Civil Works construction contracts.

UAI 5136.205-100 Statutory cost limitations – Civil Works contracts. IAW 33 U.S.C. 624, no Civil Works construction contract shall be awarded if the contract price exceeds the Government estimate by more than 25%.

UAI 5136.205-101 Cost limitations – Military construction contracts.

(a) Award of a contract for military construction shall be approved by the Center Director/District Commander when the lowest qualifying bid/proposal exceeds the Government's estimate by more than 15%. The estimate shall include an allowance for contractor profit.

(b) *Military installation support for Operations & Maintenance (O&M) construction.* Installation Commander or designee approval shall be obtained prior to award of a contract if the proposed contract price exceeds the authorized amount on the project authorization document.

UAI 5136.208 Concurrent performance of firm-fixed-price and other types of construction contracts. The Principal Assistant Responsible for Contracting (PARC) is delegated the authority under Federal Acquisition Regulation (FAR) 36.208 to approve cost-plus-fixed-fee, price incentive, or other types of contracts with cost variation or cost adjustment features concurrently, at the same work site, with firm-fixed-price or unit price contracts.

UAI 5136.209 Construction contracts with A-E firms. The PARC is delegated the authority under Army Federal Acquisition Regulation Supplement (AFARS) 5136.209 to approve award of a construction contract to the firm that designed the project.

UAI 5136.213 Special procedures for sealed bidding in construction contracting.

UAI 5136.213-2 Pre-solicitation notices.

(a) The PARC is delegated the authority under FAR 36.213-2(a) to waive the requirement to issue pre-solicitation notices on any construction requirement when the proposed contract is expected to exceed the simplified acquisition threshold.

UAI 5136.272 Prequalification of sources.

(b) The PARC is delegated the authority under Defense Federal Acquisition Regulation Supplement (DFARS) 236.272(b) to authorize the use of prequalification and approve the prequalification procedures.

Subpart 5136.3 – Two-Phase Design-Build Selection Procedures

UAI 5136.301 Use of two-phase design-build selection procedures.

(b)(3)(vi) The PARC, in coordination with HQ USACE Directorate of Contracting and HQ USACE Directorate of Contracting, Engineering and Construction Division, is delegated the authority under FAR 36.301(b)(3)(vi) to establish other criteria to be used in two-phase design-build source selection procedures.

UAI 5136.303-100 Procedures.

(a) The use of a one-step selection procedure is authorized for military construction projects; repair projects as defined in 10 U.S.C. 2811(e) with an approved cost of \$4 million or less; or an authorized security assistance project as defined by 10 U.S.C. 401, 10 U.S.C. 404, 10 U.S.C. 2561, 22 U.S.C. 2769, 22 U.S.C. 2357, 22 U.S.C. 2392 or other international security assistance specifically authorized by law.

(b) The single-phase approach can only be used where authorized.

(1) The procuring contracting officer (PCO) makes the determination in FAR 36.301, and

(2) The package contains the technical approvals IAW Engineering and Construction Bulletin (ECB) 2015-8, Limitations on the Use of One-Step Selection Procedures for Design-Build.

(c) In the event of a disagreement between the PCO's determination and the HQ USACE technical approvals, the concern shall be elevated to the Head of the Contracting Activity (HCA) and the USACE Chief of Engineering and Construction Division.

(d) Under two-phase procedures, where the phase-one and phase-two solicitations are issued in sequence, the PCO may issue the phase-one solicitation with the minimum information required by FAR 36.303-1, Phase One, while the remainder of the phase-two solicitation is still under development.

Subpart 5136.5 – Contract Clauses

UAI 5136.570 Additional provisions and clauses.

(b)(2) The CCO is delegated the authority under DFARS 236.570(b)(2) to approve the use of a separate bid item for mobilization and preparatory work.

UAI 5136.570-100 Additional solicitation provisions and contract clauses.

(a) The PCO shall insert the clause at UAI 5152.236-9000, Design-Build Order of Precedence, in all design-build solicitations and contracts.

(b) The PCO shall insert the clause at UAI 5152.236-9001, Personnel, Subcontractors and Outside Associates or Consultants, in all design-build solicitations and contracts.

(c) The PCO shall insert the clause at UAI 5152.236-9002, Government-Furnished Drawings, Surveys, and Specifications in the Request for Proposal, in all design-build solicitations and contracts.

(d) The PCO shall insert the clause at UAI 5152.236-9003, Government-Furnished Specifications and Drawings for Construction, in all design-build solicitations and contracts.

(e) The PCO shall insert the clause at UAI 5152.236-9004, Responsibility of the Contractor for Design, in all design-build solicitations and contracts.

(f) The PCO shall insert the clause at UAI 5152.236-9005, Warranty of Design, in all design-build solicitations and contracts.

(g) The PCO shall insert the clause at UAI 5152.236-9006, Deviating from the Accepted Design, in all design-build solicitations and contracts.

(h) The PCO shall insert the clause at UAI 5152.236-9007, Contractor's Role during Design Process, in all design-build solicitations and contracts.

(i) The PCO shall insert the clause at UAI 5152.236-9008, Value Engineering after Award, in all design-build solicitations and contracts.

(j) The PCO shall insert the clause at UAI 5152.236-9009, Partnering, in all construction solicitations and contracts.

(k) The PCO shall insert the clause at UAI 5152.236-9010, Government Re-Use of Design, in all design-build solicitations and contracts.

Subpart 5136.6 – Architect-Engineer Services

UAI 5136.601-3-100 Applicable contracting procedures. Professional A-E services acquisitions will be procured under the Brooks Act, the provisions outlined in FAR subpart 36.6, and the procedures provided in EP 715-1-7.

UAI 5136.601-3-90-100 Limitations. If a task order can be issued under more than one available indefinite delivery contract, see EP 715-1-7, section 3-16.

UAI 5136.602 Selection of firms for A-E contracts.

UAI 5136.602-1 Selection criteria.

(b) The CCO is delegated the authority under AFARS 5136.602-1(b) to approve design competition.

UAI 5136.602-3 Evaluation board functions. The Center Director/District Commander is delegated the authority under FAR 36.602-3 to direct the evaluation board's performance of functions listed in FAR 36.602-3(a)-(d). The Center Director/District Commander may further delegate, on a case-by-case basis, this

authority in writing to the Center/District Chief of Engineering, the CCO, or other appropriate officials not below the level of the CCO.

UAI 5136.602-4 Selection authority.

(a) The Center Director/District Commander is delegated the authority under AFARS 5136.602-4(a) to make the final selection decision IAW all appropriate source selection guidance. The Center Director/District Commander may further delegate, on a case-by-case basis, this authority in writing to the Center/District Chief of Engineering, the CCO, or other appropriate officials not below the level of the CCO.

UAI 5136.602-5 Short selection process for contracts not to exceed the simplified acquisition threshold.

(b)(2) The Center Director/District Commander is delegated the authority under AFARS 5136.602-5(b)(2) to approve the selection report or return it to the chairperson for appropriate revision. The Center Director/District Commander may further delegate, on a case-by-case basis, this authority in writing to the Center/District Chief of Engineering, the CCO, or other appropriate officials not below the level of the CCO.

UAI 5136.609 Contract clauses.

UAI 5136.609-1 Design within funding limitations.

(c)(1) The CCO is delegated the authority under FAR 36.609-1(c)(1) to determine, after consultation with the District Chief of Engineering, that cost limitations are secondary to performance considerations and additional project funding can be expected, if necessary.

UAI – PART 5137

SERVICE CONTRACTING

Subpart 5137.1 – Service Contracts – General

UAI 5137.104 Personal services contracts. 33 U.S.C. 569a authorizes the U.S. Army Corps of Engineers (USACE) Chief of Engineers to procure the temporary services of consultants in connection with the Civil Works functions of USACE.

(b)(i) The Principal Assistant Responsible for Contracting (PARC) is delegated the authority under Army Federal Acquisition Regulation Supplement (AFARS) 5137.104(b)(i) to make the determination as required by Defense Federal Acquisition Regulation Supplement (DFARS) 237.104(b)(i) to authorize contracts pursuant to 10 U.S.C. 129b and 5 U.S.C. 3109.

(iii) The PARC is delegated the authority under AFARS 5137.104(b)(iii) to approve the proposed personal services contract pursuant to 10 U.S.C. 129b(d).

UAI 5137.170 Approval of contracts and task orders for services.

UAI 5137.170-2 Approval requirements.

(a)(1) The Head of the Contracting Activity (HCA) retains the authority under AFARS 5137.170-2(a)(1) to approve acquisition of services through a contract or task order that is not performance based at or below \$93 million.

Subpart 5137.2 – Advisory and Assistance Services

UAI 5137.204 Guidelines for determining availability of personnel. The HCA retains the authority under AFARS 5137.204 to make the determination at Federal Acquisition Regulation (FAR) 37.204.

Subpart 5137.5 – Management Oversight of Service Contracts

UAI 5137.590 Scope of section.

UAI 5137.590-3 Review thresholds.

(a)(i) The PARC is delegated the authority under AFARS 5137.590-3(a), Table 37-1, Army Acquisition of Services Categories, to approve acquisition strategies for acquisitions of services with an estimated total value of \$100 million or more, but less than \$250 million.

(ii) The chief of the contracting office (CCO) is delegated the authority under AFARS 5137.590-3(a), Table 37-1, Army Acquisition of Services Categories, to approve acquisition strategies for acquisitions of services with an estimated total value of \$10 million or more, but less than \$100 million.

(iii) The CCO, as one level above the contracting officer, is delegated the authority under AFARS 5137.590-3(a), Table 37-1, Army Acquisition of Services Categories, to approve acquisition strategies for acquisitions of services with an estimated total value of the simplified acquisition threshold or more, but less than \$10 million. If the CCO is the contracting officer, the PARC is delegated the authority under AFARS 5137.590-3(a), Table 37-1, to approve acquisition strategies for acquisitions of services with an estimated total value of the simplified acquisition threshold or more, but less than \$10 million.

UAI 5137.590-4 Review procedures.

(b) See USACE Desk Guide (UDG) 5137.590-4 for the Department of the Army, Office of Small Business Programs (OSBP) pre-brief procedures.

UAI 5137.590-100 Management and oversight of service contracts.

(a) *USACE Command Services Executive (CSE)*. Refer to USACE Operation Order (OPORD) 2012-81, USACE Implementation of Management and Oversight of Army Services Acquisitions, for additional information.

(i) Services requirements (except Civil Works), including indefinite delivery/indefinite quantity contracts (IDIQs), for services acquisitions with a value of \$10 million or greater over the life of a contract require CSE review and approval to proceed with the services acquisition.

(ii) All IDIQs, regardless of dollar value, for construction acquisitions that will cross MSC boundaries require CSE review and approval to proceed with the construction acquisition.

(b) *Services Acquisition Workshop (SAW)*. The completion of a SAW is required for all acquisition valued at \$250 million or greater before the services acquisition strategy will be approved by the Deputy Assistant Secretary of Army (Procurement) (DASA(P)) or the Director, Defense Procurement and Acquisition Policy (DPAP). See the DASA(P) website for additional guidance on SAWs.

Subpart 5137.74 – Services at Installations Being Closed

UAI 5137.7401 Policy.

(c) The PARC is delegated the authority under DFARS 237.7401(c) to determine that the services being acquired under contract with the local government are in the best interests of the Department of Defense (DoD).

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UAI – PART 5138

FEDERAL SUPPLY SCHEDULE CONTRACTING

Reserved

UAI – PART 5139

ACQUISITION OF INFORMATION TECHNOLOGY

Subpart 5139.1 – General

UAI 5139.101 Policy.

UAI 5139.101-90 Policy.

UAI 5139.101-90-100 USACE Policy.

(a) Commercial information technology hardware, services, non-standard equipment, and software.

(1) USACE activities shall coordinate with the local Chief of Information Management (IM)/Chief of Information Technology (IT) to provide the requirements and justification for their acquisition requests. All activities are required to obtain USACE Chief Information Officer (CIO)-delegated review and approval prior to submitting acquisition packages requiring procurement of any IM/IT hardware, services, or elements of IM/IT through the Army's Computer Hardware, Enterprise Software and Solutions (CHESS) program or other (Non-Army Corps of Engineers Enterprise Information Technology (ACE-IT)/Non-CHESS) acquisition vehicles. The acquisition of IM/IT hardware and services destined for delivery to an external customer, partner, organization, or agency requires approval in accordance with the external organization's CIO office.

(2) USACE organizations shall purchase supported items using the below acquisition vehicles (in order of precedence):

(a) ACE-IT Acquisition Tools (e.g. ACE-IT Surge, ACE-IT Radios, ACE-IT OrderTrak, ACE-IT iSYS)

(b) Army CHESS

(c) Other vehicles, only in event of unavailability from ACE-IT and CHESS

(3) USACE IM/IT Acquisition Checklist.

(a) For all acquisitions not utilizing the ACE-IT Acquisition Tools, the Acquisition Requestor (ACE-IT IT Chief (ITC)/Chief of IM, Information Technology Operations Officer (ITOO), ACE-IT Enterprise, or USACE CIO/G-6 representatives) shall complete the USACE IM/IT Acquisition Checklist and other required documentation and submit the acquisition package to the appropriate CIO-delegated approval authority.

(b) The Checklist is for requesting approval, prior to purchase of USACE-approved configurations and services through Army CHES or other sources using local contracting offices or government purchase cards (GPCs). Sites may request other acquisition vehicle approvals only when hardware or services are unavailable from the ACE-IT Acquisition Tools.

(c) As part of the acquisition packages, contracting offices will require an IM/IT Acquisition Checklist approval email for all CHES and other acquisition vehicle purchases.

(d) Use of the Checklist is not required when the acquisition vehicle is an ACE-IT Acquisition Tool, such as ACE-IT Surge, ACE-IT Radio, ACE-IT OrderTrak, or ACE-IT iSYS Wireless Ordering because these tools already have delegated approval, tracking, and reporting functionality built into their processes.

(4) Waivers.

(a) An approved Army Information Technology Approval System (ITAS) waiver is required when an "other" acquisition method is used for hardware purchases, regardless of dollar value. All "other" acquisition requests for hardware shall have a copy of the approved CHES Statement of Non-Availability (SONA) and approved Army ITAS letter attached to the IT Acquisition Checklist request.

(b) DoD CIO or Army CIO waiver approval is required for the procurement of data servers and data center equipment, including servers; server operating systems; data center management tools; or procurement, construction, or renovation and/or lease of a facility related to data centers; and other related items. A copy of the approved DoD IT Data Center Spending Moratorium Waiver must be attached to the USACE IM/IT Acquisition Checklist.

(5) Exceptions. This policy applies to all IM/IT acquisitions except:

(a) Acquisition of IT Consumables (paper, toner, maintenance kits) through DoD Electronic Mall (EMALL).

(b) Software requests (approved and unevaluated) are not part of this policy and must follow the Software Request process on ServiceTrak.

UAI – PART 5140

Reserved

UAI – PART 5141

ACQUISITION OF UTILITY SERVICES

Subpart 5141.2 – Acquiring Utility Services

UAI 5141.202 Procedures.

(c)(2) The Head of the Contracting Activity (HCA) retains the authority under Federal Acquisition Regulation (FAR) 41.202(c)(2) to determine that a written contract cannot be obtained and that the issuance of a purchase order is not feasible.

UAI 5141.204 General Services Administration (GSA) areawide contracts.

(c)(1)(ii) The chief of the contracting office (CCO) is delegated the authority under FAR 41.204(c)(1)(ii) to determine that use of the area-wide contract is not advantageous to the Government.

UAI – PART 5142

CONTRACT ADMINISTRATION AND AUDIT SERVICES

Subpart 5142.2 – Assignment of Contract Administration

UAI 5142.202 Assignment of contract administration.

(a)(v) Civil works supply contracts for items that require inspection during manufacture shall be assigned for administration, except that the following functions shall be retained by U.S. Army Corps of Engineers (USACE) and not be assigned:

(1) Responsibility for payments under the contract.

(2) Responsibility for contract changes, shop drawing approvals, approval of shop and model tests, and approval of delivery schedules.

(c)(2) The chief of the contracting office (CCO) is delegated the authority under FAR 42.202(c)(2) to delegate to the Contract Administration Office the authority to issue orders under provisioning procedures in existing contracts and under basic ordering agreements for items and services identified in the schedule.

Subpart 5142.3 – Contract Administration Office Functions

UAI 5142.302 Contract administration functions.

(d) The procuring contracting officer (PCO) may appoint an administrative contracting officer (ACO) to be responsible for the administration of construction contracts. The ACO may issue contract modifications up to the amount delegated and pursuant to clauses specified in their ACO delegation letter. See Army Federal Acquisition Regulation Supplement (AFARS) 5101.603-3-100 for the authorities in a typical designation letter. The ACO shall routinely confer with the PCO on the status of each of their assigned contracts.

(e) The contracting officer or ordering officer shall execute contract actions and Contract Action Reports (CARs) in the Standard Procurement System/Procurement Desktop-Defense (SPS/PD2) simultaneously with signing the award/modification document.

(f) Immediately upon execution, the contracting officer or ordering officer is required to upload at least the following documentation to the Paperless Contracting File (PCF): all contract modifications and supporting documentation, all correspondence, and any other contract administration documents requested by the PCO.

(g) If documentation is filed in an official repository other than PCF, PCF shall include a cross-reference notation to the location of the documentation (e.g., payrolls, submittals, labor interviews, etc.) maintained by the ACO and the contracting officer's representative (COR).

UAI 5142.302(S-75) Monitoring contractor costs.

(c)(1)(i)(C) The Head of the Contracting Activity (HCA) retains the authority under Defense Federal Acquisition Regulation Supplement (DFARS) Procedures, Guidance, and Information (PGI) 242.302(a)(S-75)(c)(1)(i)(C) to direct departments and agencies to conduct a formal program of Government monitoring of contractor policies, procedures, and practices for controlling costs at contractor locations where significant Government business exists.

Subpart 5142.15 – Contractor Performance Information

UAI 5142.1502 Policy.

UAI 5142.1502-100 USACE roles and responsibilities for Contractor Performance Assessment Reporting System (CPARS).

(a) The Engineering Regulation (ER) 415-1-17, Construction Contractor Performance Evaluations, sets forth the roles, responsibilities, and time requirements for construction contractor performance assessments.

(b) The Engineering Pamphlet (EP) 715-1-7, Architect-Engineer (A-E) Contracting in USACE, sets forth the roles, responsibilities, and time requirements for A-E contractor performance assessments.

UAI 5142.1503 Procedures.

UAI 5142.1503-90 Policy.

(a) For evaluations of contractor performance on other services acquisition (other than construction or A-E), the responsible roles are:

(1) Services Acquisition Assessing Official (AO): The AO shall be the contracting officer (or, when designated, the COR) responsible for the services acquisition and deliverables.

(2) Services Acquisition Reviewing Official (RO): The RO shall be one level above the contracting officer (or, when a COR is designated, the COR's supervisor) assigned to the contract.

Subpart 5142.71 – Voluntary Refunds

UAI 5142.7100 General.

(4) The Principal Assistant Responsible for Contracting (PARC) is delegated the authority under DFARS PGI 242.7100(4) to approve solicitation of voluntary refunds.

UAI – PART 5143

CONTRACT MODIFICATIONS

Subpart 5143.2 – Change Orders

UAI 5143.204 Administration.

UAI 5143.204-70 Definitization of change orders.

UAI 5143.204-70-6 Allowable profit. The chief of the contracting office (CCO) is delegated the authority under Defense Federal Acquisition Regulation Supplement (DFARS) 243.204-70-6 to ensure the profit allowed reflects risk when the final price of an unpriced change order is negotiated after a substantial portion of the required performance has been completed.

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UAI – PART 5144

SUBCONTRACTING POLICIES AND PROCEDURES

Reserved

UAI – PART 5145

GOVERNMENT PROPERTY

Subpart 5145.1 – General

UAI 5145.102 Policy.

(e) The Principal Assistant Responsible for Contracting (PARC) is delegated the authority under Federal Acquisition Regulation (FAR) 45.102(e) to determine, after consultation with Office of Counsel, that installation or construction of Government property on contractor-owned real property in such fashion as to become nonseverable is necessary and in the Government's interest.

(4) *Government-furnished property identification.*

(ii)(B) The PARC is delegated the authority under Army Federal Acquisition Regulation Supplement (AFARS) 245.102(4)(ii)(B) to determine exceptions to the item unique identification requirement to tag, mark, and label items used to support a contingency operation; or to facilitate defense against or recovery from nuclear, biological, chemical, or radiological attack. This authority may not be delegated.

(ii)(C)(1)(ii) The PARC is delegated the authority under Defense Federal Acquisition Regulation Supplement (DFARS) 245.102(4)(ii)(C)(1)(ii) to determine that it is more cost effective for the Government requiring activity to assign, mark, and register the unique item identification after delivery of an item acquired from a small business concern or a commercial item acquired under FAR part 12 or part 8.

(f) The contracting officer's representative (COR) will ensure that the contractor has the proper controls in place to manage and account for property and materials in accordance with the Property Management Plan (PMP). To achieve this, the COR, contract specialist, and/or property management specialist will visit the project during performance of the contract. For contracts other than fixed-price contracts, the COR will review the contractor's invoices to ensure that the procured items were approved as necessary prior to purchase and that all required documentation for this property is included and maintained on file. Each U.S. Army Corps of Engineers (USACE) activity must maintain a record of all open contracts that provide for Government furnished property (GFP). Contracting officers shall ensure that changes to Government property made over time are reflected by modifications to the contract.

(g) The Quality Assurance Surveillance Plan (QASP) should ensure that a member of the project delivery team (PDT) is completely familiar with the approved PMP and the Work Plan and monitors of GFP per approved plans and the QASP.

(h) The COR shall ensure that Government real property, regardless of value, is accounted for and used only for the actual needs of the work being undertaken by USACE, and is not used for the benefit of any private contractor. The use of Government property for the advantage, comfort, convenience, pleasure, or for any private purpose is strictly prohibited.

(i) For contracts subject to FAR 45.105(a), accountability for GFP will be transferred to the contractor, as follows:

(1) Property book officers (PBOs) will release the Government property to a contractor as GFP. The transfer of accountability of property provided to a contractor will be accomplished by issuing a DD Form 1149, Requisition and Invoice/Shipping Document, or DA Form 3161, Request for Issue or Turn-In. The document transferring accountability will be approved by the contracting officer prior to GFP being provided to the contractor.

(2) A joint physical inventory of GFP will be conducted by the PBO, the property administrator, and the contractor prior to the beginning of the contract period. On completion of the inventory and written acknowledgement of receipt by the contractor, the PBO will post the transfer document as a loss to the Army's property accounting records. The PBO will continue to maintain the basic property book records with authorization, identification, and management data for all GFP transferred to the contractor.

(3) On termination or completion of the contract, a joint physical inventory by the contractor, the PBO, and the property administrator will be conducted. A transfer document transferring accountability back to the Army will be prepared as directed by the property administrator using DD Form 1149 or DA Form 3161. The contracting officer will reconcile the transfer document for shortages and will approve the transfer prior to the PBO acknowledging receipt and accepting accountability for the GFP.

(j) For contracts subject to FAR 45.105(b), citing FAR clause 52.245-1, Government Property, accountability for GFP will be laterally transferred on DA Form 3161, per Army Regulation (AR) 710-2, paragraph 2-13a, to the contracting office. The property records will be maintained by the property administrator. These records will be kept separate and distinct from installation property book records. Responsibility for GFP will be assigned to the contractor using the technical exhibit to the contract.

Subpart 5145.3 – Authorizing the Use and Rental of Government Property

UAI 5145.301 Use and rental.

(f) The PARC is delegated the authority under FAR 45.301(f) to approve contractor use of Government property for commercial use where non-Government use is expected to exceed 25 percent of the total use of Government and commercial work performed.

UAI – PART 5146

QUALITY ASSURANCE

Subpart 5146.4 – Government Contract Quality Assurance

UAI 5146.401 General.

(h) Quality assurance should be performed on all contracts. Quality assurance surveillance plans should be prepared for services and supplies valued over the simplified acquisition threshold.

(1) See Army Regulation (AR) 70-13, Management and Oversight of Service Acquisitions, and Defense Acquisition Guidebook Chapter 14 for quality assurance procedures for services.

(2) See Engineering Regulation (ER) 1110-1-12, Engineering and Design Quality Management, and Engineering Pamphlet (EP) 715-1-7, Architect-Engineer (A-E) Contracting in USACE, for quality assurance procedures on A-E contracts.

(3) See ER 1180-1-6, Construction Quality Management, for quality assurance procedures for construction.

Subpart 5146.7 – Warranties

UAI 5146.710 Contract clauses.

(e)(1) Federal Acquisition Regulation (FAR) clause 52.246-21, Warranty of Construction, shall not be used in solicitations or contracts that are solely for dredging, excavation, grubbing, or clearing.

UAI – PART 5147

TRANSPORTATION

Subpart 5147.5 – Ocean Transportation by U.S.-Flag Vessels

UAI 5147.574 Solicitation provisions and contract clauses.

(f) The Principal Assistant Responsible for Contracting (PARC) is delegated the authority under Defense Federal Acquisition Regulation Supplement (DFARS) clause 252.247 7027(c)(2)(ii) to waive the requirement for each riding gang member to pass a Department of Defense (DoD) background check before going aboard a vessel if the individual possesses a valid U.S. Merchant Mariner's Document issued under 46 U.S.C., chapter 73, or a transportation security card issued under section 70105 of such title.

UAI – PART 5148

VALUE ENGINEERING

Subpart 5148.1 – Policies and Procedures

UAI 5148.102 Policies.

(a) The Head of the Contracting Activity (HCA) retains the authority under Army Federal Acquisition Regulation Supplement (AFARS) 5148.102(a) to exempt individual contracts, or specific classes of contracts, from including value engineering clauses as prescribed by Federal Acquisition Regulation (FAR) 48.201 and 48.202.

(b) See Engineer Regulation (ER) 11-1-321, Value Engineering, for policies, procedures, roles, and responsibilities for the execution of Value Engineering activities at U.S. Army Corps of Engineers (USACE).

