®

US Army Corps of Engineers

USACE
ACQUISITION
INSTRUCTION
(UAI)

Version 3

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VERSION 3 SUMMARY OF CHANGES

Updates version 2, dated 07 April 2014, to include:

1. **1.170-100 Peer Reviews** – Paragraph (a) is revised to exclude sealed bid procurements valued at micro-purchase threshold to less than $50M from the peer review requirement, provide notification that waivers to the peer review requirement for sealed bid and other type procurements valued at $50M to less than $1B are permitted, and provide the waiver template to align the UAI with DASA(P) PARC Policy Alert #14-73 issued 19 August 2014 and USACE DOC Policy Alert # 14-0015 Rev 1 issued 03 June 2014.

2. **1.201-100 Maintenance of the UAI** – Paragraph (b) is revised to provide the months the UAI will be updated; typically the months of November (annual revision) and June (semi-annual revision). (Administrative Clarification).

3. **2.101-100 Definitions** – Definition for Directorate of Contracting, Acquisition Support Division and Principal Assistants Responsible for Contracting were added and revised. (Administrative Clarification)

4. **6.303-2-100 Content of Justification and Approvals** – Provides the appropriate links for Army policy relating to justifications reviewed and approved by the Head of the Contracting Activity (HCA) (or HCA Designee) or the Army Senior Procurement Executive (SPE). (UAI 14-IPD-04, issued 17 September 2014)

5. **6.304-100 Approval of the Justification** – Clarifies responsibilities for review and coordination of justifications. Policy reiterates approval authorities and thresholds for justifications. (UAI 14-IPD-04, issued 17 September 2014)

6. **6.501-100 Requirement** – Revised in its entirety to clarify the positions and appointing authority of the USACE Command Special Competition Advocate (SCA), the Regional Special Competition Advocate (SCA), and to remove the term "Field Competition Advocates." (UAI 14-IPD-04, issued 17 September 2014)

7. **15.300-100(d) Source Selection Authority (SSA) Hierarchy** – Revised paragraphs (1) and (2) clarifying the guidance for SSA appointments for source selections over $100M and SSA appointments outside the contracting chain to align UAI with DASA(P) PARC Policy Alert #14-30 guidance issued 17 December 2013.

8. **17 Special Contracting Methods** - Updated UAI Subparts 17.5 and 17.7 in its entirety to align the UAI with Army policy revised 30 June 2014 via DASA(P) PARC Policy Alert #14-64. Army templates for interagency determinations are provided in the Army policy. Appendix 17-1 and 17-2 were deleted in their entirety as a result of the revised Army policy. (14-IPD-15, issued 26 August 2014)

9. 22.1302-100 Equal Opportunity for Veterans – Establishes verbiage for contracts that require the inclusion of FAR Clause 52.222-35, "Equal Opportunity for Veterans," the USACE requirement that the requiring activity shall incorporate UAI text in the general requirements section of the specification/performance work statement (PWS)/statement of work (SOW) or the statement of objectives (SOO) (UAI 14-IPD-06, issued 01 August 2014)

10. 225.3 Contracts Performed in the United States – Establishes UAI Subparts 225.301-4-100 and 225.302-100 which provides guidance relative to the Synchronized Pre-deployment and Operational Tracker (SPOT) requirements and contracting reachback in support of forward Districts operating in Overseas Contingency Operations (OCO) within the CENTCOM area of responsibility, and incorporates Appendix 25-1, USACE SPOT Non-Compliance Letter template, into the UAI. Procurement Instruction Letter (PIL) 2008-05-01 is rescinded with issuance of 14-IPD-05. (UAI 14-IPD-05, issued 05 September 2014)

11. 225.74 Defense Contractors Outside the United States – Establishes UAI Subpart 225.7401-100 to provide guidance relative to the Theater Business Clearance (TBC) requirements for contracts requiring performance or delivery in a foreign country. PIL 2008-04 is rescinded with issuance of 14-IPD-05. (UAI 14-IPD-05, issued 05 September 2014)