UAI 5148.104 Sharing arrangements.

UAI 5148.104-3 Sharing collateral savings.

(a) The chief of the contracting office (CCO) is delegated the authority under FAR 48.104-3(a) to determine, in consultation with the Center/District Chief of Engineering, that the cost of calculating and tracking collateral savings will exceed the benefits to be derived from the Government sharing collateral savings with the contractor.

Subpart 5148.2 – Contract Clauses

UAI 5148.202 Clause for construction contracts. The CCO is delegated the authority under FAR 48.202 to determine that the cost of computing and tracking collateral savings for a contract will exceed the benefits to be derived.

UAI – PART 5149

TERMINATION OF CONTRACTS

Subpart 5149.5 – Contract Termination Clauses

UAI 5149.505 Other termination clauses.

(d) The procuring contracting officer (PCO) shall insert the clause at 5152.249-9000, Basis for Settlement of Proposals, in solicitations and contracts for construction expected to exceed the simplified acquisition threshold (SAT).

UAI – PART 5150

EXTRAORDINARY CONTRACTUAL ACTIONS AND THE SAFETY ACT

Reserved

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UAI – PART 5151

USE OF GOVERNMENT SOURCES BY CONTRACTORS

Reserved

UAI – PART 5152

SOLICITATION PROVISIONS AND CONTRACT CLAUSES

UAI 5152.211-9000 Evaluation of Subdivided Items.

As prescribed in 5111.703(d), insert the following provision:

EVALUATION OF SUBDIVIDED ITEMS (MAR 1995)

Item Nos. _____ are subdivided into two or more estimated quantities and are to be separately priced. The Government will evaluate each of these items on the basis of total price of its subitems.

(End of clause)

UAI 5152.211-9001 Variations in Estimated Quantities – Subdivided Items.

As prescribed in 5111.703(e), insert the following clause:

VARIATIONS IN ESTIMATED QUANTITIES — SUBDIVIDED ITEMS (MAR 1995)

This variation in estimated quantities clause is applicable only to item Nos. ____.

(a) Variation from the estimated quantity in the actual work performed under any second or subsequent sub-item or elimination of all work under such a second or subsequent sub-item will not be the basis for an adjustment in contract unit price.

(b) Where the actual quantity of work performed for item Nos. _____ is less than 85% of the quantity of the first sub-item listed under such item, the contractor will be paid at the contract unit price for that sub-item for the actual quantity of work performed and, in addition, an equitable adjustment shall be made in accordance with the clause Federal Acquisition Regulation (FAR) 52.211-18, Variation in Estimated Quantities.

(c) If the actual quantity of work performed under item Nos. _____ exceeds 115% or is less than 85% of the total estimated quantity of the sub-item under that item and/or if the quantity of the work performed under the second sub-item or any subsequent sub-item under item Nos. _____ exceeds 115% or is less than 85% of the estimated quantity of any such sub-item, and if such variation causes an increase or a decrease in the time required for performance of this contract the contract completion time will be adjusted in accordance with the clause FAR 52.211-18, Variation in Estimated Quantities.

(End of clause)

UAI 5152.222-9000 Contractor Supply and Use of Electronic Software for Processing Wage Rate Requirements Statute Certified Labor Payrolls.

As prescribed in 5122.407(i), insert the following clause:

**CONTRACTOR SUPPLY AND USE OF ELECTRONIC SOFTWARE FOR
PROCESSING WAGE RATE REQUIREMENTS STATUTE CERTIFIED LABOR
PAYROLLS (APR 2011)**

(a) The contractor is encouraged to use a commercially-available electronic system to process and submit certified payrolls electronically to the Government. The requirements for preparing, processing and providing certified labor payrolls are established by the Wage Rate Requirements statute.

(b) If the contractor elects to use an electronic payroll processing system, then the contractor shall be responsible for obtaining and providing for all access, licenses, and other services required to provide for receipt, processing, certifying, electronically transmitting to the Government, and storing weekly payrolls and other data required for the contractor to comply with the Wage Rate Requirements statute. When the contractor uses an electronic payroll system, the electronic payroll service shall be used by the contractor to prepare, process, and maintain the relevant payrolls and basic records during all work under this construction contract and the electronic payroll service shall be capable of preserving these payrolls and related basic records for the required 3 years after contract completion. If the contractor chooses to use an electronic payroll system, then the contractor shall obtain and provide electronic system access to the Government, as required to comply with the Wage Rate Requirements over the duration of this construction contract. The access shall include electronic review access by the Government contract administration office to the electronic payroll processing system used by the contractor.

(c) The contractor's provision and use of an electronic payroll processing system shall meet the following basic functional criteria:

(1) commercially available;

(2) compliant with appropriate Wage Rate Requirements statute payroll provisions in the Federal Acquisition Regulation (FAR);

(3) able to accommodate the required numbers of employees and subcontractors planned to be employed under the contract

(4) capable of producing an Excel spreadsheet-compatible electronic output of weekly payroll records for export in an Excel spreadsheet to be imported into the contractor's Quality Control System (QCS) version of Resident Management System (RMS), that in turn shall export payroll data to the Government's RMS;

(5) demonstrated security of data and data entry rights;

(6) ability to produce contractor-certified electronic versions of weekly payroll data;

(7) ability to identify erroneous entries and track the date/time of all versions of the certified Wage Rate Requirements statute payrolls submitted to the government over the life of the contract;

(8) capable of generating a durable record copy, that is, a CD or DVD and PDF file record of data from the system database at end of the contract closeout. This durable record copy of data from the electronic payroll processing system shall be provided to the Government during contract closeout.

(d) All contractor-incurred costs related to the contractor's provision and use of an electronic payroll processing service shall be included in the contractor's price for the overall work under the contract. The costs for compliance with the Wage Rate Requirements statute by using electronic payroll processing services shall not be a separately bid or reimbursed item under this contract.

(End of clause)

UAI 5152.231-9000 Equipment Ownership and Operating Expense Schedule.

As prescribed in 5131.100-70, insert the following clause:

EQUIPMENT OWNERSHIP AND OPERATING EXPENSE SCHEDULE (MAR 1995)

(a) This clause does not apply to terminations. See UAI 5152.249-9000, Basis for Settlement of Proposals, and Federal Acquisition Regulation (FAR) part 49.

(b) Allowable costs for construction and marine plant and equipment in sound workable condition owned or controlled and furnished by a contractor or subcontractor at any tier shall be based on actual cost data for each piece of equipment or groups of similar serial and series for which the Government can determine both ownership and operating costs from the contractor's accounting records. When both ownership and operating costs cannot be determined for any piece of equipment or groups of similar serial or series equipment from the contractor's accounting records, costs for that equipment shall be based upon the applicable provisions of Engineer Pamphlet (EP) 1110-1-8, Construction Equipment Ownership and Operating Expense Schedule, Region [insert Roman numeral for the appropriate region of the schedule]. Working conditions shall be considered to be average for determining equipment rates using the schedule unless specified otherwise by the contracting officer. For equipment not included in the schedule, rates for comparable pieces of equipment may be used or a rate may be developed using the formula provided in the schedule. For forward pricing, the schedule in effect at the time of negotiations shall apply. For retroactive pricing, the schedule in effect at the time the work was performed shall apply.

(c) Equipment rental costs are allowable, subject to the provisions of FAR 31.105(d)(ii) and FAR 31.205-36. Rates for equipment rented from an organization under common control, lease-purchase arrangements, and sale-leaseback arrangements, will be determined using the schedule, except that actual rates will be used for equipment leased from an organization under common control that has an established practice of leasing the same or similar equipment to unaffiliated lessees.

(d) When actual equipment costs are proposed and the total amount of the pricing action exceeds the simplified acquisition threshold (SAT), the contracting officer shall request the contractor to submit either certified cost or pricing data, or partial/limited data, as appropriate. The data shall be submitted on Standard Form 1411, Contract Pricing Proposal Cover Sheet.

(End of clause)

UAI 5152.232-9000 Payment for Materials Delivered Off-Site

As prescribed in 5132.111(d), insert the following clause:

PAYMENT FOR MATERIALS DELIVERED OFF-SITE (MAR 2009)

(a) Pursuant to Federal Acquisition Regulation (FAR) 52.232-5, Payments Under Fixed Price Construction Contracts, materials delivered to the contractor at locations other than the site of the work may be taken into consideration in making payments if included in payment estimates and if all the conditions of the General Provisions are fulfilled. Payment for items delivered to locations other than the work site shall be limited to:

- (1) Materials required by the technical provisions; or
- (2) Materials that have been fabricated to the point where they are identifiable to an item of work required under this contract; or
- (3) Items specifically listed below.

(b) Payment for materials delivered off-site shall be made only after receipt of paid invoices listing the value of material and labor incorporated in the items along with a canceled check showing the prime contractor's title to the items delivered off site. Payment for materials delivered off-site shall be limited to the following items: [List specific material items to be considered for payment when off-site delivery is made]

(End of clause)

UAI 5152.232-9001 Continuing Contracts – Special Continuing Contracts for Civil Works Projects Managed by the United States Army Corps of Engineers (Deviation)

As prescribed in 5132.705(a), insert the following clause:

CONTINUING CONTRACTS - SPECIAL CONTINUING CONTRACTS FOR CIVIL WORKS PROJECTS MANAGED BY THE UNITED STATES ARMY CORPS OF ENGINEERS (DEVIATION) (SEP 2009)

(a) Funds are not available at the inception of this contract to cover the entire contract price. The liability of the Government is limited by this clause notwithstanding any contrary provision of the "Payments to Contractor" clause or any other clause of this contract, except the Termination for Convenience clause. The sum of \$----- [Each fiscal year (FY) of contract execution, Contracting Officer shall insert the specific dollar amount that is reserved for this contract and available for payment to the contractor during the current FY. The Contracting Officer shall modify that amount to reflect any funds added to or subtracted from the contract during a current FY] has been reserved for this contract and is available for payment to the Contractor during the current FY. It is expected that Congress will make appropriations for future FY from which additional funds, together with funds provided by one or more non-federal project sponsors, will be reserved for this contract.

(b) Failure to make payments in excess of the amount currently reserved, or that may be reserved from time to time, shall not be considered a breach of contract and shall not entitle the Contractor to a price adjustment under the terms of this contract.

(c) The Government may at any time reserve additional funds for payments under the contract if there are funds available for such purpose. The Contracting Officer will promptly notify the Contractor of any additional funds reserved for the contract by issuing an administrative modification to the contract.

(d) If earnings will be such that funds reserved for the contract will be exhausted before the end of any FY, the Contractor shall give written notice to the Contracting Officer of the estimated date of exhaustion and the amount of additional funds which will be needed to meet payments due or to become due under the contract during that FY. This notice shall be given not less than 120 days prior to the estimated date of exhaustion. Unless informed in writing by the Contracting Officer that additional funds have been reserved for payments under the contract, the Contractor shall stop work upon the exhaustion of funds.

(e) No payments will be made after exhaustion of funds except to the extent that additional funds are reserved for the contract.

(f) Any suspension, delay, or interruption of work arising from exhaustion or anticipated exhaustion of funds shall not constitute a breach of this contract and

shall not entitle the Contractor to any price adjustment under the "Suspension of Work" clause or in any other manner under this contract.

(g) An equitable adjustment in performance time shall be made for any increase in the time required for performance of any part of the work arising from exhaustion of funds or the reasonable anticipation of exhaustion of funds.

(h) If, upon the expiration of 100 days after the beginning of the FY following an exhaustion of funds, the Government has failed to reserve additional funds for this contract sufficient to cover the Government's estimate of funding required for the first quarter of that FY, the Contractor, by written notice delivered to the Contracting Officer at any time before such additional funds are reserved, may elect to treat his right to proceed with the work as having been terminated. Such a termination shall be considered a termination for the convenience of the Government.

(i) If at any time it becomes apparent that the funds reserved for any FY are in excess of the funds required to meet all payments due or to become due the Contractor because of work performed and to be performed under the contract during the FY, the Government reserves the right, after notice to the Contractor, to reduce said reservation by the amount of such excess.

(j) The term "Reservation" means monies that have been set aside and made available for payments under this contract. Reservations of funds shall be made in writing via an administrative modification issued by the Contracting Officer.

(End of clause)

Alternate I (Deviation) (SEP 2009). As prescribed in 5132.705(b), substitute the following paragraphs (a) and (h) for paragraphs (a) and (h) of the basic clause if future funding for the specifically authorized civil works project for which use of the continuing contract is contemplated is not included in the following year's President's Budget:

**CONTINUING CONTRACTS - SPECIAL CONTINUING CONTRACTS FOR CIVIL
WORKS PROJECTS MANAGED BY THE UNITED STATES ARMY CORPS OF
ENGINEERS ALTERNATE 1 (DEVIATION) (SEP 2009)**

(a) Funds are not available at the inception of this contract to cover the entire contract price. The liability of the Government is limited by this clause notwithstanding any contrary provision of the "Payments to Contractor" clause or any other clause of this contract. The sum of \$----- [Each fiscal year (FY) of contract execution, Contracting Officer shall insert the specific dollar amount that is reserved for this contract and available for payment to the contractor during the current FY. The Contracting Officer shall modify that amount to reflect any funds added to or subtracted from the contract during a current FY] has been reserved for this contract and is available for payment to the Contractor during the current FY. It is expected that Congress will make appropriations for future FY from which

additional funds, together with funds provided by one or more non-federal project sponsors, will be reserved for this contract.

(h) If, upon the expiration of 100 days after the beginning of the FY following an exhaustion of funds, the Government has failed to reserve additional funds for this contract sufficient to cover the Government's estimate of funding required for the first quarter of that FY, the Contractor, by written notice delivered to the Contracting Officer at any time before such additional funds are reserved, may elect to treat his right to proceed with the work as having been terminated. The Government will not be obligated in any event to reimburse the Contractor for any costs incurred after the exhaustion of funds regardless of anything to the contrary in the clause entitled "Termination for Convenience of the Government."

(End of clause)

UAI 5152.236-9000 Design-Build Contract Order of Precedence

As prescribed in 5136.570-100(a), insert the following clause:

DESIGN-BUILD CONTRACT ORDER OF PRECEDENCE (AUG 1997)

(a) The contract includes the standard contract clauses and schedules current at the time of contract award. It entails (1) the solicitation in its entirety, including all drawings, cuts, and illustrations, and any amendments, and (2) the successful offeror's accepted proposal. The contract constitutes and defines the entire agreement between the Contractor and the Government. No documentation shall be omitted which in any way bears upon the terms of that agreement.

(b) In the event of conflict or inconsistency between any of the provisions of this contract, precedence shall be given in the following order:

(1) Betterments: Any portions of the accepted proposal, which both conform to and exceed the provisions of the solicitation.

(2) The provisions of the solicitation.

(3) All other provisions of the accepted proposal.

(4) Any design products including, but not limited to, plans, specifications, engineering studies and analyses, shop drawings, equipment installation drawings, etc. These are "deliverables" under the contract and are not part of the contract itself. Design products must conform to all provisions of the contract, in the order of precedence herein.

(End of clause)

UAI 5152.236-9001 Personnel, Subcontractors, and Outside Associates or Consultants
As prescribed in 5136.570-100(b), insert the following clause:

PERSONNEL, SUBCONTRACTORS, AND OUTSIDE ASSOCIATES OR
CONSULTANTS (MAY 2006)

In connection with this contract, any in-house personnel, subcontractors, and outside associates or consultants will be limited to individuals or firms that were specifically identified in the Contractor's accepted proposal. The Contractor shall obtain the Contracting Officer's written consent before making any substitution for these designated in-house personnel, subcontractors, associates, or consultants. If the Contractor proposes a substitution, it shall submit the same type of information that was submitted in the accepted proposal to the Contracting Officer for evaluation and approval. The level of qualifications and experience submitted in the accepted proposal or that required by the Solicitation, whichever is greater, is the minimum standard for any substitution.

(End of clause)

UAI 5152.236-9002 Government-Furnished Specifications, Drawings, Surveys, and Specifications in the Request for Proposal

As prescribed in 5136.570-100(c), insert the following clause:

GOVERNMENT-FURNISHED SPECIFICATIONS, DRAWINGS, SURVEYS, AND
SPECIFICATIONS IN THE REQUEST FOR PROPOSAL (JUL 2002)

This is to clarify Defense Federal Acquisition Regulation Supplement (DFARS) 252.236-7001, Contract Drawings and Specifications, refers to any Government-furnished design or design criteria included in the Request for Proposal (RFP).

(End of clause)

UAI 5152.236-9003 Government-Furnished Specifications and Drawings for Construction

As prescribed in 5136.570-100(d), insert the following clause:

GOVERNMENT-FURNISHED SPECIFICATIONS AND DRAWINGS FOR
CONSTRUCTION (JUL 2003)

This is to clarify Federal Acquisition Regulation (FAR) 52.236-21, Specifications and Drawings for Construction, refers to any specifications and drawings furnished in the Request for Proposal (RFP). The term "specifications" refers to the design criteria or scope of work, in addition to any attached specifications.

(End of clause)

UAI 5152.236-9004 Responsibility of the Contractor for Design

As prescribed in 5136.570-100(e), insert the following clause:

RESPONSIBILITY OF THE CONTRACTOR FOR DESIGN (MAY 2002)

(a) The Contractor shall be responsible for the professional quality, technical accuracy, and the coordination of all designs, drawings, specifications, and other non-construction services furnished by the Contractor under this contract. The Contractor shall, without additional compensation, correct or revise any errors or deficiency in its designs, drawings, specifications, and other non-construction services and perform any necessary rework or modifications, including any damage to real or personal property, resulting from the design error or omission.

(b) The standard of care for all design services performed under this agreement shall be the care and skill ordinarily used by members of the architectural or engineering professions practicing under similar conditions at the same time and locality. Notwithstanding the above, in the event that the contract specifies that portions of the Work be performed in accordance with a performance standard, the design services shall be performed so as to achieve such standards.

(c) Neither the Government's review, approval or acceptance of, nor payment for, the services required under this contract, shall be construed to operate as a waiver of any rights under this contract or of any cause of action arising out of the performance of this contract. The Contractor shall be and remain liable to the Government in accordance with applicable law for all damages to the Government caused by the Contractor's negligent performance of any of these services furnished under this contract.

(d) The rights and remedies of the Government provided for under this contract are in addition to any other rights and remedies provided by law.

(e) If the Contractor is comprised of more than one legal entity, each entity shall be jointly and severally liable hereunder.

(End of clause)

UAI 5152.236-9005 Warranty of Design

As prescribed in 5136.570-100(f), insert the following clause:

WARRANTY OF DESIGN (MAY 2002)

(a) The Contractor warrants that the design shall be performed in accordance with the contract requirements. Design and design related construction not conforming to the Contract requirements shall be corrected at no additional cost to the Government. The standard of care for design is defined in paragraph (b) of special contract requirement UAI 5152.236-9004, Responsibility of the Contractor for Design.

(b) The period of this warranty shall commence upon final completion and the Government's acceptance of the work, or in the case of the Government's beneficial occupancy of all or part of the work for its convenience, prior to final completion and acceptance, at the time of such occupancy.

(c) This design warranty shall be effective from the above event through the Statute of Limitations and Statute of Repose or host nation law, as applicable to the place of performance.

(d) The rights and remedies of the Government provided for under this clause are in addition to any other rights and remedies provided in this contract or by law.

(End of clause)

UAI 5152.236-9006 Deviating from the Accepted Design

As prescribed in 5136.570-100(g), insert the following clause:

DEVIATING FROM THE ACCEPTED DESIGN (JUN 2002)

(a) The Contractor must obtain the approval of the Designer of Record and the Government's concurrence, in the form of supplemental agreement to the contract, for any Contractor-proposed revision to the professionally stamped-and-sealed and Government-reviewed design before proceeding with the revision. The Government reserves the right to disapprove such a revision.

(b) The Government reserves the right to non-concur with any revision to the design, which may impact furniture, furnishings, equipment selections or operations decisions that were made, based on the reviewed design.

(c) Any Contractor-proposed revision to the design which deviates from the contract requirements (i.e., the Request for Proposal (RFP) and the accepted proposal), will require a bilateral modification (e.g. supplemental agreement) to the contract before any work commences.

(d) Unless the Government initiates a change to the contract requirements, or the Government determines that the Government furnished design criteria are incorrect and must be revised, any Contractor initiated proposed change to the contract requirements, which results in additional cost, shall strictly be at the Contractor's expense.

(e) The Contractor shall track all approved revisions to the reviewed and accepted design and shall incorporate them into the as-built design documentation, in accordance with agreed procedures. The Designer of Record shall document its professional concurrence on the as-builts for any revisions in the stamped and sealed drawings and specifications.

(End of clause)

UAI 5152.236-9007 Contractor's Role During Design Process

As prescribed in 5136.570-100(h), insert the following clause:

CONTRACTOR'S ROLE DURING DESIGN PROCESS (JUN 1998)

The contractor's construction management key personnel shall be actively involved during the design process to effectively integrate the design and construction requirements of this contract. In addition to the typical required construction activities, the Contractor's involvement includes, but is not limited to actions such as: integrating the design schedule into the Master Schedule to maximize the effectiveness of fast-tracking design and construction (within the limits allowed in the contract), ensuring constructability and economy of the design, integrating the shop drawing and installation drawing process into the design, executing the material and equipment acquisition programs to meet critical schedules, effectively interfacing the construction quality control (QC) program with the design QC program, and maintaining and providing the design team with accurate, up-to-date redline and as-built documentation. The Contractor shall require and manage the active involvement of key trade subcontractors in the above activities.

(End of clause)

UAI 5152.236-9008 Value Engineering after Award

As prescribed in 5136.570-100(i), insert the following clause:

VALUE ENGINEERING AFTER AWARD (JUN 1999)

(a) In reference to Federal Acquisition Regulation (FAR) 52.248-3, Value Engineering-Construction, the Government may refuse to entertain a "Value Engineering Change Proposal" (VECP) for those "performance oriented" aspects of the Solicitation documents which were addressed in the Contractor's accepted contract proposal and which were evaluated in competition with other offerors for award of this contract.

(b) The Government may consider a VECP for those "prescriptive" aspects of the Solicitation documents, not addressed in the Contractor's accepted contract proposal or addressed but evaluated only for minimum conformance with the Solicitation requirements.

(c) For purposes of this clause, the term "performance oriented" refers to those aspects of the design criteria or other contract requirements, which allow the offeror or Contractor certain latitude, choice of and flexibility to propose in its accepted contract offer a choice of design, technical approach, design solution, construction approach or other approach to fulfill the contract requirements. Such requirements generally tend to be expressed in terms of functions to be performed, performance required or essential physical characteristics, without dictating a specific process or specific design solution for achieving the desired result.

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(d) In contrast, for purposes of this clause, the term "prescriptive" refers to those aspects of the design criteria or other Solicitation requirements wherein the Government expressed the design solution or other requirements in terms of specific material, approaches, systems, and/or processes to be used. Prescriptive aspects typically allow the offerors little or no freedom in the choice of design approach, materials, fabrication techniques, methods of installation, or any other approach to fulfill the contract requirements.

(End of clause)

UAI 5152.236-9009 Partnering

As prescribed in 5136.570-100(j), insert the following clause:

PARTNERING (FEB 2000)

In order to most effectively accomplish this contract, the Government proposes to form a partnership with the Contractor to develop a cohesive building team. It is anticipated that this partnership would involve the *<NAME THE USING ORGANIZATIONS AND OTHER CRITICAL PARTIES HERE>*, the Contractor, primary subcontractors and designers, and the Corps of Engineers. This partnership would strive to develop a cooperative management team drawing on the strengths of each team member in an effort to achieve a quality project within budget and on schedule. This partnership would be bilateral in membership and participation will be completely voluntary. Any cost associated with effectuating this partnership, excluding travel and lodging cost of Government personnel, will be borne by *<<SELECT AN OPTION TO SPECIFY: the Contractor/each party/the Government.* The partnering meetings shall be held in [Fill in with Date, Time, Place, etc.].

(End of clause)

UAI 5152.236-9010 Government Re-Use of Design

As prescribed in 5136.570-100(k), insert the following clause:

GOVERNMENT RE-USE OF DESIGN (MAY 2006)

In conjunction with the Defense Federal Acquisition Regulation Supplement (DFARS) 252.227-7022, Government Rights (Unlimited), the Government will not ask for additional originals or copies of the design works after the Contractor provides all required design documentation and as-built documentation under the instant contract. Further, if the Government uses the design for other projects without additional compensation to the Contractor for re-use, the Government releases the Contractor from liability in the design on the other projects, due to defects in the design that are not the result of fraud, gross mistake as amounts to fraud, gross negligence or intentional misrepresentation.

(End of clause)

UAI 5152.249-9000 Basis for Settlement of Proposals

As prescribed in 5149.505(d), insert the following clause:

BASIS FOR SETTLEMENT OF PROPOSALS (MAR 2009)

Actual costs will be used to determine equipment costs for a settlement proposal submitted on the total cost basis under Federal Acquisition Regulation (FAR) 49.206-2(b). In evaluating a termination settlement proposal using the total cost basis, the following principles will be applied to determine allowable equipment costs:

(a) Actual costs for each piece of equipment, or groups of similar serial or series equipment, need not be available in the contractor's accounting records to determine total actual equipment costs.

(b) If equipment costs have been allocated to a contract using predetermined rates, those charges will be adjusted to actual costs.

(c) Recorded job costs adjusted for unallowable expenses will be used to determine equipment operating expenses.

(d) Ownership costs (depreciation) will be determined using the contractor's depreciation schedule (subject to the provisions of Federal Acquisition Regulation (FAR) 31.205-11).

(e) License, taxes, storage and insurance costs are normally recovered as an indirect expense and unless the contractor charges these costs directly to contracts, they will be recovered through the indirect expense rate.

(End of clause)

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ATTACHMENT 4 – PAST PERFORMANCE QUESTIONNAIRE (PPQ) INSTRUCTIONS AND FORM

ATTACHMENT 5 – CONTRACT REQUESTS, CLAIMS, AND APPEALS

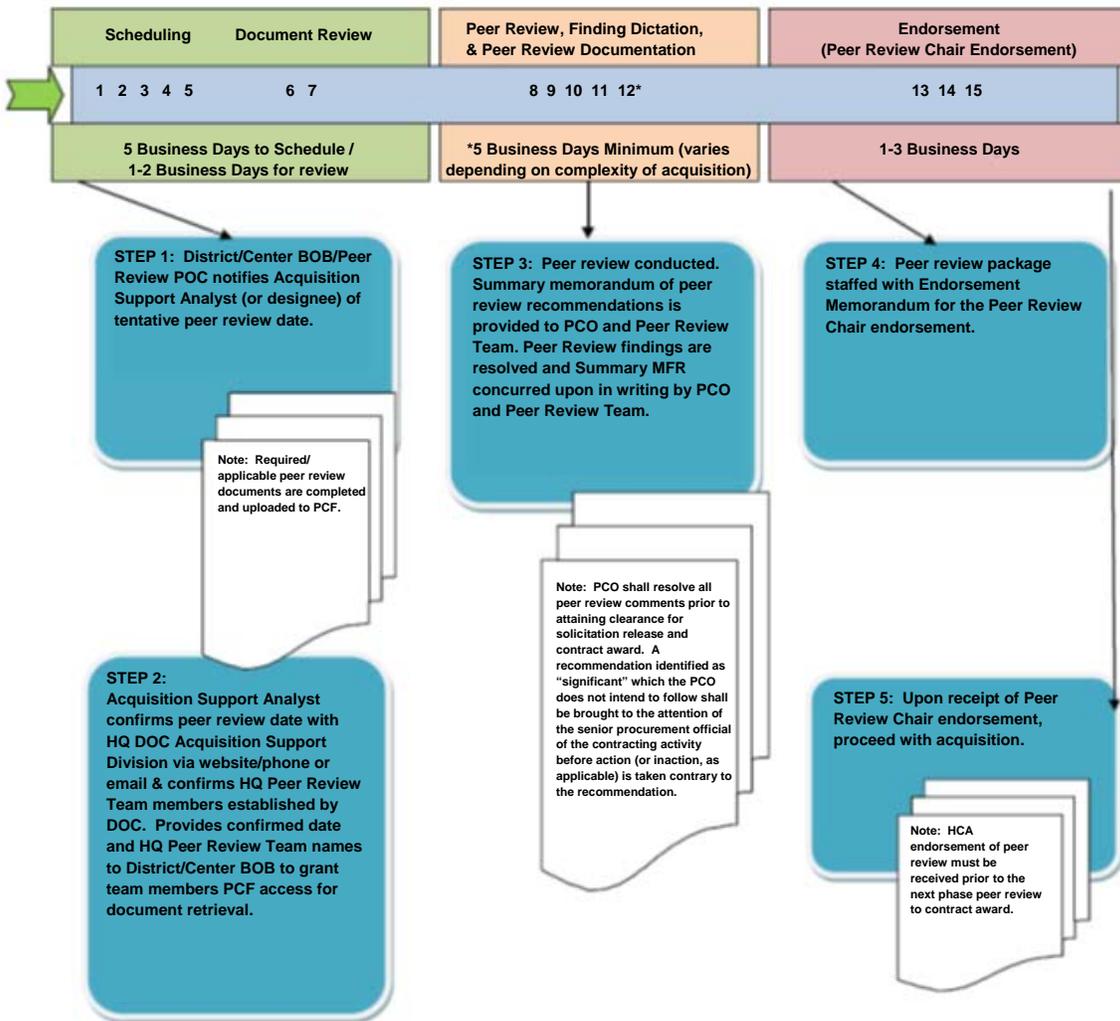
UDG – PART 5101

FEDERAL ACQUISITION REGULATION SYSTEM

UDG 5101.170 Peer reviews.

(1) Timeline Flowchart for USACE HCA Peer Review Process.

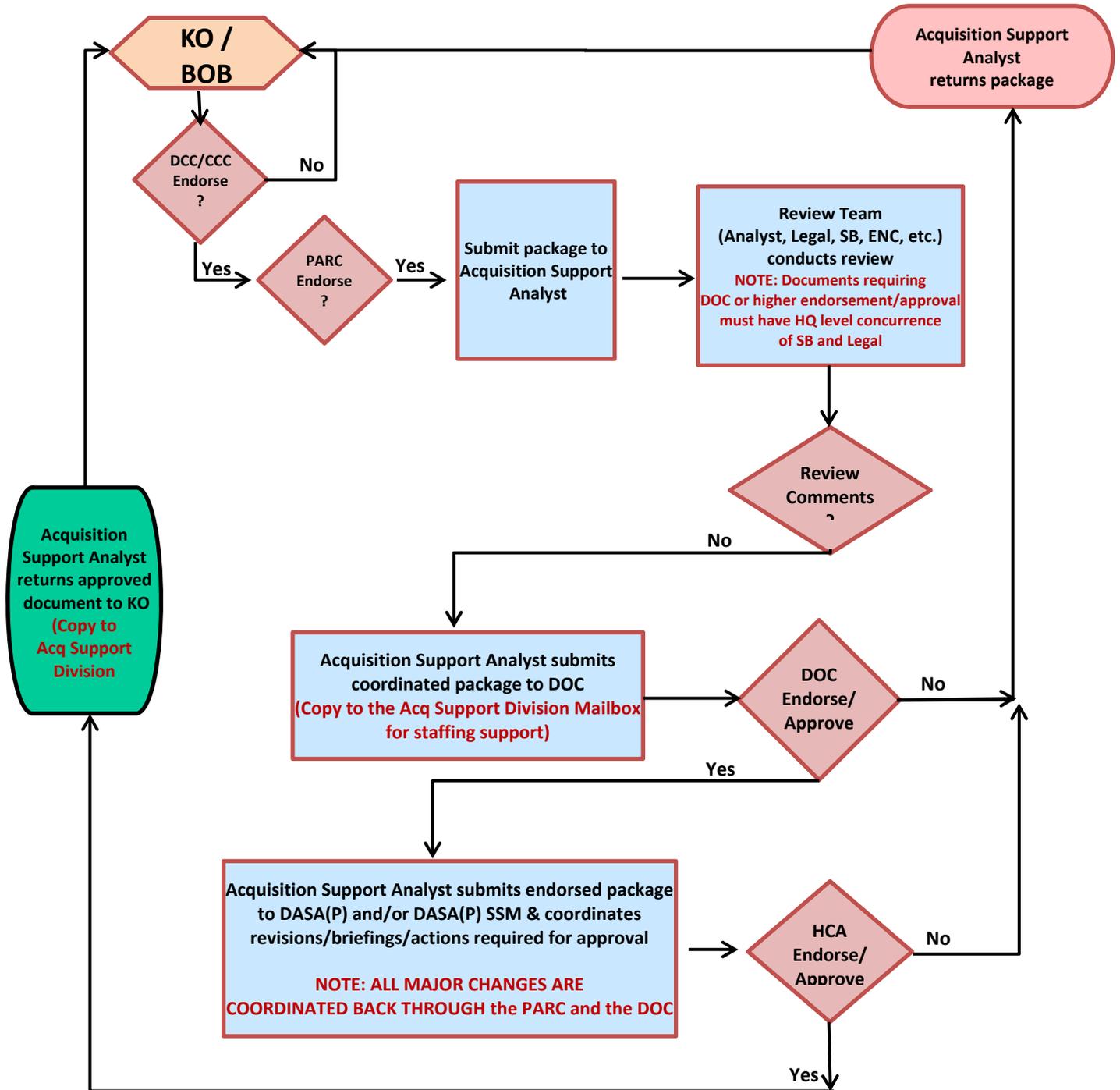
HCA Peer Review Timeline VISUAL



(2) HQ USACE acquisition review and approval process.

HQ USACE CECT Acquisition Review & Approval Process

(Actions Above \$250M and All Actions Requiring Approval At or Above DOC/HCA)



(3) *Peer review required documents and elements, suggested questions, tenets, and toolkits.*

(a) Peer reviews at the pre-solicitation, pre-award, and post-award phases shall have the required documents and elements to address listed in Defense Federal Acquisition Regulation Supplement (DFARS) Procedures, Guidance, and Information (PGI) 201.170-4 available for review. Peer reviews conducted at the Director of Contracting (DOC) level require submission of the files listed on the HQ USACE Directorate of Contracting, Acquisition Support Division SharePoint site.

(b) Utilize the list of suggested questions formulated by Defense Procurement and Acquisition Policy (DPAP) for peer review team members as a guide for peer review discussion.

UDG 5101.604

(1) *COR certification and training.*

(a) *Applicability.* This guidance applies to contractor officer's representatives (CORs) assigned and appointed to contracts for services, logistics, information technology, environmental, construction, and architect-engineer (A-E) services that they administer. The procuring contracting officer (PCO) determines when a COR is necessary.

(b) All COR nominations, appointments, and records shall be processed, tracked and managed within the Contracting Officer's Representative Tracking (CORT) Tool.

(c) *Requiring activity function.* Requiring activities are responsible for ensuring they have properly trained CORs to administer the contracts. The requiring activity is normally the activity providing technical and administrative oversight and receiving the contracted requirements.

(d) *COR certification and training requirements.* COR certification and training requirements are specified at three different type levels: A, B, and C. Like all other contracting and technical decisions, appropriate professional judgment on the part of the PCO is required to ensure effective selection and appointment of CORs. See Attachment 2 for the COR Certification and Training Requirements.

(i) **Type A** – Type A COR training is applicable to contracts where there are typically low to medium performance risks with minimal complexity. Attributes of such requirements and contracts might include: lower technical or administrative complexity; normal requirements for technical expertise; lower likelihood of complex changes or modification; or effort is follow-on to an existing contract. The COR's duties and responsibilities generally include normal technical and administrative monitoring of the contract.

(ii) **Type B** – Type B COR training is applicable to contracts where there are actions of medium to higher performance risk with greater complexity than Type A. Attributes of such requirements and contracts might include: the nature of the work is very complex; the value or sensitivity of the work is unusually high; work will be performed in multiple regions and/or remote geographic locations; design-build contracts; contracts with incentive or award fee arrangements; Time & Material/Labor Hours contracts; or Fixed Price Level of Effort contracts. COR duties and responsibilities are typically of increased technical, administrative, and financial complexity over Type A.

(iii) **Type C** – Type C COR training is applicable to highly complex, critical and very large dollar value contract requirements that typically necessitate attributes such as a professional license, specialized administrative and/or technical training, and extensive experience beyond the Type B competencies. Such contract requirements might include work such as: major, complex environmental remediation; large hospital construction; complex water resources infrastructure construction; complex watershed-wide planning studies services; Early Contractor Involvement; complex, large overseas contingency construction or services; enterprise-wide IT services; or sophisticated cost-type pricing arrangements for high value contracts. COR duties and responsibilities are typically highly complex and high impact from technical, administrative, and managerial viewpoints.

(e) *Additional training requirements.* COR designees, both internal to the district as well as external customers, will meet in face-to-face training sessions to advise them on the roles, responsibilities, and duties of CORs needed to ensure adherence to sound contracting practices. Emphasis will be placed on removing undue influence on the business decisions and regulatory compliance decisions of contracting officers. Thereafter, refresher training will be scheduled yearly for all district and external customer personnel so that all attendees are fully conversant on the roles, responsibilities, and expectations of all participants in the contracting process.

(f) *Additional information for A-E contracts.*

(i) In accordance with (IAW) Engineering Pamphlet (EP) 715-1-7, A-E Contracting in USACE, CORs serving on A-E contracts are required to be registered professional engineers/architects unless the Center/District Chief of Engineering nominates a non-registered professional as a COR.

(ii) CORs must satisfy training requirements in EP 715-1-7 and comply with Engineering Regulation (ER) 1110-1-12, Engineering and Design Quality Management.

(g) *Process for appointment of CORs.* Requiring activity nominating officials shall be the division or branch level chiefs/supervisors of the COR's respective organization. The nominating official shall nominate the COR in the Contracting Officer Representative Tracking (CORT) Tool. Upon receipt of the nomination in CORT, the PCO will review the nomination. This will include verification that the nominated

individual meets the specified Certification Level: Type A, B, or C based on all the factors related experience and training discussed herein and set forth in the enclosure. Final determination of the Certification Level Type A, B, or C shall be made by the PCO after having considered the complexity of the requirement.

(h) The COR appointment letter should detail a COR's duties, identifying the actions a COR is authorized to take under a particular contract. The COR shall not take any action not specifically stated in the COR appointment letter.

UDG – PART 5102

DEFINITIONS OF WORDS AND TERMS

Reserved

UDG – PART 5103

IMPROPER BUSINESS PRACTICES AND PERSONAL CONFLICTS OF INTEREST

UDG 5103.203 Reporting suspected violations of the Gratuities clause.

Report prohibited acts immediately through the chain of command to the Principal Assistant Responsible for Contracting (PARC) and the local ethics advisor, procurement fraud advisor, commander, or the Engineer Inspector General (EIG). Use the Commander's Critical Information Requirements report form and send report via e-mail, if available. Include the specifics detailed in Army Federal Acquisition Regulation Supplement (AFARS) 5103.203. The EIG contact information is located at <http://www.usace.army.mil/EngineerInspectorGeneral.aspx>.

UDG – PART 5104

ADMINISTRATIVE MATTERS

UDG 5104.403 Responsibilities of contracting officer.

All Contracting and Program personnel who utilize the DD Form 254, Department of Defense (DoD) Contract Security Classification Specification, should 1) review the Headquarters Department of the Army (HQDA) G-2 Defense Security Service (DSS) online guides; 2) review the HQDA G-2 DD Form 254, Preparation Guide; and 3) complete the DSS online training, which is accessible at the following link: <http://www.cdse.edu/resources/supplemental-job-aids.html>. After going to the DSS Job Aids web page, scroll down to "DD Form 254 Resources".

UDG – PART 5105

PUBLICIZING CONTRACT ACTIONS

Subpart 5105.4 – Release of Information

UDG 5105.403 Requests from Members of Congress. Processing of congressional inquiries should follow these procedures:

(1) Inquiries sent directly from congressional offices to Center/District Commanders will be processed according to local procedures.

(2) Inquiries received by the HQ Command Staff Group, or by the HQ Future Directions Branch (responsible for congressional liaison activities), directly from the Member or Member's staff will be processed for action by U.S. Army Corps of Engineers (USACE) Civil Works, Integration Future Directions Branch. Should any individual receive a congressional inquiry directly addressed to the Chief of Engineers or HQ Congressional Liaison Office/Officer, they should immediately forward the inquiry to the Integration Future Directions Branch and take no further action unless tasked with the formal response.

(3) The USACE HQ Staff Action Control Sheet submitted with the congressional inquiry will indicate the actual suspense date and will also indicate the recipient of the coordinated response to the inquiry. There may be times when the Member will request that the response be sent directly to his/her local Congressional District office and that will be indicated on the Staff Action Control Sheet.

(4) When a direct response is required by the Principal Assistant Responsible for Contracting (PARC), follow procedures on the HQ USACE Directorate of Contracting, Acquisition Support Division SharePoint site: <https://cops.usace.army.mil/sites/CT/ASD/>

(5) Congressional inquiries should receive priority staffing upon receipt to ensure that all parties involved have maximum time available for development and coordination of the response. It is important that a clear, concise, validated and well-documented response be provided to the Member(s) in a timely manner.

UDG – PART 5106

COMPETITION REQUIREMENTS

Subpart 5106.3 – Other than Full and Open Competition

UDG 5106.302-2 Unusual and compelling urgency.

(1) Procedures for obtaining verbal approval when using the 10 U.S.C. 2304(c)(2) authority:

(a) Prior to taking any action on an acquisition under this authority, the chief of the contracting office (CCO) or the procuring contracting officer (PCO) must obtain verbal approval of the approving official in order to proceed. The approving official shall maintain a record of verbal approvals and may be required to provide a report of verbal approvals to the U.S. Army Corps of Engineers (USACE) Special Advocate for Competition (SAFC). The requestor, when contacting the SAFC, must describe:

(i) Unusual and compelling urgency of the circumstances to include a description of the action;

(ii) Estimated dollar value; and

(iii) Brief justification in terms of impact on quality of life, readiness, loss or other serious injury to the Government; and the acquisition strategy the PCO proposes, to assure maximum competition to the extent practicable, given the unusual and compelling circumstances.

(b) *Limitations.* The requestor, when contacting the approval authority, must describe the following:

(i) Unusual and compelling urgency of the circumstances to include a description of the action;

(ii) Estimated dollar value; and

(iii) Brief justification in terms of impact on quality of life, readiness, loss or other serious injury to the Government, and the acquisition strategy the PCO proposes, to assure maximum competition to the extent practicable, given the unusual and compelling circumstances. Within one working day after verbal approval to proceed, the CCO shall submit a completed After-the-Fact Justification and Approval (J&A) Upward Reporting Form to the SAFC, regardless of approval authority using the following template.

After-The-Fact J&A Upward Reporting

1. Contracting Officer:	_____
E-Mail:	_____
Telephone No.:	_____
2. District/Center Chief of Contracting:	_____
E-Mail:	_____
Telephone No.:	_____
3. Technical Point of Contact:	_____
Mail:	_____
Telephone No.:	_____
4. Description of urgent requirement:	_____
• Goods/services to be procured:	_____
• Explain the unusual and compelling urgency circumstances of this procurement action (include impact on quality of life, readiness, or loss to the Government (see DFARS PGI 206-302-2).	_____

• Explain why a J&A cannot be prepared and submitted at prior to contract award.	

• Estimated Dollar Value:	_____
• Contract type (e.g., FFP, T&M):	_____
• Date of Award:	_____
5. Date verbal approval received:	_____
6. Date notification form submitted to SAFC:	_____
7. Date J&A will be submitted to Approval Authority:	_____

UDG – PART 5107

ACQUISITION PLANNING

Subpart 5107.5 – Inherently Governmental Functions

UDG 5107.503 Policy.

(1) Example determination for Non-Army Department of Defense (DoD) and Non-DoD Services Requirements:

“In accordance with FAR 7.503(c) and (d), funding provided by [Agency Name] and placed on service contracts cannot be used for project(s) which would constitute inherently governmental functions. In addition, the USACE shall not utilize [Agency Name] funds on USACE service contracts for any contractor activities to be performed that are inherently governmental, exempt from private sector performance, or that are so closely associated as to approach inherently governmental because of the nature of the function, the manner in which the contractor performs the contract, or the manner in which the Government administers contractor performance.”

UDG – PART 5108

REQUIRED SOURCES OF SUPPLIES AND SERVICES

Reserved

UDG – PART 5109

CONTRACTOR QUALIFICATIONS

Reserved

UDG – PART 5110

MARKET RESEARCH

UDG 5110.002 Procedures. A sample fillable Market Research Report is located at the HQ USACE Directorate of Contracting, Policy Division SharePoint site: <https://cops.usace.army.mil/sites/CT/P/>.

MARKET RESEARCH REPORT

1. PR/MIPR Number: _____
2. Title: _____
3. Product or Service Code: _____
4. Estimated Contract Value (including options): \$ _____
5. Provide the acquisition background.

6. Description of the minimum needs for the requirement including its purpose and any unique features, in terms of performance based task descriptions, system performance requirements, and/or essential physical characteristics.

7. In accordance with Federal Acquisition Regulation (FAR) Part 10, market research has been conducted for this acquisition. The following techniques were used (check all that apply):

____ Historical acquisition information (review of recent market research results for similar or identical supplies/services).

____ Review of Government and/or commercial databases for relevant information.

____ Review of Internet resources. List the Web sites visited and provide a brief summary of the query results.

____ Use of source lists for identical or similar items obtained from Government, professional, and/or industry sources.

____ Review of catalogs and other generally available product literature (online and/or hard copy).

____ Meetings, Industry Day, or pre-solicitation conferences with potential offerors.

____ Publication of formal request for information on the Internet.

____ Publication of a Sources Sought Announcement in FedBizOpps.

____ Publication in appropriate technical journals.

____ Contact with the requester and/or other knowledgeable people in Government and industry regarding the commercial nature of this requirement and standard industry practices in this area of supply/service.

____ Personal knowledge in procuring supplies/services of this type.

____ Other: _____

8. Based on the results of the above research, it is determined that this requirement:

____ Can be met by commercial items, commercial items with customary or minor modifications, or non-developmental items.

OR

____ Cannot be met by commercial items, commercial items with modifications, or non-developmental items. Further a reevaluation has been made in accordance with FAR 10.0002(c), and the Government requirements cannot be modified in a way that will allow a commercial item to meet the need. Note: Any synopsis of this requirement must include FedBizOpps Numbered Note 26.

OR

____ Other: _____

_____Require tailoring to be consistent with industry's commercial practices. All such tailoring will be included in the solicitation issued for the required supplies/services.

16. Summarize the market research results and make recommendations to consider in determining the appropriate acquisition strategies.

Signed _____
(Program Manager/customer)
Date: _____

Signed _____
(Contracting Officer)
Date: _____

UDG – PART 5111

DESCRIBING AGENCY NEEDS

UDG 5111.600 Scope of subpart.

(1) The U.S. Army Corps of Engineers (USACE) Commanding General will designate at least one subordinate to serve as a Defense Priorities and Allocations Systems (DPAS) Officer for the organization.

UDG – PART 5112

ACQUISITION OF COMMERCIAL ITEMS

Reserved

UDG – PART 5113

SIMPLIFIED ACQUISITION PROCEDURES

Reserved

UDG – PART 5114

SEALED BIDDING

Subpart 5114.2 – Solicitation of Bids

UDG 5114.201-1 Uniform Contract Format.

The general relationship between the Uniform Contract Format (UCF) and Construction Specifications Institute (CSI) formats are shown below for illustration purposes only. The U.S. Army Corps of Engineers (USACE) Construction Specifications Steering Committee (CSSC) will periodically issue technical specifications guidance to standardize the specific content of various technical CSI sections used for USACE construction contracts. This will ensure relevancy and standardization with CSI Master Format updates.

Construction Contract Format Comparison with the UCF (For Illustration Purposes Only)

USACE CSI Master Format		UCF
Section	Title	Section
00 00 00	Procurement and Contracting Requirements	
00 01 05	Certification Page	
00 01 10	Table of Contents	
00 01 15	List of Drawing Sheets	J
00 10 00	Solicitation, Contract Line Item Number (CLIN) Schedule	A, B
00 20 00	Instructions for Procurement	L
00 21 00	Instructions	L
00 21 13	Instructions to Bidders	L
00 21 16	Instructions to Proposers	L
00 22 00	Supplementary Instructions	L
00 22 13	Supplementary Instructions to Bidders	M
00 22 16	Supplementary Instructions to Proposers	M
00 30 00	Available Information	
00 40 00	Procurement Forms and Supplements	A
00 43 00	Bid Bond Form	A
00 43 73	Proposed Construction Schedule Form	A
00 45 00	Representations and Certifications	K
00 50 00	Contracting Forms and Supplements	A
00 51 00	Notice of Award	A
00 52 00	Agreement Forms	A
00 60 00	Project Forms	A
00 61 00	Bond Forms	A
00 62 00	Certificates	K
00 70 00	Conditions of the Contract	I
00 71 00	Contracting Definitions	
00 72 00	General Conditions	I
00 73 00	Supplementary Conditions	D, E, F, G, H
01 00 00	General Requirements	C
02 00 00 - 49 99 99	Technical Sections	C

UDG – PART 5115

CONTRACTING BY NEGOTIATION

UDG 5115.404-73 Alternate structured approaches.

UDG 5115.404-73-1 Alternate structured approaches – Construction contracts.

(1) The following alternate structured approach shall be used for all firm-fixed price construction in accordance with Defense Federal Acquisition Regulation Supplement (DFARS) 215.404-4(b)(1). For all other contract actions, the weighted guidelines method described at DFARS 215.404-71 shall be used.

Factor	Rate	Weight	Value
Degree of risk	20		
Relative difficulty of work	15		
Size of job	15		
Period of performance	15		
Contractor's investment	5		
Assistance by Government	5		
Subcontracting	25		
TOTAL	100%		

(2) Based on the circumstances of the procurement action, each of the above factors shall be weighted from 0.03 to 0.12, as indicated below. "Value" shall be obtained by multiplying the rate by the weight. The value column, when totaled, indicates the fair and reasonable profit percentage under the circumstances of the particular procurement.

(a) *Degree of risk.* Where the work involves no risk or the degree of risk is very small, the weighting should be 0.03; as the degree of risk increases, the weighting should be increased up to a maximum of 0.12. Lump sum items shall generally have a higher weight than unit price items. Consider the nature of subcontractors, amount and type of labor included in costs and whether the negotiation is before or after performance of the work. Modifications, settled before the fact, have a much greater risk than those settled after the fact. A weight of 0.03 is appropriate for after the fact equitable adjustments and/or settlements.

(b) *Relative difficulty of work.* If the work is difficult and complex, the weight should be 0.12 and should be proportionately reduced to 0.03 on the simplest of jobs. This factor is tied, to some extent, to the degree of risk. Other things to consider are the nature of the work, by whom it is to be done (i.e., subcontractors, consultants), etc.

(c) *Size of job.* Work estimated up to \$100,000 shall be weighted at 0.12. Work estimated between \$100,000 and \$5,000,000 shall be proportionately weighted from

0.12 to 0.05. Work from \$5,000,000 to \$10,000,000 shall be weighted at 0.04. Work in excess of \$10,000,000 shall be weighted at 0.03. It should be noted that control of fixed expenses generally improves with increased job magnitude.

(d) *Period of performance.* Work not to exceed 1 month is to be weighted at 0.03. Durations between 1 and 24 months are to be proportionately weighted between 0.03 and 0.12. Work in excess of 24 months is to be weighted at 0.12.

(e) *Contractor's investment.* To be weighted from 0.03 to 0.12 on the basis of below average, average and above average. Consider the amount of subcontracting, Government-furnished property or data, such as surveys, method of making progress payments, and any mobilization payment items.

(f) *Assistance by government.* To be weighted from 0.12 to 0.03 on the basis of average to above average. Consider use of Government-owned property, equipment and facilities, expediting assistance, etc.