12. 225.77 Acquisitions in Support of operations in Afghanistan – Establishes UAI Subpart 225.7703-100 to properly align PIL 2013-01 within the UAI and provides a revision to PIL 2013-01, paragraph e.(ii), due to a revision to FAR 25.402(b). (UAI 14-IPD-05, issued 05 September 2014)

13. 28.305-100 Overseas Workers Compensation and War Hazard Insurance – Revised in its entirety to replace outdated guidance, provide the Fiscal Year (FY) 14 and FY15 Defense Base Act geographic waivers. PIL 2012-12 is rescinded with issuance of 14-IPD-08. (UAI 14-IPD-08, issued 18 August 2014)

14. 36.205-101 Cost Limitations–Military Construction Contracts – The title at UAI 36.205-101 reflects the title as written in the EFARS. The term "Statutory" is removed from the title at UAI 36.205-101. The limitations given in EFARS 36.205-100(a) and (b) are not based upon any statutory restriction or mandate. (Administrative Clarification)

15. 42.15 Contractor Performance Information – Establishes UAI Subpart 42.1502-100 to update the UAI in accordance with recent policy changes made by DoD relating to the reporting system for contractor performance assessments. PIL 2011-04 is rescinded with issuance of 14-IPD-07. (UAI 14-IPD-07, issued 17 September 2014)

16. Entire Document – Page numbering and standardized reference to KO, PCO, and ACO.

[End of Summary of Changes]

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PART 1 – FEDERAL ACQUISITION REGULATIONS SYSTEM

SUBPART 1.1 — PURPOSE, AUTHORITY, ISSUANCE

1.101-100 Purpose.

The United States Army Corps of Engineers (USACE) Acquisition Instruction (UAI) establishes uniform policies and procedures to ensure that business practices are consistent throughout USACE, provides internal guidance, delegations of authority, assignments of responsibilities, procedures that are required by regulation to be established by the Head of the Contracting Activity (HCA), procedures that implement policies, and internal reporting requirements. It does not restrict the exercise of good business judgment or stifle innovation. ***The UAI is not intended to repeat, paraphrase, or otherwise restate material*** contained in the Federal Acquisition Regulation (FAR), the Defense Federal Acquisition Regulation Supplement (DFARS), the Army Federal Acquisition Regulation Supplement (AFARS), or higher-level agency regulations. The information in the UAI will not conflict or be inconsistent with FAR content as prescribed in FAR 1.304(b). ***The UAI is not a stand-alone document.*** The Engineering Federal Acquisition Regulation Supplement (EFARS) was rescinded and superseded with the initial issuance of the UAI, 18 March 2013.

1.103-100 Authority.

The UAI is issued by the HCA, pursuant to the FAR 1.301, DFARS 201.304, and under the authority of the Secretary of the Army, pursuant to AFARS 5101.304.

1.104-100 Applicability.

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

1.105-2-100 Arrangement of Regulations.

(a) *General*. The arrangement and numbering of the UAI conforms to the FAR, DFARS and the AFARS.

(b) *Numbering*. Numbered divisions (parts, subparts, sections, or paragraphs, etc. and numbered appendices) of the UAI correspond to the same numbered division in 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 an 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.

(c) *References and Citations*. This guidance shall be referred to as the UAI. Any numbered division may be cited as "UAI" followed by the division number. Thus, this section would be cited as "UAI 1.105-2-100," but within this guidance, it would be cited as "1.105-2-100."

1.170-100 Peer Reviews.

(a) *Peer Reviews.* This guidance applies to acquisitions above the micro-purchase threshold, to include actions using simplified acquisition procedures (SAP) (refer to UAI 1.170-100(d)(1)). Procurements valued at the micro-purchase threshold to less than $50M solicited through sealed bid procedures are excluded from the peer review requirement. Peer reviews for procurements valued at $50M to less than $1B 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. Peer review procedures are available at **UAI Appendix 1-1**. Approval thresholds by type and dollar value are outlined in **UAI Appendix 2-1**. Type and depth of review should be commensurate with the complexity of the procurement, and potential for systemic issues that may affect certain types of acquisitions.