(g) *Subcontracting.* To be weighted inversely proportional to the amount of subcontracting. Where 80 percent or more of the work is to be subcontracted, use 0.03. The weighting should be increased proportionately to 0.12 where all the work is performed by the contractor's own forces.

UDG 5115.404-73-2 Alternate structured approaches – Architect-Engineer (A-E) contracts.

(1) The pre-negotiation profit objective for a firm-fixed price A-E (including surveying and mapping) contract, contract modification, or task order will be determined as described in, Engineering Pamphlet (EP) 715-1-7, Architect-Engineer Contracting in U.S. Army Corps of Engineers (USACE), and as provided for below. The profit objective for all other types of A-E contracts will be determined in accordance with DFARS 215.404-71.

$$\text{Profit Objective} = \text{Cost} \times (\text{Technical Complexity Factor} + \text{Length Factor} + \text{Support of Socioeconomic Program Factor})$$

(a) *Cost* is the total estimated costs, including general and administrative costs, of the prime contractor and any subcontractors, exclusive of any profit. However, normal profit need not be deducted from the prices for commercial supplies or services (such as airfare, reproduction, lab tests, express mail, and materials) in developing the cost base.

(b) *Technical complexity factor* will vary from 0.05 for low complexity (design of simple road repaving or routine boundary survey verification) to 0.10 for high complexity (design of nuclear chemistry laboratory or the design of the remediation of a very

unusual and complex hazardous waste site). Consider the nature of the work, degree of management involvement required, schedule constraints, amount of Government assistance, and availability of design criteria.

(c) *Length factor* is 0.02 for a contract action of 1 month or less, and increased proportionately to 0.04 for a contract action of 21 months or longer. Consider the time necessary to complete the substantive portion of work, including option periods.

(d) *Support of socioeconomic programs factor* will vary from 0.00 for a prime contractor (including a small business prime contractor) who plans no subcontracting, to 0.02 for a contractor who demonstrates exceptional program support. Consider the contractor's past record as well as the instant contract with regard to mentoring and subcontracting with small businesses, small disadvantaged businesses, and historically black colleges and universities and minority institutions.

(2) When the facilities capital cost of money is proposed by the contractor and verified, reduce the profit objective as described in DFARS 215.404-73(b)(2).

UDG – PART 5116
TYPES OF CONTRACTS

Reserved

UDG – PART 5117

SPECIAL CONTRACTING METHODS

Reserved

USACE Desk Guide (UDG)
Version 1 dated 25 JAN 2017

UDG – PART 5118
EMERGENCY ACQUISITIONS

Reserved

USACE Desk Guide (UDG)
Version 1 dated 25 JAN 2017

UDG – PART 5119
SMALL BUSINESS PROGRAMS

Reserved

UDG – PART 5120

Reserved

UDG – PART 5121

Reserved

UDG – PART 5122

APPLICATION OF LABOR LAWS TO GOVERNMENT ACQUISITIONS

UDG 5122.503-1 PLA Frequently Asked Questions (FAQs)

(1) Are there particular types of contracts, e.g., fixed price, cost reimbursement, incentive fee, etc., for which PLAs should never be used?

No. PLAs have been successfully used on all types of contracts in the public and private sector.

(2) Should field operating activity personnel be discussing this with potential offerors?

Yes, FAR 22.504(c) encourages seeking the views of both prospective bidders and union representatives in an effort to identify and facilitate agreement on appropriate terms and conditions for a particular PLA. USACE Contractor Industrial Relations Specialists (CIRS) are generally in the best position to identify the appropriate points of contact among the respective labor organizations in the initial considerations regarding the use of a PLA.

(3) What about using a Master PLA as part of the solicitation?

We understand that other Federal agencies routinely use master PLAs and have found them very helpful in achieving economy and efficiency. However, given the individuality of USACE's procurement activity, sufficient experience has not been established to develop a master PLA to be added to solicitations as a requirement for all offerors.

(4) Are PLAs legal?

Yes. Federal Acquisition Circular 2005-14 specifically authorizes using PLAs on Federal construction contracts. In addition, PLAs may lawfully be used on construction projects consistent with Sections 8(e) and (f) of the National Labor Relations Act. Agencies should ensure that their actions are tailored to reflect their proprietary interests and do not prescribe how government contractors and subcontractors handle their labor relations beyond performance of the specific government construction project involved. See Building and Trades Council v. Associated Builders, 113 S.Ct. 1190 (1993) (“Boston Harbor”); Chamber of Commerce of U.S. v. Reich, 74 F.3d 1322 (D.C. Cir. 1996), rehearing denied, 83F.3d 439 (1996); rehearing en banc denied, 83 F.3d 442 (1996) (“Reich”); Building and Construction Trades Dept., AFL-CIO, et al. v. Allbaugh, et al., 295 F.3d 28, 30 (D.C. Cir. 2002).

(5) Should USACE be signing the PLA or participate in part of the negotiations?

No. Federal agencies may be the owner of the facilities, but (with the possible exception of federal corporations such as the Tennessee Valley Authority) they are not the employer of the contractor work forces employed to construct the facilities. As owners and proprietors, federal agencies may be party to bid specifications or solicitations that anticipate or require use of PLAs. However, because a federal agency is not generally the employer of the workers involved, it should not directly participate in collective bargaining determining terms and conditions of employment, or become party to labor agreements such as PLAs.

(6) Besides the items in FAR 22.204(b), what could USACE additionally require be put into a PLA?

Although the contractors, as employers, negotiate the terms and conditions of a PLA, USACE may require that a contractor negotiate a PLA containing any additional requirement consistent with USACE's interests as the proprietor of the project, that otherwise contributes to the efficiency and economy in attaining USACE's mission, or that reflects legitimate socio-economic factors.

(7) What projects are included in this change?

The President's Executive Order provides that it shall be the policy of the Federal Government to encourage the use of PLAs in connection with large-scale construction projects (defined as projects where the total cost to the Federal Government of the project is at least \$25 million) as appropriate to promote economy and efficiency in Federal procurement.

(8) Are contracts for construction projects that involve less than \$25 million also covered?

Executive Order 13502 encourages agencies to use PLAs on projects below \$25M in value. Thus, USACE has the discretion to require use of PLAs on projects where the total costs are expected to be less than \$25 million, if use of a PLA will promote efficiency and economy, but there isn't a requirement that USACE consider or use PLAs below this threshold. To date, USACE has exercised this policy on procurement actions at less than \$25M.

(9) Does USACE have to make separate determinations for each of a series of similar or related projects?

Yes. The FAR directs agencies to determine whether use of a PLA will contribute to efficiency and economy in Federal procurement on a project-by-project basis.

(10) Do PLAs discriminate against non-union contractors or employees who are not members of one of the unions?

No. PLAs in connection with public-sector construction contracts are structured to allow all contractors— union and non-union – to participate. Union hiring halls through which applicants must ordinarily pass to obtain work on a particular project must be operated in a manner that does not discriminate on the basis of union membership.

(11) Will a contractor be able to use its existing work force on the project?

Yes. PLAs may contain provisions permitting contractors to bring their existing workers to a particular construction project with them.

(12) Won't requiring use of a PLA reduce the number of bids or competition for a project?

No. Requiring the use of a PLA does not necessarily reduce the number of bids or competition for a contract. See Associated Builders and Contractors, Inc. v. Southern Nevada Water Authority, 159 Nev. 151, 159 n. 1, 979 P.2d 224 (S.Ct. Nev. 1999). In addition, in some instances, using PLAs could increase the pool of potential bidders by encouraging offerors who might otherwise believe their bid or proposal would not be competitive in terms of price (e.g. union shop contractors might be encouraged to bid).

(13) Are PLAs legal in Right-to-Work states?

Yes. PLAs are legal in states with Right-to-Work laws prohibiting agreements requiring employees to become full union members so long as the union security provisions are written to be consistent with the particular requirements imposed by the statutes in question. Certain Federal construction projects, however, will take place on property where USACE or another agency has exclusive federal jurisdiction and State Right-to-Work legislation would not be applicable in those circumstances anyway. Lord v. Local Union No. 2088, International Brotherhood of Electrical Workers, 646 F.2d 1057 (5th Cir. 1981), rehearing denied 654 F.2d 723 (1981), cert. denied 458 U.S. 1106 (1982).

(14) How would USACE evaluate whether an offeror has met the requirement to be party to a PLA? Is it possible for an offeror to gain a competitive advantage by proposing a “better” PLA than another offeror, or are all offered PLAs treated the same during source selection?

The Contractor Officer, in consultation with Office of Counsel, should determine that the offeror has provided evidence that it has agreed to be bound by a PLA. When a solicitation provides that preference will be given in selecting the successful offeror to bidders that propose expanded apprenticeship programs encouraging training and

employment of minority or disadvantaged populations, or other lawful socio-economic objectives, proposal of a PLA with such provisions may indeed give an offeror a legitimate competitive advantage. Otherwise, all offered PLAs meeting the requirements of the solicitation should be treated equally.

(15) What role should USACE play in managing a PLA during contract performance? What additional actions will need to be taken as part of administration of a contract involving a PLA that would not otherwise be taken?

Careful contract administration is very important to be sure that the PLA is properly and lawfully implemented and to be sure that the PLA succeeds in providing the economies and efficiencies in procurement anticipated when the determination to require use of a PLA was made. For cost-reimbursement contracts, Contracting Officers should approve the terms of the PLA for purposes of establishing that costs included under the PLA will be allowable under the USACE contract. USACE typically acts as its own construction manager, so it will also be involved in ensuring compliance with the PLA.

(16) What basic steps should be taken to ensure use of a PLA will advance USACE's interest in achieving economy and efficiency?

Acquisition Planners should review the project at issue and particularly the schedule and anticipated need for the end product of the construction in order to determine the sensitivity of the project to any delays in project completion and the value in preventing disruptions of work and resolving disputes that may arise on site. For example, retrofitting of occupied structures or construction of new buildings or replacement structures may be very time sensitive, especially if weather in the area could further restrict construction.

To determine the efficiencies and economies that a PLA might bring to a particular project, the planners should assess the complexity of the project involved, and particularly the number of workers, labor organizations, and employers expected to participate and the value in those circumstances of coordinating wages, hours, work rules, position classifications, dispute resolution, and other terms of employment at the project. If the budget is very tight, the certainty of labor costs provided by a PLA may be particularly important. Similarly, if studies indicate there may be a concern about possible shortage of labor with the needed skills and capabilities in the area where the project is being conducted, there could be a significant advantage to obtaining access to union hiring halls. Acquisition Planners may also take into consideration that apprenticeship programs available under a PLA may contribute to economy and efficiency of the project in a manner that assures the largest pool of labor involved and is cost-effective in the long run, as well as the impact of such programs on immediate project costs. In particular, apprenticeship and hiring hall programs may make an expanded pool of qualified workers available more expeditiously and allow the project to get under way faster. Projects at sites involving remediation of significant environmental hazards or involving particularly dangerous work give rise to particularly

acute safety and health concerns and the advantage of PLAs in facilitating coordination of work on site may be important in those circumstances. Such considerations may also constitute socio-economic factors appropriate for consideration by USACE. It may also be helpful to issue a Sources Sought Synopsis in order to better determine the likely impact of use of a PLA on a particular project.

(17) FAR 22.503(c)(6) talks about other factors. What types of other factors should be considered during acquisition planning to determine whether or not to use a PLA? Why would USACE want to promote PLAs?

There are several factors that USACE should consider during acquisition planning in order to determine whether use of a PLA will advance USACE's interest in achieving economy and efficiency. The Department of Energy and the Tennessee Valley Authority have found that projects covered by PLAs tend to come in on time or early, and on budget or under budget, and that any delays in completion of such projects or any increases in costs that do arise are not be due to labor issues.

PLAs may significantly contribute to the economy and efficiency of a project by providing a mechanism for coordinating wages, hours, work rules, and other terms of employment across a project. Agencies should consider the complexity of the particular projects involved, particularly with respect to the number of workers and labor organizations and contractors expected to participate, and the value in those circumstances of coordinating wages, hours, work rules, and other terms of employment at the project in contributing to efficiency and economy. Improving coordination of work may also be especially important in projects involving particularly acute safety and health concerns.

Further, lack of coordination among various employers, or uncertainties about the terms and conditions of employment of various groups of workers, may create friction and labor disputes. On larger, more complex projects that will be of longer duration, such problems tend to be more pronounced. The use of PLAs may prevent such problems from developing by providing structure and stability to large-scale construction projects, thereby promoting the efficient and expeditious completion of Federal construction contracts. PLAs also generally include broad provisions for grievance and arbitration of any disputes that may arise on site so as to promote the efficient and expeditious completion of Federal construction projects.

Moreover, PLAs commonly provide strong prohibitions of work stoppages, slowdowns, or strikes for the duration of a project and may specifically obligate senior union management to use their best efforts to prevent any threats of disruptions of work that might possibly arise. Agencies should therefore consider the sensitivity of the particular projects to delays and the value in the circumstances of preventing disruptions of work and of providing processes for resolving any disputes that do arise on site.

PLAs also commonly include provisions giving employers access to hiring halls maintained by the participating unions. DOE experience has been that projects

covered by PLAs have access to a well-trained supply of labor available expeditiously, even in remote areas where skilled labor would have otherwise been extremely difficult to find in a timely fashion. Thus, if there is concern about possible shortage of labor with the needed skills and capabilities in the area where the project is being conducted, access to union hiring halls could be important means of obtaining the necessary work force in the most efficient, expeditious, and economical fashion. Apprenticeship and training programs available through a PLA also help meet labor requirements – and do so in a manner that is cost-effective for the duration of the immediate project, that also assures the largest pool of labor involved, and that is cost-effective in the long run. These factors may also constitute socio-economic factors appropriate for consideration by an agency.

UDG 5122.503-2 PLA Determination Tool

(1) The decision to use a Project Labor Agreement (PLA) is made on a project by project basis where its use will promote economy and efficiency in federal procurement. This PLA Determination Tool will assist contracting officers to understand the circumstances in which a project labor agreement may benefit a specific project. This tool is structured in two parts:

(a) Market Research: Understanding the nature of the project under consideration, the geographic region, the labor market and recent project history are all key components to making informed decisions. This section of the tool will help contracting officers gather pertinent information to know if a PLA is appropriate for use on a given project.

(b) Review Checklist: This section will help the contracting officer determine whether a PLA is appropriate for the project. Note: The “Review Checklist” Memorandum within this tool and accompanying project- by-project Market Research Report shall be included in every applicable contract file.

(2) A PLA is defined as a pre-hire collective bargaining agreement with one or more labor organizations that establishes the terms and conditions of employment for a specific construction project and is an agreement described in 29 U.S.C. § 158(f). Federal Acquisition Regulation (FAR) 22.503 Policy provides that:

(a) PLAs are a tool that agencies may use to promote economy and efficiency in Federal procurement. Pursuant to Executive Order 13502, agencies are encouraged to consider requiring the use of project labor agreements in connection with large-scale construction projects.

(b) An agency may, if appropriate, require that every contractor and subcontractor engaged in construction on the project agree, for that project, to negotiate or become a party to a project labor agreement with one or more labor organizations if the agency decides that the use of project labor agreements will--

(i) Advance the Federal Government's interest in achieving economy and efficiency in Federal procurement, producing labor-management stability, and ensuring compliance with laws and regulations governing safety and health, equal employment opportunity, labor and employment standards, and other matters; and

(ii) Be consistent with law. (Refer also to FAR 52.222-33 Notice of Requirement for Project Labor Agreement and FAR 52.222-34 Project Labor Agreement).

(3) In addressing projects within the scope of Executive Order 13502, federal contracting officers may undertake a labor market survey as part of their PLA evaluation process, following the criteria offered in the FAR 22.503(c):

(a) The project will require multiple construction contractors and/or subcontractors employing workers in multiple crafts or trades.

(b) There is a shortage of skilled labor in the region in which the construction project will be sited.

(c) Completion of the project will require an extended period of time.

(d) Project labor agreements have been used on comparable projects undertaken by Federal, State, municipal, or private entities in the geographic area of the project.

(e) A project labor agreement will promote the agency's long term program interests, such as facilitating the training of a skilled workforce to meet the agency's future construction needs.

(f) Any other factors that the agency decides are appropriate.

(4) For this assessment, agencies may consider consulting a contract management firm with experience evaluating project labor agreements. There are several firms nationwide that have national and regional experience evaluating whether the use of a PLA can provide value to a project.

(5) For contracting officers who choose to conduct their own research, the following information may be helpful in making an informed decision:

(a) Sources of Information: Contracting officers who undertake this assessment may consider the following sources for detailed information about data to consider when making a determination. This information can be gathered through a "sources sought" notification, email or phone contact, or through a survey.

(i) Project owners and users: Owners of local construction projects in the vicinity of the project under consideration may have had to decide whether to use a PLA. As such, local and/or state government agencies can provide relevant information

on the factors they have considered when deciding to use PLAs on public projects. In addition, private sector firms or owners have increasingly used PLAs to manage complex projects and can be a similar resource.

(ii) Government data sources: Federal and state Departments of Labor (or similar workforce agency) provide data about wages, economic trends and labor availability in the region to employers, developers and other stakeholders. Local Career One Stop Centers may have additional data on the labor force availability.

(iii) Construction community, in accordance with FAR 22.504(c), to include:

1) Local Building and Construction Trades Councils provides essential coordination and support to the work of its affiliated national and international unions. (<http://www.bctd.org/Official-Directory/Local-Councils.aspx>)

2) Associated Builders and Contractors offers numerous local offices that represent merit shop contractors, subcontractors, material suppliers and related firms in the United States. (<http://www.abc.org/chapterlocator.aspx>)

3) Associated General Contractors includes a nationwide network of local chapters which represent more than 33,000 leading firms in the industry, including general contractors, specialty contractors and service providers and suppliers. (http://www.agc.org/cs/about_agc/find_a_chapter)

4) Construction consulting and management firms with experience using PLAs are often called on to provide expert analysis regarding the benefits of using PLAs and whether its use can provide value on a particular project. Along with academic experts, these firms have conducted analyses to determine whether to use PLAs and have extensive experience regarding what factors should be considered and how a PLA can be crafted to maximize economy and efficiency.

(b) Scan of Recent Construction Projects in Target Labor Market: A sources sought notice (or a similar relevant agency tool) may be issued as part of market research to obtain data on the recent history of construction projects in the local labor market of the project under consideration.

(i) Market research sources sought notices shall include, at a minimum, the following standard USACE questions:

1) Do you have knowledge that a PLA has been used in the local area on projects of this kind? If so, please provide supporting documentation.

2) Are you aware of skilled labor shortages in the area for those crafts that will be needed to complete the referenced project? If so, please elaborate and provide supporting documentation where possible.

3) Are you aware of time sensitive issues/scheduling requirements that would affect the rate at which the referenced project should be completed? If so, please elaborate and provide supporting documentation where possible.

4) Identify specific reasons why or how you believe a PLA would advance the Federal Governments interest in achieving economy and efficiency in federal procurement.

5) Identify specific reasons why you do not believe a PLA would advance the Federal Governments interest in achieving economy and efficiency in federal procurement.

6) Identify any additional information you believe should be considered on the use of a PLA on the referenced project.

7) Identify any additional information you believe should be considered on the non-use of a PLA on the referenced project.

(ii) The information gathered in this exercise should include the following information on projects completed in the last 2-5 years:

- 1) Project Name and Location
- 2) Detailed Project Description
- 3) Initial Cost Estimate vs. Actual Final Cost
- 4) Was the project completed on time?
- 5) Number of craft trades present on the project
- 6) Was a PLA used?
- 7) Were there any challenges experienced during the project?

(c) Current Project Details: For the project under consideration, the federal acquisition team can fill in the following table to detail the factors needed to consider when deciding whether a PLA may or may not improve the economy or efficiency of the project:

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Project Description	
Category of Construction (residential, building, highway, heavy)	
Estimated cost, duration, deadline and complexity	
Which trades are expected to be employed on the projects? Are you likely to need some union skilled trades for at least part of this project?	
What market share does union labor have in the geographic area for this project or type of construction?	
Does the local market contain the sufficient number of available skilled workers for this project? Are the other projects in the vicinity going to limit the pool of skill labor available for your project?	
Has a project like this been done before in the local market?	
What investments have been made to support registered apprenticeship programs?	
Will the completion of the project require an extended period of time or have sensitive deadlines?	
Have PLAs been used on comparable projects undertaken by the public or private sector in this geographic region?	
Have PLAs been used on this type of project in other regions?	
Which CBAs are likely to expire during the course of the project under consideration that might cause delays?	
How do open shop and union wage rates influence prevailing wage rates in the local market and compare to Davis Bacon rates? What impact does unionization in the local market have on wages?	
<p>Could a PLA contribute to cost savings in any of the following ways:</p> <ul style="list-style-type: none"> Harmonization of shifts and holidays between the trades to cut labor costs? Minimizing disruptions that may arise due expiration of CBA? Availability of trained, registered apprentices, efficient for highly skilled workforce? Allowing for changes in apprentice to journeyman ratio. Serving as a management tool that ensures highly skilled workers from multiple trades are coordinated in the most efficient way. 	
<p>Could a PLA minimize risk and contribute to greater efficiency in any of the following ways:</p> <ul style="list-style-type: none"> Mechanisms to avoid delays Complying with labor standards, safety rules and EEO and OFCCP laws. Ensuring a steady supply of skilled labor in markets with low supply or high competition for workers. 	
Are there ways in which a PLA might increase costs on this particular project?	

Review Checklist Decision Memorandum

The following factors have been considered in determining whether to use a project labor agreement (PLA). The decision to use or not use a PLA was based on an overall assessment of project economies and efficiencies to be realized from either course of action.

- The project will require multiple construction contractors and/or subcontractors employing workers in multiple crafts or trades.
- There is a shortage of skilled labor in the region in which the construction project will be sited.
- Completion of the project will require an extended period of time.
- PLAs have been used on comparable projects undertaken by Federal, State, municipal, or private entities in the geographic area of the project.
- A PLA will promote the agency's long term program interests, facilitating the training of a skilled workforce to meet the agency's future construction needs.
- There are collective bargaining agreements (CBAs) for key trades that will expire during the course of the project.
- The unique and compelling schedule requirements of a particular project (e.g., the project is tied to court-imposed deadlines or has a mission-critical schedule).
- A PLA will provide an opportunity for registered apprentices to participate in the project.
- A PLA would not contribute to the economy or efficiency for the project under consideration.
- Additional Factors (Provide any additional project or situation specific details, information or factors (e.g., results of the labor market survey, other projects in the vicinity, etc.) that apply to this determination.

Based on consideration of the above factors and the market research completed in the previous pages, provide a short summary explaining why you recommend/ do not recommend the use of a PLA for this specific project.

Signed by:

Contracting Officer: _____ Date _____

Requirements Official: _____ Date _____

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UDG – PART 5123

**ENVIRONMENT, ENERGY AND WATER EFFICIENCY, RENEWABLE ENERGY
TECHNOLOGIES, OCCUPATIONAL SAFETY, AND DRUG-FREE WORKPLACE**

Reserved

UDG – PART 5124

PROTECTION OF PRIVACY AND FREEDOM OF INFORMATION

Subpart 5124.1 – Protection of Individual Privacy

UDG 5124.103 Procedures.

(1) Sample Personally Identifiable Information (PII) requirements language for insertion into the performance work statement.

PERSONALLY IDENTIFIABLE INFORMATION (PII)

Sections *(insert applicable sections of work statement)* of this Performance Work Statement require the Contractor to design, develop, or operate a system of records on individuals, to accomplish an agency function subject to the Privacy Act of 1974, Public Law 93-579, December 31, 1974 (5 U.S.C. 552a). The Contractor shall comply with the Privacy Act and all applicable agency regulations on individual privacy, to include DoD Directive 5400.11, DoD Privacy Program, and DoD 5400.11-R, Department of Defense Privacy Program.

Systems Access

When requested by the Government, the contractor shall provide access to and information regarding the systems that the contractor operates or maintains on behalf of the Government under this contract.

Systems Security

The contractor shall encrypt all contractor-owned laptops or other portable media storage devices that process or store PII, in accordance with National Institute of Standards and Technology (NIST) Federal Information Processing Standard (FIPS) 140-2 (or successor).

The contractor shall require FIPS 140-2 (or successor) encryption of any sensitive PII when transmitted electronically across the internet or other public networks.

Data Security

The contractor, unless otherwise authorized by the Government, shall limit access to PII to those employees and subcontractors who require the information in order to perform their official duties under this contract.

The contractor, contractor employees, and subcontractors shall physically or electronically protect PII when not in use and/or under the control of an authorized individual.

During the course of contract performance, when PII is no longer needed or required

to be retained under applicable Government records retention policies, the contractor shall coordinate with the contracting officer to either turn over the PII to the Government, or destroy it through means that will make the PII irretrievable (i.e., permanently unavailable for access by any person).

The contractor shall only use the PII obtained under this contract for the purpose of the contract, and shall not collect or use such information for any other purpose without the prior written approval of the contracting officer.

At expiration or termination of this contract, the contractor shall coordinate with the contracting officer to either turn over all PII managed under the contract that is in its possession to the Government or successor contractor, or if the Government so directs, destroy the PII.

(2) Sample PII data breach response and notification.

PERSONALLY IDENTIFIABLE INFORMATION (PII) BREACH OF CONTRACT

The contractor shall adhere to the reporting and response requirements for PII set forth in Memorandum, Office of the Secretary of Defense, Subject: Safeguarding Against and Responding to the Breach of Personally Identifiable Information (PII), June 5, 2009, ALARACT 05/2009, DoD 5400.11-R, and any amendments.

The contractor or its subcontractor shall immediately notify *(insert requiring activity and phone number or email address)* upon discovery that a suspected or actual breach of PII has occurred. The notification shall include, to the greatest extent possible the identification of each individual who's PII has been or possible has been breached. In addition, the contractor or its subcontractor shall provide *(insert requiring activity and phone number or email address)* with any other available information that must be included in required breach reporting and notifications. The contractor shall provide this information at the time of the initial notification to the Government or promptly thereafter as information becomes available.

The Government will determine whether a breach of PII has occurred, and whether breach notification to affected individual is required. If breach notification to affected individuals is required, the Government will determine if the contractor shall make the required notification. If the contractor is to notify the impacted population, it shall submit the notification letters to *(insert requiring activity and phone number or email address)* for review and approval.

UDG – PART 5125

FOREIGN ACQUISITION

Subpart 5125.3 – Contracts Performed Outside the United States

UDG 5125.3 Contracting reachback in support of forward districts operating in OCO within CENTCOM.

(1) *Pre-award.*

(a) *Project acceptance.* Procuring contracting officers (PCOs) and contract specialists will NOT accept projects or provide any reachback assistance unless the requested function has already been accepted by the reachback districts.

(b) *Kick-off meeting.* The PCO and contract specialists for both the supported forward district and the supporting reachback district must attend the project kick-off meetings at the start of each project. Responsibilities to the project delivery team (PDT) include advice on contract type, source selection method, use of “set-asides,” bonding level recommendations, risks inherent in that particular acquisition, special requirements that must be considered in the project milestone schedule, and other critical items that could impact successful contract award.

(c) *Systems registration.* In order to avoid delaying critical approvals and contract award, PCOs and contract specialists must be registered in appropriate systems databases early in the acquisition process.

(d) *Contract file initiation.* All contract documents will be kept in the Paperless Contract File (PCF) system.

(e) *Pre-solicitation TBC.* The PCO in the reachback district must receive an approved preliminary Theater Business Clearance (TBC) prior to executing a solicitation for the project. See the Defense Procurement Acquisition Policy (DPAP) website for TBC guidance.

(2) *Award.* Contract award will be made by the reachback PCO in the contract writing system of the forward supported district.

(a) *Final TBC.* Final TBC approval must be provided by the TBC Office prior to making a contract award. The final TBC request is submitted through the Joint Contingency and Expeditionary Services (JCXS) in the same method as the interim TBC request. The final TBC approval will come with an approval number that will be automatically be posted to the Synchronized Predeployment and Operational Tracker (SPOT) system. The SPOT system will not accept Letters of Authorization (LOA) requests without approved Government Furnished Life Support (GFLS) and final TBC

clearance. Submit the same GFLS that was approved prior to solicitation. If there have been changes (e.g., number of contractor personnel receiving life support), a new GFLS will be required.

(b) *Vendor vetting.* Prior to making contract award, the reachback district must ensure the apparent successful offeror, if a foreign firm, has been vetted and is rated within the acceptable risk limits set by U.S. Central Command (CENTCOM). Vendor vetting is accomplished through the JCXS website. Refer to the JCXS – TBC User Guide for additional information.

(c) *Peer reviews and other approvals.* All peer reviews, business clearances, legal sufficiency reviews, and any other required pre-award approvals will be made through the reachback district's organic channels.

(d) *Notice of Award and Notice of Unsuccessful Offeror(s).* The PCO for the reachback district will issue both the Notice of Award for the apparent successful offeror and the Notice to Unsuccessful Offerors. The Notice of Award shall contain the following requirements for the awarded contractor:

- (i) Acknowledgement of Notice of Award.
- (ii) Evidence of Defense Base Act (DBA) insurance policy for the contract.
- (iii) Adequate performance and payment bonds as required by the contract.
- (iv) Military Extraterritorial Jurisdiction Act (MEJA) acknowledgement, if applicable.
- (v) Any other plans or documents required by the Notice of Award.

(e) *Protests.* All pre-award and award protests will be adjudicated by the reachback district.

(3) *Post-award.* Reachback districts will continue to execute PCO authority through Notice to Proceed (NTP). All documents required through the Notice of Award notification to the contractor must be received and approved by the reachback contracting officer prior to issuing NTP.

(a) *SPOT.* The Government authorized individual will initiate the contract information into the SPOT system. Do not execute an NTP on the project until the contractor has loaded its company information into SPOT and has prepared LOA requests for all required employees. All LOAs will be approved by the PCO at the forward supported district.

(b) *NTP.* Prior to issuing the NTP, the contractor must provide substantiating evidence that all requirements of the Notice of Award letter have been met.

(c) *PCF and other file transfers.* After issuance of NTP, the reachback district contracting System Administrator will transfer the PCF cabinet to the Transatlantic Division (TAD) PCF cabinet for forward support district administration. Coordination with the Middle East District (TAM) contracting System Administration may be necessary to ensure the cabinet is transferred properly.

(d) *Transfer PCO authority.* Concurrent with issuance of the NTP, the PCO at the reachback district will execute a modification transferring successor PCO authority to the Contracting Division of the supported forward district. Do not transfer authority to an individual in the forward district due to the transient nature of personnel assignments in the OCO Theater.

(e) *Contract administration.* Except on rare occasions, reachback-awarded contracts will be administered by the forward supported district. Occasionally, questions arise during contract administration related to the actions that occurred during the pre-award and award phases of an acquisition. Reachback contracting personnel must be available to resolve these issues and questions to the maximum extent possible during contract administration.

(f) *Contract closeout.* Contract closeout will generally occur at the forward supported district. However, reachback support may be required in certain instances in order to properly close contracts originally awarded using reachback procedures.

UDG – PART 5126

OTHER SOCIOECONOMIC PROGRAMS

Reserved

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UDG – PART 5127

PATENTS, DATA, AND COPYRIGHTS

Reserved

UDG – PART 5128

BONDS AND INSURANCE

UDG 5128.305-2 Required documentation for open market DBA insurance carriers. Defense Base Act (DBA) insurance carriers and their respective brokers require detailed information prior to quoting and/or setting prices for DBA insurance policies. In order to ensure contractors forward DBA insurance brokers a complete and detailed application, and to avoid delays in the application process, contracting officers shall ensure contractors are aware of the information required, which includes, but is not limited to, the following:

- Full Name of Insured or Company and Complete Mailing Address
- Telephone Number and Fax Number
- Contact Person
- Email for Contact Person
- Coverage Effective Date
- Contract or Task Order Number
- Clear description of operations (scope/statement of work, etc.)
- Performance location(s)
- Estimated size of payroll (total labor cost)
- Description of security measures at each site, if applicable
- Description of medical facilities at each site, if applicable
- Description of evaluation plans, if applicable
- Description of loss (claims) information, if applicable

UDG – PART 5129

TAXES

Reserved

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UDG – PART 5130

COST ACCOUNTING STANDARDS ADMINISTRATION

Reserved

UDG – PART 5131

CONTRACT COST PRINCIPLES AND PROCEDURES

Reserved

UDG – PART 5132
CONTRACT FINANCING

Reserved

UDG – PART 5133

PROTESTS, DISPUTES, AND APPEALS

UDG 5133.102-100 General.

(b) See USACE Desk Guide (UDG) Attachment 5, Contract Requests, Claims, and Appeals, for guidance on coordinating contract requests, claims, and appeals.

UDG – PART 5134

MAJOR SYSTEM ACQUISITION

Reserved

UDG – PART 5135

RESEARCH AND DEVELOPMENT CONTRACTING

Reserved

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UDG – PART 5136

CONSTRUCTION AND ARCHITECT-ENGINEER CONTRACTS

Reserved

UDG – PART 5137

SERVICE CONTRACTING

Subpart 5137.5 Management Oversight of Service Contracts

UDG 5137.590-4 Review procedures.

(b) The assigned Principal Assistant Responsible for Contracting (PARC) Procurement Analyst shall coordinate a pre-brief via telephone or email with the Department of the Army, Office of Small Business Programs (OSBP), with a courtesy email notification to the HQ U.S. Army Corps of Engineers (USACE) Associate Director, Small Business (CESB).

(1) The assigned PARC Procurement Analyst shall ensure all elements outlined in the Small Business Policy Letter 16-02, Acquisition Strategy Pre-Briefs on Service Acquisitions over \$250M, are addressed in the acquisition strategy pre-brief meeting.

(2) If the acquisition strategy is revised between the pre-brief and issuance of the solicitation, the assigned PARC Procurement Analyst must provide the updated information, via email notification, to OSBP, with a courtesy email notification to the Associate Director, CESB.

(3) The assigned PARC Procurement Analyst shall notify OSBP, via email notification, with a courtesy email notification to the Associate Director, CESB, of the contract award within 30 days.

(4) All acquisition personnel are encouraged to work with the Small Business personnel to ensure proper coordination and appropriate approvals are executed within a timely manner. Final approval of the acquisition strategies rest with the applicable approval authorities (i.e., PARC, Deputy Assistant Secretary of the Army (Procurement) (DASA(P)), and Defense Procurement and Acquisition Policy (DPAP)).

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UDG – PART 5138

FEDERAL SUPPLY SCHEDULE CONTRACTING

Reserved

UDG – PART 5139

ACQUISITION OF INFORMATION TECHNOLOGY

Reserved

UDG – PART 5140

Reserved

UDG – PART 5141

ACQUISITION OF UTILITY SERVICES

Reserved

UDG – PART 5142

CONTRACT ADMINISTRATION AND AUDIT SERVICES

Reserved

UDG – PART 5143
CONTRACT MODIFICATIONS

Reserved

UDG – PART 5144

SUBCONTRACTING POLICIES AND PROCEDURES

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UDG – PART 5145

GOVERNMENT PROPERTY

Reserved

UDG – PART 5146
QUALITY ASSURANCE

Reserved

UDG – PART 5147
TRANSPORTATION

Reserved

UDG – PART 5148
VALUE ENGINEERING

Reserved

UDG – PART 5149

TERMINATION OF CONTRACTS

Reserved

UDG – PART 5150

EXTRAORDINARY CONTRACTUAL ACTIONS AND THE SAFETY ACT

Reserved

UDG – PART 5151

USE OF GOVERNMENT SOURCES BY CONTRACTORS

Reserved

UDG – PART 5152

SOLICITATION PROVISIONS AND CONTRACT CLAUSES

Reserved

USACE DESK GUIDE



ATTACHMENT 1 – USACE ACQUISITION DOCUMENT REVIEW AND APPROVAL MATRIX

USACE DESK GUIDE

USACE ACQUISITION DOCUMENT REVIEW & APPROVAL MATRIX

This Matrix is a guide to assist Contracting Officers in preparing and submitting acquisition documents for review and approval and not substitute for exercising due diligence. This Matrix includes the most common acquisition documents executed by USACE requiring review and approval above the Contracting Officer – **it is not all inclusive**. Contracting Officers shall ensure compliance with all FAR, DFARS, or AFARS requirements or applicable DoD/Army policy guidance (See Delegation Authorities Matrix as well). If the approval authority has been delegated, the column identifies who approves the action. (Where PARC is listed, the Command PARC may approve in the absence of the PARC, or when specific actions are designated for approval by the Command PARC. In the absence of the PARC, or when specific actions are requested for approval by the HQ DOC, HQ DOC will approve.

NOTE: For acquisition milestone planning purposes, “Approximate Total Approval Days” equals “business days.”)

DOCUMENT AND REGULATORY CITE(S)	DOLLAR THRESHOLD	APPROVAL AUTHORITY	APPROX. TOTAL APPROVAL DAYS
ACQUISITION PLAN/ADDENDUM TO ACQUISITION PLAN			
Programmatic Acquisition Plans/Acquisition Plans (Exclusive of ECI Acquisition Plans) (DFARS 207.103, AFARS 5107.103-90, UAI 5107.103-90)	≥ \$25M for any FY ≥ \$50M for all years	HCA	40
Programmatic Acquisition Plans/Acquisition Plans - <i>Required Approvals Outside the Contracting Chain at USACE Headquarters.</i>	≥ \$0	Director, MSC & Director, HQ Military Programs Integration (CEMP-I)	40
Programmatic Acquisition Plans/Acquisition Plans for Early Contractor Involvement (ECI) Actions - <i>Contracting Chain Approvals.</i>	≥ \$0	HCA	40
Programmatic Acquisition Plans/Acquisition Plans - Research and Development Acquisitions (DFARS 207.103(d)(i)(A), AFARS 5107.103-90, UAI 5107.103-90)	≥ \$10M	HCA	40
Addendum to Acquisition Plan	Approval at Same Level as Acq Plan		12
Acquisition Strategy (AFARS 5137.590-3, UAI 5137.590-3)	≥ SAT to < \$10M	CCO	10
Acquisition Strategy (AFARS 5137.590-3, UAI 5137.590-3)	≥ \$10M to < \$100M	CCO	20
Acquisition Strategy (AFARS 5137.590-3, UAI 5137.590-3)	≥ \$100M to < \$250M	PARC	30

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Acquisition Strategy (AFARS 5137.590-3)	$\geq \$250M$ to $\leq \$999M$	DASA(P) or SSM*	90 *SSM Requires 30 Days for SSM Review
Acquisition Strategy (AFARS 5137.590-4)	$\geq \$250M$ to $> \$1B$	Pre-Brief to Army OSBP (Req'd Prior to DASA(P) or SSM approval; If IT Services – DoD CIO Approval; Will be coordinated by DASA(P) SSM)	120
Acquisition Strategy (AFARS 5137.590-3)	$\geq \$1B$ Or $> \$300M$ in any one year	DASA(P) or SSM	120
APPOINTMENTS			
Award Fee Determining Official Appointment (AFARS 5116.405-2(2)(B))	$\geq \$0$	PARC	10
KO Warrants, Grants Officer Warrants (UAI 5101.603-1)	$\geq \$0$	PARC	10
Use of Contractor Support (Non-Government Advisors) in Source Selection Evaluation (AFARS 5137.204, UAI 5137.204)	$\geq \$0$	HCA	15
Source Selection Authority (SSA) Appointment for ACAT II and III programs and for Acquisitions not managed IAW DoDI 5000.02 when Formal Source Selection Procedures are Used (AFARS 5115.303(a)(iii) and UAI 5115.303(a)(iii))	$> \$0$	HCA	7
SSA Appointment (UAI 15.300-100(e)(4))	$< \$100M$	PCO	7
SSA Appointment (UAI 15.300-100(e)(4))	$\geq \$100M$ to $< \$250M$	PARC	7
SSA Appointment (UAI 15.300-100(e)(4))	$\geq \$250M$ to $< \$500M$	HCA	7
SSA Appointment (UAI 15.300-100(e)(4))	$\geq \$500M$ (Construction or Supplies only)	HCA	7
SSA Appointment (UAI 15.300-100(e)(4))	$\geq \$500M$ (Services only)	DASA(P)	30

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BUSINESS CASE ANALYSIS FOR CERTAIN INTER-AGENCY & AGENCY-SPECIFIC ACQUISITIONS			
<p>NOTE: Agency-specific contract is an IDIQ contract intended for the sole use of the establishing department or agency. Agency-specific contracts may be agency-wide (sometimes referred to as "enterprise-wide") or limited to one or more specific component organizations within the agency. This Applies to general to Army Funded Services and excludes services 100% Civil Works funded.</p>			
Approval of Business Cases for Certain Inter-Agency or Agency-Specific Acquisitions - Government-Wide Acquisition Contracts (GWACS) (DASA(P) <u>PARC Alert #12-09 and #14-36 rev 1)</u>)	≥ \$0	SPE	120
Approval of Business Cases for Certain Inter-Agency or Agency-Specific Acquisitions - Covered Multi-Agency Contract or Multi-Agency BPA (DASA(P) <u>PARC Alert #12-09 and #14-36 rev 1)</u>)	≥\$50M (FY14)	SPE	120
Approval of Business Cases for Certain Inter-Agency or Agency-Specific Acquisitions - Covered Agency-Specific ("Enterprise-Wide") Contract or BPA (DASA(P) <u>PARC Alert #12-09 and #14-36 rev 1)</u>)	≥\$50M (FY14)	SPE	120
ACQUISITION OF SERVICES – COST BENEFIT ANALYSIS to Support Army Enterprise Decision Making on Service Requirements			
Approval of Cost Benefit Analysis (All Army organizations service requirements) *Use OMB BCA Template for Analysis (DASA(P) <u>PARC Policy Alert 14-36)</u>)	≥\$10M	Accompanies the Acquisition Strategy and Approval Authority Thresholds for the Strategy Apply	See Acquisition Strategy Times
CONGRESSIONAL NOTIFICATION			
Congressional Notification (<i>DFARS 205.303 and AFARS 5105.303</i>)	> \$7M	DASA(P)	3
Urgent Congressional Notification (<i>DFARS 205.303 and AFARS 5105.303</i>)	> \$7M	DASA(P)	1

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Extension of Congressional Notification (DFARS 205.303 and AFARS 5105.303)	> \$7M	DASA(P)	3
DETERMINATION & FINDINGS – CONSOLIDATION			
Determination of Consolidation of Contract Requirements (AFARS 5107.170-3(a)(3)(A) and UAI 5107.170-3(a)(3)(B))	≥ \$2M to < \$500M	PARC	30
	≥ \$500M	DASA(P)	120
DOCUMENT AND REGULATORY CITE(S)	DOLLAR THRESHOLD	APPROVAL AUTHORITY	APPROX. TOTAL APPROVAL DAYS
DETERMINATION & FINDINGS – MISCELLANEOUS			
Determination to reject offers suspected of being collusive if the disclosure was made for the purpose or had the effect of restricting competition (FAR 3.103-2(b)(2))	≥ \$0	CCO	30
Determination, for that particular solicitation, that a number greater than five offerors is in the Government's interest and is consistent with the purposes and objectives of the two-phase design-build selection procedures (FAR 36.303-1(a)(4))	≥ \$0 < \$4M	KO	
Determination, for that particular solicitation, that a number greater than five offerors is in the Government's interest and is consistent with the purposes and objectives of the two-phase design-build selection procedures (FAR 36.303-1(a)(4))	≥ \$4M	HCA	
DETERMINATION & FINDINGS FOR SERVICES ACQUISITION STRATEGY - Non-Performance Based			
Acquisition of Services - not performance based (AFARS 5137.170-2, DFARS 237.170-2 (a)(2), UAI 5137.170-2)	≤ \$93M	HCA	60
Acquisition of Services - not performance based	> \$93M	SPE Approve	120

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(AFARS 5137.170-2 & DFARS 237.170-2 (a)(1))			
DETERMINATION & FINDINGS FOR CONTRACT TYPE			
D&F for Justification of Contract Type (FAR 16.401(d) and UAI 5116.401(d))	$\geq \$0$ (for Incentive contracts only)	CCO	30
D&F for Justification of Contract Type (FAR 16.401(d), DFARS PGI 216.401(d)(iii), and UAI 5116.401(e)(iii))	$\geq \$0$ (for Award-fee contracts only)	HCA	30
Use of Time and Material (T&M) Contract and Labor-hour Contract prior to execution of the base period or any option periods of 3 years or less (FAR 16.601(d)(1)(i) & DoD Class Deviation 2012-O0016)	$\leq \$1M$	CCO	5
Use of T&M Contract and Labor-hour Contract prior to execution of the base period or any option periods of 3 years or less (FAR 16.601(d)(1)(i) & DoD Class Deviation 2012-O0016)	$\geq \$1M$	PARC	5
Use of T&M Contract and Labor-hour Contract prior to execution of the base period when the base period plus options exceeds 3 years (FAR 16.601(d)(1)(ii) and (d)(2) & DoD Class Deviation 2012-O0016)	$> \$0$	HCA	30
Use of Letter contracts (FAR 603-2, DFARS 217.7404-1, and UAI 5117.7404-1)	$> \$0$	PARC	
FMS Other than Full & Open Competitions for International Agreement Competitive Restriction (UAI 6.302-4-100(c))	$\geq \$0$	CCO	30
DETERMINATION & FINDINGS FOR NON-DOD CONTRACTS			
Non-DOD Contracts and Delivery Orders for Supplies and Services	$> \$150K \leq \$50M$	KO	5

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(AFARS 5117.502-1 and UAI 5117.502-1)			
Non-DOD Contracts and Delivery Orders for Supplies and Services (AFARS 5117.502-1 and UAI 5117.502-1)	>\$50M≤\$250M	CCO	10
Non-DOD Contracts and Delivery Orders for Supplies and Services (AFARS 5117.502-1 and UAI 5117.502-1)	>\$250M≤\$1B	PARC	30
Non-DOD Contracts and Delivery Orders for Services (AFARS 5117.502-1 and UAI 5117.502-1)	> \$1B	SSM	
Non-DOD Contracts and Delivery Orders for Supplies (AFARS 5117.502-1 and UAI 5117.502-1)	> \$1B	DASA(P)	60
DETERMINATION & FINDINGS FOR ORGANIZATIONAL CONFLICT OF INTEREST (OCI)			
Organizational Conflict of Interest (OCI) Written Analysis to Avoid, Mitigate, Neutralize Potential or Actual OCI (FAR 9.506(b) <i>(Also see "Waivers for OCI" Below)</i>)	≥\$0	CCO	10
DETERMINATION & FINDINGS FOR SINGLE AWARD TASK ORDER CONTRACTS (SATOCs)			
D&F for use of SATOC/Single Award Delivery Order Contract (FAR 16.504 (c)(1)(ii)(D)(1)(i), (ii) & (iii) & DFARS 216.504)	>\$112M	SPE	120
DETERMINATION & FINDINGS FOR SINGLE AWARD TASK ORDER CONTRACTS (SATOCs) cont'd			
D&F for use of SATOC/Single Award Delivery Order Contract (FAR 16.504 (c)(1)(ii)(D)(1)(iv) & DFARS 216.504)	>\$112M	SPE & Notice to Congress	150
DETERMINATION TO OBTAIN CERTIFIED COST & PRICE DATA BELOW THRESHOLD			
Authorization to Obtain Certified Cost and Pricing Data on Actions Below Threshold, provided the acquisition exceeds the SAT (FAR 15.403-4(a)(2))	<\$700K	HCA	30

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Justification and Approval (FAR 6.304(a)(1))	≤\$700K	KO	7
Justification and Approval (FAR 6.304(a)(2))	>\$700K≤\$13.5M	SAFC	14
Justification and Approval (FAR 6.304(a)(3))	>\$13.5M≤\$93M	HCA	30
Justification for Sole Source Award to 8(a) (FAR 6.204 (a)&(b))	>\$22M≤\$93M	HCA	30
Justification and Approval (FAR 6.304(a)(4))	>\$93M	SPE	150
MISCELLANEOUS ACTIONS			
Endorse documents related to Procurement Matters that Require Approval by HQDA (AFARS 5101.290(a)(1))	Per Regulation	HCA	Per Document Type Approval Timeline
Approve individual deviations to FAR, DFARS, and AFARS (Excluding areas set forth in <u>DFARS 201.402(1)</u> & <u>DFARS 201.403(2)</u> ; any provisions which limit approval authority to a level higher than a HCA; & any provisions based upon statute or EO unless such authority provides for waiver (AFARS 5101.403)	Per Regulation	PARC	Per Document Type Approval Timeline
Award without Preaward EEO Clearance - (use only if contract of urgent and critical nature would be delayed beyond time necessary to make award (FAR 22.805(a)(8))	≥\$0	PARC	30
Use of Letter Contracts Limitations (FAR 16.603-3, DFARS 217.74)	≥\$0	PARC	7
Use of Undefined Contract Actions (UCAs) (DFARS 217.7400, 217.7402 & 216.603 and UAI 5117.7404-1)	≥\$0	PARC	7
Appeal by SBA PCR of Contracting Officer Rejection of Set-Aside Recommendation Decision (FAR 19.505(b) & DFARS 219.505(b))	≥\$0	PARC	10

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Release of Long Range Acquisition Estimates (AFARS 5105.404-1(a), UAI 5105.404-1(a))	≥\$0	CCO	14
Violations or Possible Violations of Procurement Integrity Act (FAR 3.104-7/AFARS 5103.104-7, UAI 5103.104-7)	≥\$0	HCA	30
No Share of Collateral Savings under the Value Engineering Clause and Use of Clause's Alternate 1 (FAR 48.104-3(a), 48.201(e), 52.248-3, UAI 5148.104-3(a))	≥\$0	CCO	14
Award/Extension of Contracts for ≥18 Months for a Vessel, Aircraft or Vehicle Lease, Charter or Similar Agreement (DFARS 207.470(b), UAI 5107.470(b))	≥\$0	CCO	30
Use of Fixed-Ceiling-Price Contract with Retroactive Price Redetermination – for R&D only (FAR 16.206-3 (a) & (d))	≤\$150K	HCA	14
Use of Alternate Structured Approach in Determining Profit or Fee Objectives (DFARS 215.404-4(c)(2)(C)(2))	≥\$0	CCO	14
Deny contractor request for relief under Public Law 85-804 (DFARS 250.102-1(b))	≤ \$70,000	HCA	30
Deny contractor request for relief under Public Law 85-804 (DFARS 250.102-1(b))	> \$70,000	ASA	
Approve substitution of a surety bond (FAR 28.106-2 (a), UAI 5128.106-2(a))	≥\$0	CCO	14
Issuance of a Personal Services Contract (DFARS 237.104(b)(iii)(A)(1) & (2), AFARS 5137.104(b)(iii), UAI 5137.104(b)(iii))	≥\$0	PARC	30
Exceptions to Policy FAR 3.601 & 3.602	≥\$0	HCA	30
Receive notice of suspected violations of Gratuities clause received from military	≥\$0	HCA	30

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commander over the contract (exempt report, AR 335-15, para 5-2) (AFARS 5103.203(a)(i) & (ii))			
Buy American— Impracticable or Inconsistent with public interest AFARS 5125.202(a)(1)	≥\$0	HCA	
Buy American--Construction Materials Non-Availability (not mined, produced, or manufactured in USA in sufficient and reasonably available (non-availability) Exception (AFARS 5125.202(a)(2), UAI 5125.202(a)(2))	≥\$0	PARC	30
Approve Exception to Prohibition Against Issuance of a Solicitation for R&D Contract Incrementally Funded Over Successive Years - Approval must identify FYDP Revisions to Include Adequate Resources (AFARS 5132.702(a)(ii)(D), & UAI 5132.702(a)(ii)(D))	≥\$0	PARC	30
COMPLIANCE REVIEWS			
Every contract action (UAI 5104.802(g))	≥\$0	KO	15
PEER REVIEWS			
Prior to Solicitation Issuance and Prior to Contract Award (UAI 5101.170(c)(3))	≥ \$150,000 to < \$50M	CCO or designee	10
	≥ \$50M to < \$250M	PARC	15
HCA PRE-AWARD PEER REVIEWS			
<i>Non-Competitive</i> Acquisitions – Prior to Entering Negotiations and Prior to Contract Award (UAI 5101.170(c)(3)(3)(iv)(B) and DFARS 201.170(a)(1)(ii))	≥ \$250M to < \$500M	HCA	15
	≥ \$500M	DPAP	45-60
<i>Competitive</i> Acquisitions – Prior to Solicitation Issuance, Prior to Requesting Final	≥ \$250M to < \$1B	HCA	15
	≥ \$1B	DPAP	45-60