(b) *Administration of Peer Reviews*.

(1) Peer reviews are not compliance reviews (i.e. Solicitation Review Boards (SRB)/Contract Review Boards (CRB)). Refer to Defense Procurement and Acquisition Policy (DPAP) Deputy Director peer review slides, dated 13 May 2010, presented at the Department of Defense (DoD) Procurement Conference and Training Symposium. These slides highlight that peer reviews are intended to be advisory in nature.

(2) Actions ≥ $250M: The Principal Assistant Responsible for Contracting (PARC) shall ensure all internal compliance reviews and approvals (i.e. pre-negotiation objective memorandums (POMs), price negotiation memorandums (PNMs), determination & findings (D&F), justification and approvals (J&A), legal sufficiency reviews, etc.) are completed prior to scheduling a higher-level peer review. (Peer review toolkits, provided at **UAI Appendix 1-4** can also be useful tools for compliance reviews)**.**

(c) *Peer Review Required Documents and Elements, Suggested Questions, Tenets and Toolkits*:

(1) Peer Review minimum required documents and elements to address during pre-solicitation, pre-award, and post-award peer reviews are available in DFARS Procedures, Guidance and Instruction (PGI) 201.170-4.

(2) Utilize the list of suggested questions formulated by DPAP for peer review team members as a guide for peer review discussion.

(3) The following references provide the tenets and review criteria for pre-solicitation, pre-award, and post-award peer reviews for the acquisition of services:
- DFARS PGI 201.170 and 237.102-76
- Memorandum, Director, Defense Procurement and Acquisition Policy (DPAP), subject: Review Criteria for the Acquisition of Services, 18 February 2009

(4) Compliance review toolkits are available in **UAI Appendix 1-4**. Toolkits are provided as a self-check for use in preparing for peer reviews. The toolkits may be used for peer reviews conducted at the $50M and under threshold.

(d) Peer reviews are independent reviews conducted outside the purview of the District/Center Project Delivery Team (PDT) of the particular action being reviewed. For actions valued at $50M and greater, the peer review should be a multi-functional team comprised of senior level experts, which will at a minimum, include representatives from the acquisition center, small business office (where applicable), office of counsel, requirements community and in the case of non-competitive actions, the competition advocate. For actions valued up to $50M, the team composition should be commensurate with the scope and complexity of the requirement. While legal counsel participates in the peer review process, separate legal sufficiency reviews are required in accordance with AFARS 5101.602-2(c) (see UAI 1.602-

2-100 Responsibilities). It is highly recommended, to avoid any conflict of interest and maintain the integrity of the advisory nature of the peer review, that, if possible, the Peer Review Chair not be in the supervisory chain of the source selection authority (SSA).

(1) *Business Oversight Branch (BOB)/Procuring Contracting Officer (PCO)*: The BOB or PCO will identify and perform a random sampling of peer reviews for stand-alone contract actions, task/delivery/Federal Supply Schedule (FSS) orders and Blanket Purchase Agreement (BPA) calls above the micro-purchase threshold to less than $500K. The peer review can be conducted by Contracting 1102 peers with commensurate knowledge, skills, abilities and warrant threshold as the PCO. (The "1102 Peer" cannot be subordinate to the PCO).

(2) *District/Center Contracting Chief (DCC/CCC) Peer Reviews.* Peer reviews facilitated by the DCC/CCC, or designee apply to contract actions valued at $500K to less than $50M. The DCC/CCC will randomly identify and perform a minimum of one (1) peer review annually for each PCO in their AOR.