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Proposal Revisions, and Prior to Contract Award <i>(UAI 5101.170(c)(3)(3)(iv)(A) and DFARS 201.170(a)(1)(i))</i>			
Approval to waive peer reviews DASA(P) <i>(UAI 5101.170(c)(7))</i>	≥\$50M	Peer Review Chair	
HCA POST-AWARD PEER REVIEWS			
Service Acquisitions <i>(AFARS 5101.170(b)(vi)(A)) and DFARS 201.170(a)(2))</i>	≥ \$250M to < \$1B	SSM	30-45
	≥ \$1B	DPAP	45-60
UNAUTHORIZED COMMITMENTS			
Ratify Unauthorized Commitments <i>(UAI 5101.602-3(b)(3)(A), (B), (C))</i>	≤ \$10K	CCO	7
	> \$10K to ≤ \$100K	PARC	14
	> \$100K	HCA	30
Approval of Quantum Meruit Nonratifiable Commitments under Contracts Disputes Act <i>(HQ DOC Policy Alert #14-006)</i>	≤ \$10K	CCO	7
	> \$10K to ≤ \$100K	PARC	14
	> \$100K	HCA	30
WAIVERS			
Use of Forward Pricing Rate Agreement Rates <i>(UAI 5115.407-3(b)(i))</i>	when such rates are available	CCO	14
Waiver of General Rule or Procedure within FAR subpart 9.5 Regarding Organizational and Consultant Conflict of Interest <i>(AFARS 5109.503)</i>	≥ \$0	HCA	30
Inclusion of FAR clause 52.214-27, Price Reduction for Defective Certified Cost or Pricing Data - Modifications - Sealed Bidding <u>OR</u> FAR clause 52.214-28, Subcontractor Certified Cost or Pricing Data - Modifications - Sealed Bidding in a Contract with a Foreign Government or Agency of that Government <i>(UAI 5114.201-7(b)(2), (c)(2))</i>	≥ \$0	PARC	14
Inclusion of FAR clause 52.228-7, Insurance-Liability to Third Persons <i>(UAI 5128.311-1)</i>	≥ \$0	PARC	30

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Waiver of Requirement for Submission of Certified Cost or Pricing Data (FAR 15.403-1(c)(4))	≥ \$700k	HCA	14
CONTINGENCY CONTRACTING DOCUMENT REVIEWS & APPROVAL			
Contingency Contracting Micro-purchase Threshold (awarded/performed /purchased OCONUS) (FAR 2.101 and UAI 5118.2)	\$30K	PARC determines the acquisition of supplies or services are to be used to support a contingency operation or to facilitate defense against or recovery from nuclear, biological, chemical, or radiological attack.	
Contingency Contracting Simplified Acquisition Threshold (awarded/performed/purchased OCONUS) (FAR 2.101 and UAI 5118.2)	\$1M	PARC determines the acquisition of supplies or services are to be used to support a contingency operation or to facilitate defense against or recovery from nuclear, biological, chemical, or radiological attack.	
For an Individual Acquisition of products or services not limited to use by the military forces, police, or other security personnel of Afghanistan (DFARS 225.7703-2(b)(2)(i) and (ii) and UAI 5125.7703-2(b)(2)(i))	≤ \$93M ≥ \$93M	PARC DPAP or AAE	60 120
For a Class of Acquisitions of products or services not limited to use by the military forces, police, or other security personnel of Afghanistan (DFARS 225.7703-2(b)(2)(ii))	≥ \$0	DPAP or AAE	120
For an Individual Acquisition of products or services to be used only by the military forces, police, or other security personnel of Afghanistan (DFARS 225.7703-2(a), <u>PIL 2013-01</u>)	≥ \$0	KO	

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ATTACHMENT 2 – COR CERTIFICATION AND TRAINING REQUIREMENTS

USACE STANDARD FOR CERTIFICATION OF CONTRACTING OFFICER'S REPRESENTATIVES FOR ALL ACQUISITIONS

TYPE A			
NATURE OF WORK	REQUIRED COMPETENCY TOPICS	REQUIRED COMPETENCIES	EXPERIENCE/TRAINING REQUIREMENTS
<p>Fixed-Price requirements without incentives, low to medium performance risk with minimal complexity.</p> <p>Attributes of such requirement might include:</p> <ul style="list-style-type: none"> * lack of technical or administrative complexity * no identifiable risk factors * limited requirement for technical expertise * low likelihood of modification * effort is follow-on to an existing contract. <p>COR duties and responsibilities are generally limited to minimal technical and/or administrative monitoring of the contract.</p> <p>USACE Contract Types requiring Type A COR Training include:</p> <p>* Firm Fixed Price</p> <p>Note: USACE KOs may require Type B or C training on Firm Fixed Price contracts, depending on the technical complexity, contract value, or other relevant factors.</p>	<p><u>General:</u></p> <ul style="list-style-type: none"> * Attention to detail * Decision making * Flexibility * Oral and written communication * Problem solving and reasoning * Self-management and initiative * Teamwork <p><u>Technical:</u> Competent via training and experience in the technical aspects of the contract requirements and demonstrates administrative and technical competencies in the following areas:</p> <ul style="list-style-type: none"> * Business ethics * Effective communication of contract requirements * Effective contract performance management * Effective COR performance 	<p>Upon completion of mandatory training, COR should be able to perform at least the following competencies in a manner consistent with the nature of Type A work or requirements:</p> <ul style="list-style-type: none"> * Assist in acquisition planning * Assist in contract award process * Establish and maintain COR file with all required documentation * Identify and prevent unethical conduct and instances of fraud, waste, and abuse * Perform technical/administrative monitoring and reporting duties in accordance with the letter of designation and surveillance plan * Recommend contract changes and monitor modifications * Monitor contract expenditures and payments * Monitor contract schedule compliance * Perform liaison duties between KO and Contractor for management of contract * Inspect and accept or reject deliverables during contract performance and at close-out in conformance with contract * Monitor the control and disposition of Government furnished assets * Perform surveillance in a contingency environment, when applicable 	<p><u>Experience:</u></p> <ul style="list-style-type: none"> * Agency experience: min. 24 months * Relevant technical experience: As recommended by the COR's supervisor and determined by the KO * General competencies: As recommended by the COR's supervisor and determined by the KO <p><u>Initial Training:</u></p> <ul style="list-style-type: none"> * DAU CLC 106, Contracting Officer's Representative with a Mission Focus * DAU CLC 206, COR in a Contingency Environment, when applicable * Army JAG School Fiscal Law Training or equivalent (check with local RM) * USACE Prospect Course 366, CORs on Construction Contracts (Recommended) <p>Note: CORs on A-E contracts must also satisfy training requirements in EP 715-1-7 and comply with provisions of ER 1110-1-12.</p> <p><u>Annual Training (including 1st Year):</u></p> <ul style="list-style-type: none"> * Combating Trafficking in Persons * Ethics training (e.g., DAU or USACE-provided) * USACE Learning Network Fiscal Law Refresher Training or equivalent (check with local RM) <p><u>Refresher Training:</u></p> <ul style="list-style-type: none"> * Minimum of 8 hours COR-specific training every 3 years or prior to assuming COR responsibilities if the nominated COR has not served as a COR in the previous 24 months <p><u>Other:</u> CORs serving on A-E contracts are required to be registered professional engineers or architects unless Center/District Chief of Engineering waives the requirement in writing.</p>

USACE STANDARD FOR CERTIFICATION OF CONTRACTING OFFICER'S REPRESENTATIVES FOR ALL ACQUISITIONS

TYPE B			
NATURE OF WORK	REQUIRED COMPETENCY TOPICS	REQUIRED COMPETENCIES	EXPERIENCE/TRAINING REQUIREMENTS
<p>Service requirements where there is medium to high performance risk with greater complexity than Type A.</p> <p>Attributes of such requirement might include:</p> <ul style="list-style-type: none"> * Nature of work is more complex * Effort will be performed in multiple regions and/or remote geographic locations * Need for increased surveillance * Magnitude of the requirement * Contract contains incentive arrangements or cost sharing provisions <p>COR duties and responsibilities are increased complexity over Type A.</p> <p>USACE Contract Types requiring Type B COR Training include:</p> <ul style="list-style-type: none"> * Firm Fixed Price * Fixed Price with Economic Price Adjustment * Fixed Price Level of Effort * Fixed Price Incentive Fee * Fixed Price Award Fee * Time and Materials * Labor Hours <p>Note: USACE KOs may require Type C training on the above contract types, depending on the technical complexity, contract value, or other relevant factors.</p>	<p>General:</p> <ul style="list-style-type: none"> * Attention to detail * Decision making * Flexibility * Influencing and persuasive interpersonal skills * Oral and written communication * Planning and evaluating * Problem solving and reasoning * Self-management and initiative * Teamwork <p>Technical:</p> <p>Competent via training and experience in the technical aspects of the contract requirements and demonstrates administrative and technical competencies in the following areas:</p> <ul style="list-style-type: none"> * Business ethics * Defining Government requirements * Understanding and knowledge of contract type * Effective analytic skills * Effective communication of contract requirements * Effective contract performance management * Effective COR performance * Project management * Strategic planning * Understanding the marketplace 	<p>Upon completion of mandatory training, COR should be able to perform at least the following competencies in a manner consistent with the nature of Type B work or requirements:</p> <ul style="list-style-type: none"> * Assist in acquisition planning * Assist in contract award process * Establish and maintain COR file with all required documentation * Identify and prevent unethical conduct and instances of fraud, waste, and abuse * Review technical deliverables and ensure compliance with SOW or SOO in accordance with letter of designation and surveillance plan * Perform administrative monitoring and reporting duties in accordance with the letter of designation and surveillance plan * Recommend contract changes and monitor modifications * Monitor contract expenditures and payments * Monitor contract schedule compliance * Perform liaison duties between KO and Contractor for management of contract * Inspect and accept or reject deliverables during contract performance and at close-out in conformance with contract * Review and validate that contractor payment requests are commensurate with performance * Monitor the control and disposition of Government furnished assets * Perform surveillance in a contingency environment, when applicable 	<p>Experience:</p> <ul style="list-style-type: none"> * Agency experience: min. 24 months * Relevant technical experience: As recommended by the COR's supervisor and determined by the KO * General competencies: As recommended by the COR's supervisor and determined by the KO <p>Initial Training:</p> <ul style="list-style-type: none"> * DAU CLC 222, Contracting Officer's Representative, or equivalent * DAU CLC 206, COR in a Contingency Environment, when applicable * Army JAG School Fiscal Law Training or equivalent (check with local RM) * USACE Prospect Course 366, CORs on Construction Contracts (Recommended) <p>Note: CORs on A-E contracts must also satisfy training requirements in EP 715-1-7 and comply with provisions of ER 1110-1-12.</p> <p>Annual Training (including 1st Year):</p> <ul style="list-style-type: none"> * Combating Trafficking in Persons * Ethics training (e.g., DAU or USACE-provided) * USACE Learning Network Fiscal Law Refresher Training or equivalent (check with local RM) <p>Refresher Training:</p> <ul style="list-style-type: none"> * Minimum of 16 hours COR-specific training every 3 years or prior to assuming COR responsibilities if the nominated COR has not served as a COR in the previous 24 months <p>Other:</p> <p>CORs serving on A-E contracts are required to be registered professional engineers or architects unless Center/District Chief of Engineering waives the requirement in writing.</p>

USACE STANDARD FOR CERTIFICATION OF CONTRACTING OFFICER'S REPRESENTATIVES FOR ALL ACQUISITIONS

TYPE C			
NATURE OF WORK	REQUIRED COMPETENCY TOPICS	REQUIRED COMPETENCIES	EXPERIENCE/TRAINING REQUIREMENTS
<p>Service requirements where there is medium to high performance risk with greater complexity than Type A.</p> <p>Attributes of such requirement might include:</p> <ul style="list-style-type: none"> * Nature of work is more complex * Effort will be performed in multiple regions and/or remote geographic locations * Need for increased surveillance * Magnitude of the requirement * Contract contains incentive arrangements or cost sharing provisions <p>COR duties and responsibilities are increased complexity over Type A.</p> <p>USACE Contract Types requiring Type B COR Training include:</p> <ul style="list-style-type: none"> * Firm Fixed Price * Fixed Price with Economic Price Adjustment * Fixed Price Level of Effort * Fixed Price Incentive Fee * Fixed Price Award Fee * Time and Materials * Labor Hours <p>Note: USACE KOs may require Type C training on the above contract types, depending on the technical complexity, contract value, or other relevant factors.</p>	<p><u>General:</u></p> <ul style="list-style-type: none"> * Attention to detail * Decision making * Flexibility * Influencing and persuasive interpersonal skills * Oral and written communication * Planning and evaluating * Problem solving and reasoning * Self-management and initiative * Teamwork <p><u>Technical:</u> Competent via training and experience in the technical aspects of the contract requirements and demonstrates administrative and technical competencies in the following areas:</p> <ul style="list-style-type: none"> * Business ethics * Defining Government requirements * Understanding and knowledge of contract type * Effective analytic skills * Effective communication of contract requirements * Effective contract performance management * Effective COR performance * Project management * Strategic planning * Understanding the marketplace 	<p>Upon completion of mandatory training, COR should be able to perform at least the following competencies in a manner consistent with the nature of Type B work or requirements:</p> <ul style="list-style-type: none"> * Assist in acquisition planning * Assist in contract award process * Establish and maintain COR file with all required documentation * Identify and prevent unethical conduct and instances of fraud, waste, and abuse * Review technical deliverables and ensure compliance with SOW or SOO in accordance with letter of designation and surveillance plan * Perform administrative monitoring and reporting duties in accordance with the letter of designation and surveillance plan * Recommend contract changes and monitor modifications * Monitor contract expenditures and payments * Monitor contract schedule compliance * Perform liaison duties between KO and Contractor for management of contract * Inspect and accept or reject deliverables during contract performance and at close-out in conformance with contract * Review and validate that contractor payment requests are commensurate with performance * Monitor the control and disposition of Government furnished assets * Perform surveillance in a contingency environment, when applicable 	<p><u>Experience:</u></p> <ul style="list-style-type: none"> * Agency experience: min. 24 months * Relevant technical experience: As recommended by the COR's supervisor and determined by the KO * General competencies: As recommended by the COR's supervisor and determined by the KO <p><u>Initial Training:</u></p> <ul style="list-style-type: none"> * DAU CLC 222, Contracting Officer's Representative, or equivalent * DAU CLC 206, COR in a Contingency Environment, when applicable * Army JAG School Fiscal Law Training or equivalent (check with local RM) * USACE Prosepect Distributed Learning Courses: <ul style="list-style-type: none"> - USACE PMBP, Introduction and Overview (762) - USACE PMBP, Working with PMBP (763) * USACE Prospect Course 366, CORs on Construction Contracts (Recommended) <p>Note: CORs on A-E contracts must also satisfy training requirements in EP 715-1-7 and comply with provisions of ER 1110-1-12.</p> <p><u>Annual Training (including 1st Year):</u></p> <ul style="list-style-type: none"> * Combating Trafficking in Persons * Ethics training (e.g., DAU or USACE-provided) * USACE Learning Network Fiscal Law Refresher Training or equivalent (check with local RM) <p><u>Refresher Training:</u></p> <ul style="list-style-type: none"> * Minimum of 16 hours COR-specific training every 3 years or prior to assuming COR responsibilities if the nominated COR has not served as a COR in the previous 24 months <p><u>Other:</u> CORs serving on A-E contracts are required to be registered professional engineers or architects unless Center/District Chief of Engineering waives the requirement in writing.</p>



**ATTACHMENT 3 – INDEPENDENT GOVERNMENT ESTIMATES
SIGNATORY MATRIX**

MATRIX-DEVELOPMENT, REVIEW AND APPROVAL OF GOVERNMENT ESTIMATES			INDEPENDENT GOVERNMENT ESTIMATE (IGE) ¹		
CONTRACT TYPE	CONTRACT VALUE	MEASUREMENT	PREPARATION	REVIEW	APPROVAL OR VALIDATION ²
Construction Contracts	Less than Simplified Acquisition Threshold ³	Price Reasonableness Method ⁴	per PCO discretion	per PCO	per PCO discretion
	greater than SAT (Note: all unilateral contract actions regardless of size)	IGE Required	Cost Engineering Organization ⁵	Chief, Cost Engineering Organization ⁵ or their Delegated Authority	District Commander or their Delegated Authority ^{5b}
Construction Contract Modifications and Claims	Less than Simplified Acquisition Threshold ³	Price Reasonableness Method ⁴	per PCO or ACO discretion	per PCO or Area/Resident's Engineer's discretion	per PCO or Area/Resident's Engineer's discretion
	SAT to \$500,000	IGE Required	Area/Resident Engineer staff or Cost Engineering Organization ⁵	Chief, Cost Engineering Organization ⁵ or their Delegated Authority ^{5a}	District Commander or their Delegated Authority ^{5a}
	greater than \$500,000	IGE Required	Cost Engineering Organization ⁵ w/support of Area/Resident Engineer staff	Chief, Cost Engineering Organization ⁵ or their Delegated Authority	District Commander or their Delegated Authority ^{5b}
Supply / Services without Construction Activities	Less than Simplified Acquisition Threshold		per PCO's discretion	per PCO's discretion	per PCO's discretion
	Equal to or greater than Simplified Acquisition Threshold	IGE Required	Project Delivery Team ⁶	Competent individual employed by the Government, one management level above or organizationally independent of the "IGE preparer;"	District Commander or their Delegated Authority
Supply / Services with Construction Activities ⁷	Less than Simplified Acquisition Threshold	Price Reasonableness Method ⁴	per PCO's discretion	per PCO's discretion	per PCO's discretion
	Equal to or greater than Simplified Acquisition Threshold	IGE Required	Cost Engineering Organization ⁵	Chief, Cost Engineering Organization ⁵ or their Delegated Authority	District Commander or their Delegated Authority ^{5b}
Architect Engineer Contract	Less than Simplified Acquisition Threshold	Price Reasonableness Method ⁵	per PCO's discretion	per PCO's discretion	Section Chief or 1st Line Supervisor
	More than Simplified Acquisition Threshold and less than \$500,000	IGE Required	Design Manager or equivalent technical position	Competent individual employed by the Government, one management level above or organizationally independent of the "IGE preparer;"	Chief, Cost Engineering Organization or Branch Chief or 2nd Line Supervisor
	More than \$500,000	IGE Required	Design Manager or equivalent technical position	Competent individual employed by the Government, one management level above or organizationally independent of the "IGE preparer;"	Engineering Division Chief
Information Technology	Less than Simplified Acquisition Threshold	Price Reasonableness Method ⁴	per PCO's discretion	per PCO's discretion	per PCO's discretion
	Equal to or greater than Simplified Acquisition Threshold	IGE Required	Project Delivery Team ⁶	Competent individual employed by the Government, one management level above or organizationally independent of the "IGE preparer;"	District Commander or their Delegated Authority
¹ "IGE" is an formal official government document prepared in accordance with ER 1110-1-1300 Cost Engineering Policy and General Requirements.					
² IGE Approver shall <u>not</u> be the PCO or ACO for the acquisition					
³ SAT is currently \$150K					
⁴ "Price Reasonableness Method" as defined within regulations with determination of services and construction items made by the KO and the PDT with cost engineering representation. The PCO may request IGE if deemed necessary or appropriate. FAR 31.201					
⁵ "Cost Engineering Organization" - is the single cost engineering group located in a district/center/division designated to perform the cost engineering function. IGEs must be accurately prepared using the corporate automated cost estimating systems, e.g., latest approved version of Microcomputer Aided Cost Estimating System (MCACES) or a system previously approved by the chief of the cost engineering office. ^{5a} Delegated Authority is intended to be the appropriate member of the technical division performing construction contract administration and the management of that function. ^{5b} Delegated Authority is intended to be the appropriate member of the technical division managing the Chief of the Cost Engineering Organization.					
⁶ "Project Delivery Team" estimates prepared by the PDT shall be developed by members qualified to estimate their respective portion of the effort. Cost Engineering Organization PDT member is a viable option.					
⁷ "Construction Activities" refers to all types of work done by laborers and mechanics employed by the construction contractor or construction subcontractor on a particular building or work at the site thereof, including without limitations— Altering, remodeling, installation (if appropriate) on the site of the work of items fabricated off-site; Painting and decorating; Manufacturing or furnishing of materials, articles, supplies, or equipment on the site of the building or work; Transportation of materials and supplies between the site of the work within the meaning of paragraphs (1)(i) and (ii) of the "site of the work" definition of this section, and a facility which is dedicated to the construction of the building or work and is deemed part of the site of the work within the meaning of paragraph (2) of the "site of work" definition of this section; and Transportation of portions of the building or work between a secondary site where a significant portion of the building or work is constructed, which is part of the "site of the work" definition in paragraph (1)(ii) of this section, and the physical place or places where the building or work will remain. Includes maintenance of facilities. Per FAR 22.4					

USACE DESK GUIDE



ATTACHMENT 4 – NAVFAC/USACE PAST PERFORMANCE QUESTIONNAIRE (PPQ) INSTRUCTIONS AND FORM

**INSTRUCTIONS FOR IMPLEMENTATION OF
NAVFAC/USACE PAST PERFORMANCE QUESTIONNAIRE (PPQ) FORM**

1. **Background:** In many source selections and MATOC task order evaluations, the RFP encourages the Offeror to have their clients provide a completed PPQ directly to the contract specialist. In addition, throughout USACE, various formats of PPQs are being utilized. Industry expressed concern regarding the process by which PPQs are submitted, that completing multiple PPQs for the same type projects over time places a significant burden on their clients, and seeking a standard process and format to be implemented across USACE and NAVFAC.

2. **Discussion:** Based on input from industry, NAVFAC and USACE will still allow Offerors to submit PPQs with their proposal but will not require them to be sent directly from the client to the contracting office. In addition, NAVFAC and USACE will utilize a standard PPQ format for all requirements, when required as part of an evaluation. The standard PPQ form and process will allow Offerors to obtain clients' completed PPQ at the completion of a contract or task order, and the Offeror may retain PPQs in its files for submission on future procurements. In cases where the validity of the completed PPQ is questioned, the contract specialist/contracting officer may contact the reference for verification or additional information. The standard PPQ for NAVFAC and USACE is Form PPQ-0 (9/30/11). NAVFAC/USACE does not intend to create and maintain a database of PPQs submitted by Offerors. Therefore, it will be the Offerors responsibility to insure the submission of the relevant PPQs in its files for each solicitation. Alternatively, the Offeror may obtain an updated/new PPQ from its client(s) for submission. This new process does not preclude the Government from utilizing previously submitted PPQ information in the past performance evaluation as a source of information. Also, as the completion of Contractor Performance Assessment Reports (CPARS) is required, Contracting Officers should search CPARS to determine if a relevant and recent evaluation is on file when one is not provided by the offeror. Recognizing CPARS evaluations are just one tool for assessing past performance, these evaluations are expected to be considered by the Contracting Officer. Discrepancies between CPARS evaluations and information provided in PPQs will be resolved by the Contracting Officer during the source selection evaluation process.

In completing the PPQ form, representatives that have direct knowledge of the Offerors past performance are encouraged to complete the PPQ (i.e., Administrative Contracting Officers, Contracting Officer Representatives, Project Engineers, etc., who had direct oversight/involvement with the project).

ACTIONS: Effective immediately, for all procurements that are using PPQs in the evaluation process:

1. Form PPQ-0 shall be utilized for all evaluations that require a PPQ. Offerors shall submit the PPQ with their proposal submission to the Contracting Office designated proposal submission location. The contract specialist or Contracting Officer shall not require the PPQ to be sent directly from the client. Solicitations that have previously been issued do not need to be amended to include this requirement.

2. RFPs utilizing PPQs shall incorporate language from the "Sample Solicitation Submittal Requirement" (below) stating, at a minimum, the following: "Completed Past Performance Questionnaires should be submitted with your proposal as required by RFP Section XXXXX. Offerors shall not incorporate by reference into their proposal PPQs previously submitted for other RFPs. This does not preclude the Government from utilizing previously submitted PPQ information in the past performance evaluation. While the Government may elect to consider data from other sources, the burden of providing detailed, current, accurate and complete past performance information rests with the Offeror."

NAVFAC / USACE Past Performance Questionnaire (PPQ)

Form PPQ -0 (9/30/11)

3. When Past Performance Questionnaires are being permitted/sought, the following sample language will be tailored to the specific acquisition and included in the solicitation:

Sample Solicitation Submittal Requirement:

“The Past Performance Questionnaire (PPQ) included in the solicitation is provided for the offeror or its team members to submit to the client for each project the offeror includes in its proposal for Factor ____ (insert the applicable factor number, usually as “Factor 4” and insert the factor title, usually “Past Performance for the Prime Contractor”). Ensure correct phone numbers and email addresses are provided for the client point of contact. Completed Past Performance Questionnaires should be submitted with your proposal. If the offeror is unable to obtain a completed PPQ from a client for a project(s) before proposal closing date, the offeror should complete and submit with the proposal the first page of the PPQ (Attachment ____), which will provide contract and client information for the respective project(s). Offerors should follow-up with clients/references to ensure timely submittal of questionnaires. If the client requests, questionnaires may be submitted directly to the Government’s point of contact, _____ via email at _____ prior to proposal closing date. Offerors shall not incorporate by reference into their proposal PPQs previously submitted for other RFPs. However, this does not preclude the Government from utilizing previously submitted PPQ information in the past performance evaluation.

Also include performance recognition documents received within the last ____ (insert the number of years) such as awards, award fee determinations, customer letters of commendation, and any other forms of performance recognition.

In addition to the above, the Government may review any other sources of information for evaluating past performance. Other sources may include, but are not limited to, past performance information retrieved through the Past Performance Information Retrieval System (PPIRS), including Contractor Performance Assessment Reporting System (CPARS), using all CAGE/DUNS numbers of team members (partnership, joint venture, teaming arrangement, or parent company/subsidiary/affiliate) identified in the offeror’s proposal, inquiries of owner representative(s), Federal Awardee Performance and Integrity Information System (FAPIS), Electronic Subcontract Reporting System (eSRS), and any other known sources not provided by the offeror.

While the Government may elect to consider data from other sources, the burden of providing detailed, current, accurate and complete past performance information rests with the Offeror.”

NAVFAC / USACE Past Performance Questionnaire (PPQ)

Form PPQ -0 (9/30/11)

NAVFAC/USACE PAST PERFORMANCE QUESTIONNAIRE (Form PPQ-0)	
CONTRACT INFORMATION (Contractor to complete Blocks 1-4)	
1. Contractor Information	
Firm Name:	CAGE Code:
Address:	DUNs Number:
Phone Number:	
Email Address:	
Point of Contact:	Contact Phone Number:
2. Work Performed as: <input type="checkbox"/> Prime Contractor <input type="checkbox"/> Sub Contractor <input type="checkbox"/> Joint Venture <input type="checkbox"/> Other (Explain)	
Percent of project work performed:	
If subcontractor, who was the prime (Name/Phone #):	
3. Contract Information	
Contract Number:	
Delivery/Task Order Number (if applicable):	
Contract Type: <input type="checkbox"/> Firm Fixed Price <input type="checkbox"/> Cost Reimbursement <input type="checkbox"/> Other (Please specify):	
Contract Title:	
Contract Location:	
Award Date (mm/dd/yy):	
Contract Completion Date (mm/dd/yy):	
Actual Completion Date (mm/dd/yy):	
Explain Differences:	
Original Contract Price (Award Amount):	
Final Contract Price (to include all modifications, if applicable):	
Explain Differences:	
4. Project Description:	
Complexity of Work <input type="checkbox"/> High <input type="checkbox"/> Med <input type="checkbox"/> Routine	
How is this project relevant to project of submission? (Please provide details such as similar equipment, requirements, conditions, etc.)	
CLIENT INFORMATION (Client to complete Blocks 5-8)	
5. Client Information	
Name:	
Title:	
Phone Number:	
Email Address:	
6. Describe the client's role in the project:	
7. Date Questionnaire was completed (mm/dd/yy):	
8. Client's Signature:	

NOTE: NAVFAC/USACE requests that the client completes this questionnaire and submits directly back to the offeror. The offeror will submit the completed questionnaire to USACE with their proposal, and may duplicate this questionnaire for future submission on USACE solicitations. Clients are highly encouraged to submit questionnaires directly to the offeror. However, questionnaires may be submitted directly to USACE. Please contact the offeror for USACE POC information. The Government reserves the right to verify any and all information on this form.

NAVFAC / USACE Past Performance Questionnaire (PPQ)

Form PPQ -0 (9/30/11)

*ADJECTIVE RATINGS AND DEFINITIONS TO BE USED TO BEST REFLECT
YOUR EVALUATION OF THE CONTRACTOR'S PERFORMANCE*

RATING	DEFINITION	NOTE
(E) Exceptional	Performance meets contractual requirements and exceeds many to the Government/Owner's benefit. The contractual performance of the element or sub-element being assessed was accomplished with few minor problems for which corrective actions taken by the contractor was highly effective.	An Exceptional rating is appropriate when the Contractor successfully performed multiple significant events that were of benefit to the Government/Owner. A singular benefit, however, could be of such magnitude that it alone constitutes an Exceptional rating. Also, there should have been NO significant weaknesses identified.
(VG) Very Good	Performance meets contractual requirements and exceeds some to the Government's/Owner's benefit. The contractual performance of the element or sub-element being assessed was accomplished with some minor problems for which corrective actions taken by the contractor were effective.	A Very Good rating is appropriate when the Contractor successfully performed a significant event that was a benefit to the Government/Owner. There should have been no significant weaknesses identified.
(S) Satisfactory	Performance meets minimum contractual requirements. The contractual performance of the element or sub-element contains some minor problems for which corrective actions taken by the contractor appear or were satisfactory.	A Satisfactory rating is appropriate when there were only minor problems, or major problems that the contractor recovered from without impact to the contract. There should have been NO significant weaknesses identified. Per DOD policy, a fundamental principle of assigning ratings is that contractors will not be assessed a rating lower than Satisfactory solely for not performing beyond the requirements of the contract.
(M) Marginal	Performance does not meet some contractual requirements. The contractual performance of the element or sub-element being assessed reflects a serious problem for which the contractor has not yet identified corrective actions. The contractor's proposed actions appear only marginally effective or were not fully implemented.	A Marginal is appropriate when a significant event occurred that the contractor had trouble overcoming which impacted the Government/Owner.
(U) Unsatisfactory	Performance does not meet most contractual requirements and recovery is not likely in a timely manner. The contractual performance of the element or sub-element contains serious problem(s) for which the contractor's corrective actions appear or were ineffective.	An Unsatisfactory rating is appropriate when multiple significant events occurred that the contractor had trouble overcoming and which impacted the Government/Owner. A singular problem, however, could be of such serious magnitude that it alone constitutes an unsatisfactory rating.
(N) Not Applicable	No information or did not apply to your contract	Ra Rating will be neither positive nor negative.

NAVFAC / USACE Past Performance Questionnaire (PPQ)

Form PPQ -0 (9/30/11)

TO BE COMPLETED BY CLIENT

PLEASE CIRCLE THE ADJECTIVE RATING WHICH BEST REFLECTS YOUR EVALUATION OF THE CONTRACTOR'S PERFORMANCE.	
1. QUALITY:	
a) Quality of technical data/report preparation efforts	E VG S M U N
b) Ability to meet quality standards specified for technical performance	E VG S M U N
c) Timeliness/effectiveness of contract problem resolution without extensive customer guidance	E VG S M U N
d) Adequacy/effectiveness of quality control program and adherence to contract quality assurance requirements (without adverse effect on performance)	E VG S M U N
2. SCHEDULE/TIMELINESS OF PERFORMANCE:	
a) Compliance with contract delivery/completion schedules including any significant intermediate milestones. <i>(If liquidated damages were assessed or the schedule was not met, please address below)</i>	E VG S M U N
b) Rate the contractor's use of available resources to accomplish tasks identified in the contract	E VG S M U N
3. CUSTOMER SATISFACTION:	
a) To what extent were the end users satisfied with the project?	E VG S M U N
b) Contractor was reasonable and cooperative in dealing with your staff (including the ability to successfully resolve disagreements/disputes; responsiveness to administrative reports, businesslike and communication)	E VG S M U N
c) To what extent was the contractor cooperative, businesslike, and concerned with the interests of the customer?	E VG S M U N
d) Overall customer satisfaction	E VG S M U N
4. MANAGEMENT/ PERSONNEL/LABOR	
a) Effectiveness of on-site management, including management of subcontractors, suppliers, materials, and/or labor force?	E VG S M U N
b) Ability to hire, apply, and retain a qualified workforce to this effort	E VG S M U N
c) Government Property Control	E VG S M U N
d) Knowledge/expertise demonstrated by contractor personnel	E VG S M U N
e) Utilization of Small Business concerns	E VG S M U N
f) Ability to simultaneously manage multiple projects with multiple disciplines	E VG S M U N
g) Ability to assimilate and incorporate changes in requirements and/or priority, including planning, execution and response to Government changes	E VG S M U N
h) Effectiveness of overall management (including ability to effectively lead, manage and control the program)	E VG S M U N
5. COST/FINANCIAL MANAGEMENT	
a) Ability to meet the terms and conditions within the contractually agreed price(s)?	E VG S M U N

NAVFAC / USACE Past Performance Questionnaire (PPQ)

Form PPQ -0 (9/30/11)

b) Contractor proposed innovative alternative methods/processes that reduced cost, improved maintainability or other factors that benefited the client	E VG S M U N
c) If this is/was a Government cost type contract, please rate the Contractor's timeliness and accuracy in submitting monthly invoices with appropriate back-up documentation, monthly status reports/budget variance reports, compliance with established budgets and avoidance of significant and/or unexplained variances (under runs or overruns)	E VG S M U N
d) Is the Contractor's accounting system adequate for management and tracking of costs? <i>If no, please explain in Remarks section.</i>	Yes No
e) If this is/was a Government contract, has/was this contract been partially or completely terminated for default or convenience or are there any pending terminations? <i>Indicate if show cause or cure notices were issued, or any default action in comment section below.</i>	Yes No
f) Have there been any indications that the contractor has had any financial problems? <i>If yes, please explain below.</i>	Yes No
6. SAFETY/SECURITY	
a) To what extent was the contractor able to maintain an environment of safety, adhere to its approved safety plan, and respond to safety issues? (Includes: following the users rules, regulations, and requirements regarding housekeeping, safety, correction of noted deficiencies, etc.)	E VG S M U N
b) Contractor complied with all security requirements for the project and personnel security requirements.	E VG S M U N
7. GENERAL	
a) Ability to successfully respond to emergency and/or surge situations (including notifying COR, PM or Contracting Officer in a timely manner regarding urgent contractual issues).	E VG S M U N
b) Compliance with contractual terms/provisions (<i>explain if specific issues</i>)	E VG S M U N
c) Would you hire or work with this firm again? (<i>If no, please explain below</i>)	Yes No
d) In summary, provide an overall rating for the work performed by this contractor.	E VG S M U N

Please provide responses to the questions above (*if applicable*) and/or additional remarks. Furthermore, please provide a brief narrative addressing specific strengths, weaknesses, deficiencies, or other comments which may assist our office in evaluating performance risk (*please attach additional pages if necessary*):

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ATTACHMENT 5 – CONTRACT REQUESTS, CLAIMS, AND APPEALS

SUBPART 100 - AUTHORITIES

- A3-100 Scope of Subpart.
- A3-101 Contracting Officers.
- A3-102 Armed Services Board of Contract Appeals.
- A3-103 Federal Courts.

SUBPART 200 - CLAIMS

- A3-200 Scope of Subpart.
- A3-201 Background.
- A3-202 Policy.
- A3-203 Claim Processing Procedures.
- A3-204 Affirmative Government Claims.
- A3-205 Maritime Contract Claims.
- A3-206 Maintenance of Records.
- A3-207 Claims Management and Case Tracking.

SUBPART 300 - PROCEDURES FOR HANDLING APPEALS AT THE ARMED SERVICES BOARD OF CONTRACT APPEALS

- A3-300 Scope of Subpart.
- A3-301 Notice of Appeal.
- A3-302 Nature of Appeals - General.
- A3-303 Appeal File (Rule 4).
- A3-304 Trial Attorneys.
- A3-305 Pleadings.
- A3-306 Motions.
- A3-307 Briefs.
- A3-308 Discovery.
- A3-309 Alternative Dispute Resolution (ADR).
- A3-310 Settlement.
- A3-311 Decisions.
- A3-312 Attorney Fee Claims.
- A3-313 Appeals Management and Case Tracking.

SUBPART 400 - DIRECT ACTIONS IN THE UNITED STATES COURT OF FEDERAL CLAIMS

- A3-400 Scope of Subpart.
- A3-401 Responsibilities.
- A3-402 Notice of Filing.
- A3-403 Litigation Report.
- A3-404 Significant Events.
- A3-405 Alternative Dispute Resolution (ADR).
- A3-406 Settlement.
- A3-407 Decisions.
- A3-408 Case Management and Tracking.

**SUBPART 500 - APPEALS TO THE UNITED STATES COURT OF APPEALS FOR
THE FEDERAL CIRCUIT**

A3-500 Scope of Subpart.

A3-501 Notice of Appeal.

A3-502 Responsibilities.

A3-503 Significant Events.

A3-504 Oral Argument.

A3-505 Decision.

A3-506 Appeals Management and Tracking.

SUBPART 100 – AUTHORITIES

A3-100 Scope of Subpart.

This subpart sets forth the authorities of contracting officers, Division Commanders, the Armed Services Board of Contract Appeals (“ASBCA” or “Board”), and Federal courts to decide contract requests, claims and appeals. Further, the authority for Corps of Engineers' trial attorneys to represent the Government before the Board is stated.

A3-101 Contracting Officers.

The contracting officer's authority to decide or settle all claims relating to a contract is contained in FAR 33.210. A contracting officer's decision is final and conclusive and not subject to review by any forum, tribunal or Government agency, unless an appeal or suit is timely commenced (41 U.S.C. § 7103(f)). Further, in FAR 33.210, contracting officers are authorized to use Alternative Dispute Resolution (ADR) procedures under FAR 33.214 to resolve contract claims.

A3-102 Armed Services Board of Contract Appeals.

(a) Contract Disputes. The Contract Disputes Act of 1978, as amended, 41 U.S.C. §§ 7101-7109, provides that a contractor may appeal a contracting officer's final decision to the appropriate Board of Contract Appeals or to the United States Court of Federal Claims. A contractor has 90 days from receipt of a contracting officer's final decision to file an appeal with the appropriate Board of Contract Appeals. 41 U.S.C. § 7104(a). The ASBCA has been designated by the Secretary of the Army as the appropriate Board for the Corps of Engineers. The charter and rules of the ASBCA are found in DFARS, Appendix A.

(b) Real Estate Leases. The ASBCA has jurisdiction under the Contract Disputes Act for leases where the Government is the lessee. In cases not covered by the Contract Disputes Act, the Secretary of the Army has delegated authority to the Board.

(c) Correspondence. All correspondence with the ASBCA will be addressed to the Recorder, Armed Services Board of Contract Appeals, Skyline Six, 5109 Leesburg Pike, Falls Church, Virginia 22041-3208. Copies of all significant correspondence addressed to the ASBCA Recorder will be sent to the Engineer Chief Trial Attorney, HQUSACE.

(d) Delegations. The Engineer Chief Trial Attorney under a delegation from the Secretary of the Army is the authorized representative of the Secretary of the Army and has the sole authority and responsibility for the conduct and control of litigation of contract disputes for all Corps of Engineers cases docketed with the ASBCA of a value less than \$3 million. AFARS 5133.212- 90(a)(2). The Assistant Judge Advocate General for Civil Law may determine on a case by case basis to delegate Corps of Engineers cases of a value of \$3 million or more to the Engineer Chief Trial Attorney or designee. AFARS 5133.212-90(a)(3). The Engineer Chief Trial Attorney or designee also has the

authority to settle such cases with the concurrence of the contracting officer, the reviewing official or the Deputy Assistant Secretary of the Army (Procurement). AFARS 5133.212-90-7. All official correspondence with the Engineer Chief Trial Attorney or designee will be addressed to the current Engineer Chief Trial Attorney (by name), CECC-C, U.S. Army Corps of Engineers, 441 G Street, NW, Washington, D.C. 20314-1000.

A3-103 Federal Courts.

The Federal Courts Improvement Act of 1982, Public Law 97-164, 96 Stat. 25, abolished the U.S. Court of Claims and established the United States Court of Appeals for the Federal Circuit and the Court of Federal Claims with jurisdiction over contract disputes formerly within the jurisdiction of the U.S. Court of Claims. This act was amended by the Court of Federal Claims Technical and Procedural Improvements Act of 1992, Public Law 102-572, 106 Stat. 4516, which changed the name of the United States Claims Court to the United States Court of Federal Claims.

(a) U.S. Court of Federal Claims. Under the Contract Disputes Act, a contractor may, in lieu of appealing a contracting officer's final decision to a Board, bring an action directly on a claim in the U.S. Court of Federal Claims within one year of receipt of the contracting officer's final decision. 41 U.S.C. § 7104(b)(3). The Department of Justice is responsible for the litigation of such cases and will be assisted by a Corps of Engineers attorney.

(b) U.S. Court of Appeals for the Federal Circuit. A decision of a Board of Contract Appeals may be appealed by the Contractor or the Government to the U.S. Court of Appeals for the Federal Circuit within 120 days. 41 U.S.C. § 7107(a)(1)(A). A decision of the U.S. Court of Federal Claims may be appealed within 60 days after the date of entry of judgment. FED. R. APP. P. 4(a)(1). In an appeal from a Board decision, the decision of the Board on any question of law is not final or conclusive, but the U.S. Court of Appeals for the Federal Circuit will not set aside conclusions on questions of fact unless the decision is fraudulent, or arbitrary, or capricious, or so grossly erroneous as to necessarily imply bad faith, or if such decision is not supported by substantial evidence. 41 U.S.C. § 7107(b).

(c) Correspondence with the Department of Justice. The litigation report on contract claims and appeals for the Department of Justice will be addressed to Office of the Engineer Chief Trial Attorney, HQUSACE, except in those instances when time does not permit and prior telephonic approval of deviation from this procedure is obtained from the Office of the Engineer Chief Trial Attorney. Copies of all other significant correspondence will be sent to the Office of the Engineer Chief Trial Attorney.

SUBPART 200 – CLAIMS

A3-200 Scope of Subpart.

This subpart sets forth procedures for considering and processing contract requests and claims.

A3-201 Background.

The Contract Disputes Act establishes procedures and requirements for asserting and resolving contract claims subject to the Act. The Act provides for a final written decision of the contracting officer when the claim cannot be resolved by agreement of the contracting parties. The contractor may appeal a contracting officer's final decision to the Armed Services Board of Contract Appeals within 90 days of receiving the decision. Alternatively, the contractor may bring an action directly in the U.S. Court of Federal Claims within 12 months of the contracting officer's final decision. These time limitations are jurisdictional and there is no authority for an extension of these time limitations. A contracting officer may change, modify, recall or reconsider the decision within the appeal period. If, at the contractor's request the decision is reconsidered, irrespective of whether it is modified or not, a new appeal period begins to run. Policies and procedures for processing contract claims, as well as the definition of key terms, are set forth in FAR 33.2.

A3-202 Policy.

As set forth in FAR 33.204, the Government's policy is to attempt to resolve all contractual issues in controversy at the contracting officer level. Reasonable efforts should be made to resolve controversies prior to submission of a claim. Agencies are encouraged to use Alternative Dispute Resolution (ADR) procedures to the maximum extent practicable.

A3-203 Claim Processing Procedures.

Any written request by a contractor for the payment of money, granting of time adjustment or interpretation of contract terms or other relief arising under or relating to the contract, even if the amount of money or time requested is unstated, may become a contract claim against the Government. If not included in the original request, the contractor immediately should be asked to furnish documentation: e.g., facts, cost breakdown or the contract clause underlying the claim. Some requests can be resolved in a relatively short period of time. Every effort should be made to resolve such requests as soon as possible.

(a) Certification Requirements. A contractor is required to certify all claims exceeding \$100,000. The Administrative Dispute Resolution Act of 1996, Public Law 104-320, 110 Stat. 3870, amended the previous Alternative Dispute Resolution Act and eliminated the

additional certification requirement when a dispute resolution procedure is used. The certification should state as follows:

I certify that the claim is made in good faith; that the supporting data are accurate and complete to the best of my knowledge and belief; that the amount requested accurately reflects the contract adjustment for which the contractor believes the Government is liable; and that I am duly authorized to certify the claim on behalf of the contractor.

(b) Initial Investigation of a Claim. A contract claim for which all certification requirements have been met shall be subject to a thorough fact finding investigation conducted by appropriate staff members, including an attorney from the Office of Counsel. During this investigation, the attorney will determine the scope of the review, evaluate the relevancy and materiality of the facts considered and take appropriate measures to preserve the documentation, including written statements and affidavits. After the investigation has been completed and the staff recommendations have been considered, the contracting officer should offer the contractor an opportunity to attend a conference to discuss the claim. An attorney from the Office of Counsel should participate in this conference. If the contract claim has merit in whole or part, an attempt should be made to negotiate quantum, either at the conference or at a later time agreed to by the parties.

(c) Alternative Dispute Resolution (ADR). Contracting officers and trial attorneys are strongly encouraged to consider the use of ADR techniques in all claims at the earliest possible time. These ADR techniques include, but are not limited to, nonbinding arbitration, mediation and mini-trial. There is no regulatory authority and the policy of the Corps of Engineers is not to use binding arbitration. The use of ADR shall be timely recorded in the Matter Tracking System. See A3-207.

(d) Unresolved Claims. When a claim by or against a contractor cannot be settled, the contracting officer shall issue a written decision on the claim. On claims by a contractor, the decision will be issued within 60 days of the receipt of the written request for a decision from the contractor for claims under \$100,000; for claims over \$100,000 the contracting officer will, within 60 days, either issue a decision or notify the contractor of the date when a decision will be issued. For claims over \$100,000, the contracting officer's final decision shall be issued within a reasonable period after the receipt of the claim. 41 U.S.C. § 7103(f)(3).

(1) Contracting Officer's Final Decision. The written decision of the contracting officer may be in any appropriate form. The decision shall include a description of the claim, a reference to the pertinent contract terms, a statement of the factual areas of agreement and disagreement and a statement of the contracting officer's final decision with supporting rationale. The decision also must include a demand for payment in cases where the decision results in a finding that the contractor is indebted to the Government (affirmative Government claim). The decision must be written to inform the contractor of the facts and reasons upon which the contracting officer's conclusion is

based and that the decision is final. To adequately meet the above requirements the facts shall be separately presented in a Findings of Fact section as part of the decision.

(i) Findings of Fact. The proposed numbered Findings of Fact with supporting data properly tabbed will be drafted by an Office of Counsel attorney with technical assistance from other appropriate staff members. When a claim in excess of \$100,000 involves a factual dispute, the contracting officer may send the contractor a copy of the proposed Findings of Fact and advise that the supporting data may be reviewed at the office of the contracting officer. The contractor should be requested to indicate in writing whether it concurs in the proposed Findings of Fact and, if not, to indicate specifically which facts with which it takes issue and submit material in rebuttal. After reviewing the contractor's comments and making any appropriate corrections in the Findings of Fact, the contracting officer shall then issue the decision. If an appeal is filed, the appeal file should include the contractor's response to the request for comment on proposed Findings of Fact.

(ii) Decision. The contracting officer's final decision will be drafted by an Office of Counsel attorney. Prior to issuing the decision, the contracting officer will become familiar with all facts and proposed conclusions contained in the draft and either adopt them as the Findings of Fact and decision or make such changes as deemed appropriate.

a. The first paragraph of the decision is appropriate for introductory matter, including a reference to the contract number and date and a brief description of the contract work and the location thereof.

b. The next part of the decision should be a summary of the contractor's claim(s), including any revisions. Each claim document discussed will reference a tab number where the document can be located in the potential appeal file. In arranging the tabs for the potential appeal file, the first two tabs should be reserved for the notice of appeal and the contracting officer's final decision.

c. The third part of the decision should be the numbered Findings of Fact, presented chronologically in narrative form. Conclusions or arguments should not be included. The Findings of Fact will consist of (a) a statement of facts relevant to the claim, and (b) a reference to the pertinent bidding documents and contract provisions. Quotations from standard contract clauses normally should be avoided; however, non-standard clauses relied upon by the contracting officer should be quoted. All documents mentioned should be referred to by a tab number where they can be found in the potential appeal file. If possible, agreed and disputed facts should be so identified.

d. The fourth part of the decision should reflect the contracting officer's analysis or conclusions based upon the Findings of Fact. New facts and case citations normally should not be included in this part. After an appropriate discussion and analysis, the contracting officer should make a clear, simple statement which sets forth the determination on the contract claim.

e. The last paragraph of the decision should clearly state that the writing is the contracting officer's final decision and advise the contractor of its appeal rights.

(2) Notification of Appeal Rights. This paragraph, which is found in FAR 33.211(a)(4)(v), should be included at the end of a contracting officer's final decision:

"This is the final decision of the Contracting Officer. This decision may be appealed to the Armed Services Board of Contract Appeals, Skyline 6, 5109 Leesburg Pike, Falls Church, Virginia 22041-3208. If you decide to appeal, you must mail or otherwise furnish written notice thereof to the Armed Services Board of Contract Appeals within 90 days from the date you receive this decision. A copy thereof shall be furnished to the contracting officer from whose decision the appeal is taken. The notice shall indicate that an appeal is intended, include a copy of this decision and identify the contract by number. The notice shall also include a copy of this decision. With regard to appeals to the Armed Services Board of Contract Appeals, you may, solely at your election, proceed under the Board's small claims procedure for claims of \$50,000 or less or its accelerated procedures for claims of \$100,000 or less. In lieu of appealing to the Armed Services Board of Contract Appeals, you may bring an action directly in the U.S. Court of Federal Claims (except as provided in the Contract Disputes Act, 41 U.S.C. § 7102(d), regarding Maritime Contracts) within 12 months of the date you receive this decision."

(3) Transmittal of the Contracting Officer's Final Decision. The contracting officer's final decision with the Findings of Fact shall be transmitted by certified or registered mail, return receipt requested, to the contractor's address shown on the initial contract page or by another reasonable method that evidences receipt by the contractor. The contractor may request, in writing, that a different address be utilized if the specific purpose is identified, i.e., receipt of formal contracting officer's final decision.

A3-204 Affirmative Government Claims.

Contract claims by the Government also should be processed under these guidelines.

A3-205 Maritime Contract Claims.

The Contract Disputes Act contains a separate provision for the consideration of claims and appeals of maritime contracts.

(a) Contracts for the repair of ships are maritime contracts under the Contract Disputes Act. Appeals arising out of maritime contracts are covered separately by the Suits in Admiralty Act. Jurisdiction to hear these appeals is in the U.S. District Courts, not the U.S. Court of Federal Claims. When rendering a decision on a claim arising out of a maritime contract, contracting officers must advise the contractor of its right to appeal the decision to a U.S. District Court.

(b) Contracts for the construction of ships – as opposed to contracts for the repair of ships - are not considered maritime contracts. Claims and appeals arising out of contracts for the construction of ships will be administered in the same manner as other claims and appeals subject to the Contract Disputes Act.

A3-206 Maintenance of Records.

(a) All Government personnel must exercise care to prevent premature destruction of contract administration and finance records, including electronic files, that are involved in claims and appeals before Boards and Federal courts. Contract files containing these records are sometimes retired or destroyed before all claims and appeals have been fully resolved. In the process of retiring records, documents that do not appear to have a permanent value are often discarded, such as handwritten memoranda and preliminary drafts. Therefore, it is important to identify such material during the investigation required by A3-203(b) and to provide for its retention. See DFARS 204.805

(b) To avoid closeout of an official contract file prior to completion of a pending appeal, all contract files involving an appeal shall be retained intact for seven years after the date of the final Board or Federal court decision in the case. In an appeal dismissed by the Board or Federal court with prejudice based on stipulation of the parties, or request of the contractor following the settlement of the appeal, this requirement does not apply.

SUBPART 300 – PROCEDURES FOR HANDLING APPEALS AT THE ARMED SERVICES BOARD OF CONTRACT APPEALS

A3-300 Scope of Subpart.

This subpart sets forth the procedures for handling contract appeals before the ASBCA. Throughout this subpart, the term “local counsel” shall mean District Counsel, Division Counsel, Center Counsel, Laboratory Counsel, or FOA Counsel.

A3-301 Notice of Appeal.

Normally, the contractor will send a Notice of Appeal directly to the Board and will furnish a copy to the contracting officer. If the original Notice of Appeal is received by the contracting officer, however, it should be forwarded promptly to the Board and a copy sent to the Division and to the Office of the Engineer Chief Trial Attorney. Specifically, any Notice of Appeal received directly shall be promptly forwarded to the Chairman, Armed Services Board of Contract Appeals, 5109 Leesburg Pike, Suite 703, Falls Church, VA 22041-3208 and include the envelope showing the postmark when the notice of appeal was received by mail. AFARS 5133.212-90-1(a).

A3-302 Nature of Appeals - General.

(a) Signature Block. For all trial documents which require the signature of the Engineer Chief Trial Attorney or designee, the signature block shall read "Engineer Chief Trial Attorney."

(b) Appeals under \$3 million. The Engineer Chief Trial Attorney or designee is the authorized representative of the Secretary of the Army and has sole authority and responsibility for the conduct and control of litigation of contract disputes for all Corps of Engineers cases docketed with the ASBCA of a value of less than \$3 million. AFARS 5133.212-90(a)(2).

(c) Appeals of \$3 million or more. The Assistant Judge Advocate General (TAJAG) for Civil Law may determine, on a case by case basis, to delegate Corps of Engineers cases of a value of \$3 million or more to the Engineer Chief Trial Attorney or designee. AFARS 5133.212 90(a)(3). Within 14 days of receipt of a Notice of Appeal in an ASBCA case of \$3 million or more, the assigned trial attorney shall transmit to the Office of the Engineer Chief Trial Attorney a memorandum describing the nature of the claim and recommending whether the Engineer Chief Trial Attorney or designee should seek delegation from TAJAG under AFARS 5133.212-90(a)(3). A copy of the contracting officer's final decision, if issued, shall accompany this memorandum. The Engineer Chief Trial Attorney or designee shall forward a recommendation to TAJAG.

A3-303 Appeal File (Rule 4).

(a) General. In Rule 4 of the ASBCA, the contracting officer is responsible for assembling and transmitting to the Board an appeal file consisting of all documents pertinent to the appeal. Normally, appeal files are prepared by the Office of Counsel. The appeal file shall include the compilation of documents described in Rule 4 and shall be prepared in accordance with this section.

(b) Filing Procedure.

(1) General. The appeal file shall be forwarded directly to the Board. At the time the appeal file is forwarded, the contracting officer will furnish the appellant a copy of each document except the contract. The letter of transmittal to the Board shall state that this has been done. An abbreviated copy of the appeal file consisting only of the transmittal letter, contracting officer's final decision, and claim letter shall be forwarded to the Office of the Engineer Chief Trial Attorney. A copy of the appeal file shall be provided by the trial attorney to Division Counsels in Command and Control Divisions as required.

(2) Unless otherwise directed by the Board, one copy of the complete appeal file shall be forwarded to the Board.

(3) In conformity with an agreement between the parties, one copy of the complete appeal, file shall be provided to the appellant.

(4) Appeal File Supplements. Additional material may be submitted as a supplement to the appeal file and a copy simultaneously furnished to the appellant. Any supplements to the appeal file will be forwarded to the Board in the same manner as the original appeal file. Tab numbers in an appeal file supplement shall begin with "SR4-."

(c) Form. Appeal files will be assembled in three-ring binders with a 2-inch spine, or as otherwise directed by the Board. Each document will be separated by a divider with a tab attached. In accordance with Board rules, the tabs should be numbered sequentially. The tab numbers may be preprinted, hand printed or typed on the tab. If the appeal file is voluminous, it should be divided into two or more volumes. The cover of each volume shall identify it as the appeal file and include the appeal caption, contract number, docket number and volume number. Additionally, an index of documents shall be placed in the front of all volumes of the appeal file. Drawings may be placed in a separate volume. Generally, drawings should be placed in the appeal file in the following or other comparable manner: (1) insert a sealed manila envelope into the assembly, punching holes at the top, or left side, so that the top, left side and bottom are even with the remaining documents; (2) cut the right envelope side open, parallel to the right edge of the remaining documents; and (3) fold the drawings so that they can be inserted and removed from the right side of the envelope. When a complete set of specifications or drawings is furnished, it should be identified as an appendix to the appeal file which can be easily reviewed, e.g., a complete set of specifications similar to the basic appeal file: a complete set, or several drawings clearly marked, rolled and placed in a shipping tube. Specifications and drawings need only be submitted to the Board. When large documentary exhibits are included in the appeal file, such exhibits shall be paginated sequentially for easier reference.

A3-304 Trial Attorneys.

(a) Appointment. The local counsel shall assign the Government Trial Attorney. For every appeal, the Engineer Chief Trial Attorney or designee and the Chief Counsel reserve the authority to disapprove the assignment of a particular trial attorney or to remove the trial attorney once assigned.

(b) Duties. The trial attorney is expected to personally prepare and present the Government's case. The trial attorney is expected to follow all of the customary rules of professional conduct, including the duty to ensure that documents and pleadings which require the signature of the Engineer Chief Trial Attorney or designee are forwarded to the Office of the Engineer Chief Trial Attorney so that they may be timely filed. The trial attorney will review the appeal file to ascertain if the Government's position is adequately supported and the appeal is timely. In the event the appeal is untimely, the trial attorney shall immediately follow the procedure discussed in A3-306(b) for filing a Motion to Dismiss.

(1) Prior to Hearings. Prior to a hearing before the ASBCA, the trial attorney shall seek to obtain a written stipulation from a pro se appellant or a represented appellant's counsel which states whether or not quantum will be an issue at the hearing.

(2) Upon Discovery of New Evidence or Facts. If, before or during the presentation of the Government's case, the trial attorney discovers or is informed of new facts or evidence which require re-evaluation of the Government's potential liability, a prompt and direct review shall be made and the contracting officer advised. The trial attorney shall inform the contracting officer of the previously unknown facts or evidence, provide an initial determination of the impact upon the Government's case, and make a recommendation to the contracting officer as to possible settlement or other action.

(3) All Government Personnel. The contracting officer and other Government personnel shall assist the trial attorney in case preparation and presentation as requested by the trial attorney.

A3-305 Pleadings.

(a) Answer.

(1) Style. An Answer should conform to the Federal Rules of Civil Procedure, i.e., admit, deny or allege according to each specific allegation in the complaint; followed by a second section which outlines the Government's affirmative defenses. An Answer shall be neatly typed, double spaced, and prepared on letter size paper. If the Complaint is in letter form, as opposed to traditional numbered paragraph form, the trial attorney should assign paragraph numbers to each paragraph contained in the letter, and base the answer on these numbered paragraphs.

(2) Procedures. The original and two copies of the Answer shall be filed by the trial attorney directly with the ASBCA. The answer shall be signed by the trial attorney and local counsel. The trial attorney shall also forward a copy of the answer and the complaint to the Office of the Engineer Chief Trial Attorney and to Division Counsels in Command and Control Divisions as each requires.

(b) Government Complaints. In appeals of affirmative Government claims, the Board may require the Government to file the Complaint. A Government Complaint shall conform to the Federal Rules of Civil Procedure. The trial attorney shall follow the filing procedures described above.

A3-306 Motions.

Motions will be neatly typed, double spaced and prepared on letter size paper. Motions should be supported by an accompanying memorandum, prepared according to the above guidelines, which states relevant facts and identifies the statutes, regulations, and other legal authorities supporting the motion. The memorandum shall have the same signatures as the motion and be filed according to the procedures outlined below.

The memorandum should conform to the customary style and professional standards covering presentation, argument and citation of authorities.

(a) Non-Dispositive Motions. Most non-dispositive motions shall be filed directly by the trial attorney with the ASBCA. These include: motion for an extension of time, motion to compel, motion to amend, motion to strike and motion to suspend proceeding. The motion shall be signed by the trial attorney and local counsel. A copy of the motion shall be provided by the trial attorney to Division Counsels in Command and Control Divisions as each requires and to the Office of the Engineer Chief Trial Attorney. Pursuant to Rule 16 of the ASBCA, the trial attorney is responsible for forwarding a copy of the motion to the appellant's counsel (or to the appellant who is appearing pro se). The correspondence transmitting the motion to the Board shall indicate that this has been done.

(b) Dispositive Motions and Motions Raising Significant Issues. Jurisdictional motions, motions invoking executive privilege, dispositive motions, motions for reconsideration and motions for sanctions shall be signed by the trial attorney. The original and two copies shall be forwarded to the Office of the Engineer Chief Trial Attorney for signature and filing with the ASBCA. A copy of such a motion shall be provided by the trial attorney to Division Counsels as each requires. The correspondence transmitting the motion to the Office of the Engineer Chief Trial Attorney shall indicate the date, if any, when the motion must be received by the Board and include an envelope addressed to the appellant's counsel (or to the appellant who is appearing pro se). Pursuant to Rule 16 of the ASBCA, the Office of the Engineer Chief Trial Attorney is responsible for forwarding a copy of the motion to the appellant's counsel (or to the appellant where pro se).

A3-307 Briefs.

(a) Style. Briefs shall be neatly typed, double-spaced on letter size paper and bound by a front and back cover made of plastic, cardboard or heavy paper. All briefs should conform to the customary style and professional standards covering presentation, argument and citation of authorities.

(b) Procedures.

(1) Type I and Type II Appeals. Briefs in Type I and Type II appeals shall be signed by the trial attorney and local counsel and filed directly with the ASBCA. The trial attorney shall provide a copy of the brief to the Office of the Engineer Chief Trial Attorney and to Division Counsels in Command and Control Divisions as each requires.

(2) Type III Appeals. Briefs in Type III appeals shall be signed by the trial attorney and the original and two copies shall be forwarded to the Engineer Chief Trial Attorney or designee for signature and filing with the Board. A copy of the brief shall be provided by the trial attorney to Division Counsels in Command and Control Divisions as each requires. The correspondence transmitting the brief to the Office of the Engineer

Chief Trial Attorney shall indicate the date when the brief must be received by the Board and include an envelope addressed to the appellant's counsel (or to the appellant where pro se).

A3-308 Discovery.

Discovery is covered by Rule 14 of the ASBCA and should generally follow the Federal Rules of Civil Procedure. All Government personnel are encouraged to assist the trial attorney in voluntary discovery procedures. However, any deposition or discovery procedure that is designed to annoy, embarrass, harass or place an undue burden upon the Government will be vigorously opposed.

A3-309 Alternative Dispute Resolution (ADR).

Trial attorneys are encouraged to engage in ADR of contract claims and appeals to the maximum extent practicable.

(a) Third Party Assisted. Neutral and impartial third parties may be used in mediation, mini-trial, non-binding arbitration and dispute review boards. There is no regulatory authority and the policy of the Corps of Engineers is not to use binding arbitration.

(b) Board Assisted. ASBCA administrative judges are available for ADR and it is USACE policy to use their services as settlement judges. At the inception of an appeal, the Board provides its notice regarding ADR to the parties. The notice describes Board ADR policies and procedures. The ADR procedures used by the Board include: settlement judge, mini-trial, summary trial with binding decision and other agreed upon methods. Prior to agreeing to use any form of ADR, the trial attorney shall consult with the Engineer Chief Trial Attorney or designee. Prior to agreeing to participate in a summary trial with binding decision process, the trial attorney must request and receive from the Chief Counsel a waiver of the Government's right to appeal the decision. The memorandum requesting waiver shall be forwarded to the Chief Counsel through the Engineer Chief Trial Attorney and shall briefly set forth the factual background of the appeal.

A3-310 Settlement.

(a) Authority. The authority and responsibility to settle contract appeals docketed with the ASBCA remain with the contracting officer. AFARS 5133.212-90-7(a). The contracting officer shall advise the trial attorney of all offers of settlement from a contractor, whether such offer is made by the contractor or through the contractor's attorney. The contracting officer shall consult with the trial attorney before accepting a contractor's offer of settlement and before making a settlement offer to the contractor. Additionally, the Engineer Chief Trial Attorney or designee has the independent authority to settle ASBCA cases with the concurrence of either the contracting officer,

the Head of the Contracting Activity or the Deputy Assistant Secretary of the Army for Procurement (DASA(P)).

(b) Procedure. A stipulation of dismissal shall be prepared for all settled appeals. This should be submitted by the trial attorney directly with the Board. A copy of this document shall be provided by the trial attorney to Division Counsels in Command and Control Divisions as each requires and to the Office of the Engineer Chief Trial Attorney.

(c) When no funds are available to support the settlement of an appeal before the ASBCA, the agency will access the Judgment Fund to obtain the necessary funding. The Trial Attorney shall notify the stakeholder/customer prior to entering into the settlement, ensuring its understanding of its responsibility to reimburse the Judgment Fund using current appropriations.

A3-311 Decisions.

(a) Notice. The trial attorney is responsible for notifying the Office of the Engineer Chief Trial Attorney of all decisions rendered by the ASBCA. The notification should be made by telephone or electronic mail within one day of receiving the decision, and a copy should be faxed or mailed to the Office of the Engineer Chief Trial Attorney. A copy of the decision shall be provided by the trial attorney to Division Counsels in Command and Control Divisions as each requires.

(b) Motion for Reconsideration. Under Rule 20 of the ASBCA, either party may file a motion for reconsideration within 30 days of receipt of the decision. Prior to preparing such a motion, the trial attorney must receive authorization from the Office of the Engineer Chief Trial Attorney. The motion and its supporting memorandum shall be prepared in accordance with Board Rule 20 and Section A3-306 of this document.

(c) Appeals to the U.S. Court of Appeals for the Federal Circuit. When the trial attorney wants to appeal a Board's decision to the U.S. Court of Appeals for the Federal Circuit, a request to initiate such an action should be made through command channels to the Office of the Engineer Chief Trial Attorney within ten calendar days after receipt of the decision. The request shall state the bases for the appeal pursuant to the review standard of the Contract Disputes Act, 41 U.S.C. §7107(b). The Engineer Chief Trial Attorney or designee shall coordinate with the Office of the Army General Counsel, and the Chief Counsel shall make the final agency recommendation to the Department of Justice. The appeal must be made by the Department of Justice within 120 days of receipt of the decision by the Government. 41 U.S.C. § 7107(a)(1)(B).

(d) Payment. A payment to an appellant from a Board decision shall be made promptly from available project appropriations. If project funds are not readily available or extraordinary circumstances exist, the Judgment Fund, as provided for in the Contract Disputes Act, 41 U.S.C. § 7108, may be used. Such use requires the prior approval of the Office of the Engineer Chief Trial Attorney. Resorting to the Judgment Fund requires a certification from Resource Management that project funds are

unavailable. The Trial Attorney shall notify the stakeholder/customer, prior to entering into the settlement, of the use of the Judgment Fund, ensuring its understanding of its responsibility to reimburse the Judgment Fund using current appropriations.

A3-312 Attorney Fee Claims.

Pursuant to the Equal Access to Justice Act (EAJA), 5 U.S.C. § 504, a qualifying appellant may recover fees and other expenses incurred in connection with the appeal if it prevails either through a favorable settlement or Board decision and when the Government's position was not substantially justified. As a jurisdictional matter, EAJA requires that a Board receive the application for an award of fees and other expenses within 30 days after final disposition of the matter. An EAJA claim may be settled by the contracting officer pursuant to A3-310. Upon receipt of a request for fees and expenses under EAJA, the trial attorney responsible for the appeal should review the appellant's qualifications and follow the Board's procedures for award of fees and expenses under EAJA.

SUBPART 400 - DIRECT ACTIONS IN THE UNITED STATES COURT OF FEDERAL CLAIMS

A3-400 Scope of Subpart.

This subpart sets forth procedures for handling Contract Disputes Act litigation before the U.S. Court of Federal Claims. See 41 U.S.C. § 7104(b). Throughout this subpart, the term "local counsel" shall mean District Counsel, Operating Division Counsel, Center Counsel, Laboratory Counsel or FOA Counsel.

A3-401 Responsibilities.

(a) Department of Justice (DOJ). DOJ is responsible for Contract Disputes Act cases in the U.S. Court of Federal Claims. 28 U.S.C. § 2518(a).

(b) Corps of Engineers. The District, Laboratory or FOA Counsel will assign a trial attorney to prepare a litigation report and to assist the DOJ attorney assigned to the case.

A3-402 Notice of Filing.

(a) Department of Justice. When a complaint is filed, DOJ notifies the agency by sending a transmittal letter stating the name and telephone number of the DOJ attorney assigned to the case and requesting that the Corps trial attorney assigned to the case contact the DOJ attorney. The letter also requests a litigation report and draft answer.

(b) Corps of Engineers. The Office of the Engineer Chief Trial Attorney will forward the DOJ letter and complaint to the Corps District, Operating Division, Laboratory, Center or FOA responsible for administration of the contract at issue, with a copy to the

Division Counsel where applicable. The Engineer Chief Trial Attorney's letter will establish a suspense for submitting the litigation report and contain instructions for complying with DOJ's requests.

A3-403 Litigation Report.

(a) Procedures. Except in those instances when time does not permit and prior telephonic approval of deviation from this procedure is obtained from the Engineer Chief Trial Attorney or designee, two copies of the litigation report and exhibits, one for the DOJ attorney and one for the Engineer Chief Trial Attorney, will be submitted directly to the Office of the Engineer Chief Trial Attorney. An additional copy should be sent to the Division Counsel in Command and Control Divisions as each requires. Bulky or voluminous exhibits may be omitted from the Engineer Chief Trial Attorney's copy of the report with prior permission of the Engineer Chief Trial Attorney or designee.

(b) Form. The litigation report shall contain (1) a narrative statement of facts and listing of exhibits; (2) a suggested answer; (3) a list of witnesses; (4) a legal analysis; and (5) information concerning any known counterclaim, set-off or other cause of action which may be asserted against the Plaintiff by the Government. The statement of facts may be summarized from the contracting officer's final decision. A legal memorandum prepared for the contracting officer's use in considering the claim may be used as the required legal analysis if it addresses all of the relevant legal points. The exhibits shall consist of a compilation of documents prepared in the same manner as an appeal file before the Board. See generally A3-303.

A3-404 Significant Events.

The Corps trial attorney assigned to the case is responsible for keeping the Engineer Chief Trial Attorney or designee fully informed of all significant events that occur as the case progresses. This requirement includes furnishing the Office of the Engineer Chief Trial Attorney a copy of all pleadings, motions and briefs filed; keeping the Matter Tracking System completely updated (see A3-408); and advising the Engineer Chief Trial Attorney or designee by telephone or electronic mail when hearings are scheduled.

A3-405 Alternative Dispute Resolution (ADR).

(a) Third Party Assisted. Executive Order 12988 concerning civil justice reform, encourages litigation attorneys to use ADR. The Corps trial attorney will assist the DOJ attorney in using ADR.

(b) Court Assisted. General Order 13 of the U.S. Court of Federal Claims, as amended, established three methods of ADR for use in cases before the court: settlement judges, mini-trials and third party neutrals. The settlement judge procedure contemplates a frank, in-depth discussion of each party's case before a neutral advisor. The mini-trial is a flexible, expedited procedure where each party presents an abbreviated version of its case to a neutral advisor (a judge other than the presiding

judge), who then assists the parties in negotiating a settlement. The third party neutral procedure consists of a private third party appointed by the court to assist in ADR. Corps trial attorneys are strongly encouraged to work with the DOJ attorney in utilizing these procedures to the maximum extent practicable.

A3-406 Settlement.

Authority to settle the case is vested solely in the Department of Justice. 28 U.S.C. §§ 516, 519; Exec. Order No. 6166, June 10, 1933, reprinted in 5 U.S.C. § 901. Once litigation is docketed before a Federal court, the contracting officer loses all authority to settle the case. All recommendations concerning settlement of cases in the U.S. Court of Federal Claims will be made by the Chief Counsel to DOJ. The Corps trial attorney assigned to the case, in collaboration with the contracting officer, is responsible for forwarding the settlement recommendation, including an explanation of the proposed terms and the reasons why the Government should or should not agree to them, through the command channels, to the Engineer Chief Trial Attorney or designee. The Office of the Engineer Chief Trial Attorney will prepare the recommendation for the Chief Counsel to send to DOJ. An exception will be made when, pursuant to General Order 13, as amended, the court requests that the agency representative have full settlement authority.

A3-407 Decisions.

(a) Notice. The Corps trial attorney assigned to a case is responsible for notifying the Office of the Engineer Chief Trial Attorney of all decisions rendered by the U.S. Court of Federal Claims. The notification should be made by telephone or electronic mail within one day of receiving the decision, and a copy should be faxed or mailed to the Engineer Chief Trial Attorney or designee. A copy of the decision shall be provided by the trial attorney to Division Counsels in Command and Control Divisions as each requires.

(b) Motion for Reconsideration. A motion for reconsideration is governed by Rule 59 of the Rules of the U.S. Court of Federal Claims. The motion must be filed within 10 days of the entry of judgment. The Corps trial attorney assigned to the case should forward any recommendations concerning the Government's filing a motion for reconsideration through command channels to the Office of the Engineer Chief Trial Attorney within 5 days of the entry of judgment. The Engineer Chief Trial Attorney or designee will prepare the agency recommendation for the Chief Counsel to forward to DOJ.

(c) Appeal. Recommendation for appeal of an adverse decision will be made by the Chief Counsel to DOJ. When the trial attorney assigned to the case believes an appeal is warranted, the trial attorney and the local counsel will contact the Engineer Chief Trial Attorney or designee informally to discuss whether an appeal is appropriate. If an appeal is warranted, the trial attorney shall forward a written appeal recommendation, including a thorough analysis of the facts and law, through command channels to the Engineer Chief Trial Attorney or designee. The Engineer Chief Trial Attorney or

designee will coordinate with the Office of the Army General Counsel and prepare the agency recommendation for the Chief Counsel to send to DOJ.

(d) Payment. In cases where the U.S. Court of Federal Claims issues a decision sustaining the appeal, and no funds are available, payment will be made in accordance with Judgment Fund procedures. The Trial Attorney shall notify the stakeholder/customer, prior to entering into the settlement, of the use of the Judgment Fund, ensuring its understanding of its responsibility to reimburse the Judgment Fund using current appropriations.

SUBPART 500 - APPEALS TO THE UNITED STATES COURT OF APPEALS FOR THE FEDERAL CIRCUIT

A3-500 Scope of Subpart.

This subpart sets forth procedures for handling appeals at the U.S. Court of Appeals for the Federal Circuit pursuant to the Contract Disputes Act, 41 U.S.C. § 7107(a)(1).

A3-501 Notice of Appeal.

(a) Contractor Appeals.

(1) Department of Justice (DOJ). When an appeal is filed, the DOJ notifies the agency by sending a transmittal letter stating the name and telephone number of the DOJ attorney assigned to the case and requesting that the Corps trial attorney contact the DOJ attorney. The letter indicates that upon filing of appellant's brief, the DOJ attorney will promptly furnish a copy with a request for comments to the trial attorney. The letter also requests that the trial attorney provide advice as to which parts of the record should be included in the appendix.

(2) Corps of Engineers. The Office of the Engineer Chief Trial Attorney will forward the DOJ letter and notice of appeal to the Corps District, Operating Division, Laboratory, Center or FOA responsible for administration of the contract at issue, with a copy to the Division. The Engineer Chief Trial Attorney's letter will direct the assigned attorney to comply with DOJ's requests for advice, to keep the Chief Trial Attorney or designee informed of significant developments in the case and to keep the appeal updated on the Matter Tracking System.

(b) Government Appeals. Appeals of ASBCA decisions shall be made according to the procedure set forth in A3-311(c). Appeals of U.S. Court of Federal Claims decisions shall be made according to A3-407(c).

A3-502 Responsibilities.

(a) Department of Justice (DOJ). DOJ is responsible for Contract Disputes Act cases in the U.S. Court of Appeals for the Federal Circuit. 28 U.S.C. § 518(a). The DOJ

attorney assigned to the case is responsible for representing the Government to include preparing and filing the Government's brief and participating in oral arguments.

(b) Corps of Engineers. The assigned trial attorney shall provide assistance to the DOJ attorney in preparing the Government's brief and conducting oral argument. The trial attorney shall also have the responsibility of notifying the Engineer Chief Trial Attorney or designee of significant events in the case as defined below.

A3-503 Significant Events.

The assigned trial attorney is responsible for keeping the Office of the Engineer Chief Trial Attorney fully informed of all significant events that occur as the case progresses. This requirement includes furnishing the Office of the Engineer Chief Trial Attorney a copy of dispositive motions and briefs filed and keeping the Matter Tracking System completely updated (see A3-506).

A3-504 Oral Argument.

When oral argument is scheduled, the assigned trial attorney shall inform the Office of the Engineer Chief Trial Attorney or designee of the date and indicate who will be attending.

A3-505 Decision.

The assigned trial attorney is responsible for notifying the Office of the Engineer Chief Trial Attorney of the decision rendered by the U.S. Court of Appeals for the Federal Circuit. The notification should be made by telephone or electronic mail within one day of receiving the decision, and a copy should be faxed or mailed to the Engineer Chief Trial Attorney or designee.