(3) *PARC Peer Reviews*. PARC peer reviews apply to all applicable contract actions valued at $50M to less than $250M. IAW AFARS revision in DASA(P) PARC Policy Alert 14-24, the PARC may delegate the authority to chair a peer review for actions valued at $50M but less than $250M to a level no lower than the DCC/CCC. All delegations are required to be in writing and included in the contract file. A copy of the PARC level delegation shall be posted with the Peer Review Summary Chair Endorsement Memorandum to the Central Peer Review Site (or per guidance from the USACE HQ DOC Acquisition Support Division (CECT-ASD), email: hq-cect-acquisitionsupport@usace.army.mil).

(4) *HCA Peer Reviews*. HCA peer reviews are required for competitive actions valued at $250M to less than $1B and for non-competitive actions valued at $250M to less than $500M. (Note: IAW DASA(P) PARC Policy Alert 14-24, with AFARS revision to 5101.170(b)(1)(d)(2), the HCA may delegate to no lower than the PARC the authority to chair HCA peer reviews. The USACE HCA has delegated in writing all delegable HCA duties and responsibilities to the Director of Contracting (HQ DOC). The HQ DOC is hereby authorized to chair peer reviews specified herein at Paragraph (4). A copy of the HCA delegation to the HQ DOC is available on the HQ DOC Policy Website under Delegations & Appointments. KOs shall ensure a copy of the delegation is included in the contract file for all HCA-Level peer reviews chaired by the HQ DOC. All delegations are required to be in writing and included in the contract file.

(i) *Notice of Upcoming HCA Peer Reviews*. Requests shall be provided by District/Center BOB to the HQ DOC through the PARC Acquisition Support Analyst. The District/Center PDT shall plan, at a minimum, one week (5 business days) for scheduling and document review by the peer review team; 2-3 business days for the actual review; and 5 business days for HCA endorsement. The District/Center BOB and PARC Acquisition Support Analyst will coordinate and organize the peer review date and time; the HQ DOC will establish the peer review participants, the PARC Acquisition Support Analyst will confirm the peer review participants with the District/Center BOB, and the District/Center BOB will coordinate the PDT members requested as attendees at the peer review meeting, to 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 SSA is invited, but not required, to attend the peer review meeting. If the SSA does not attend the peer review meeting, the peer review team will provide

a debriefing to the SSA upon request. An HCA timeline visual is provided at **UAI Appendix 1-2**.

(ii) HCA peer reviews are conducted IAW the HQ DOC Acquisition Review and Approval Process flowchart available in **UAI Appendix 1-3**.

(iii) Peer reviews are conducted as a review of the applicable acquisition documents either through a face-to-face meeting, by video teleconferencing, or teleconference.

(iv) Access to the peer review documents is provided by the PARC Acquisition Support Analyst to the HQ DOC peer review members. The PARC Acquisition Support Analyst, in coordination with the HQ DOC Acquisition Support Division Peer Review Lead, will draft and send the PCO a summary memorandum of the peer review recommendations. (The HQ CECT-ASD can be reached via email). This memorandum will include the names/positions of the peer review and PDT members, state the review proceedings, note any significant findings and incorporate any applicable resolutions that were determined as a result of the peer review.

(v) Prior to the approval authority signing the summary memorandum, the PCO must send a response to the Peer Review Lead addressing resolutions to peer review recommendations. The HQ USACE DOC will then proceed with endorsement of the HCA-level peer review memorandum.

(5) *HCA Peer Review Endorsement*: Only actions endorsed by the HCA (or HQ DOC as delegated authority by HCA, or PARC, if delegated authority by HQ DOC), and staffed through the DOC in accordance with (IAW) the HQ DOC Acquisition Review & Approval Process flowchart (**UAI Appendix 1-3**) shall be released for solicitation or award.

(6) *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 peer review report, peer reviews, regardless of the dollar value or approval authority shall be reported at the Central Peer Review Site. The peer review data includes the project name, project location, estimated project amount, contract award amount, solicitation and contract number, names of peer review members, scheduled dates of the peer review, and a summary of best practices, systemic weaknesses, and quality improvements identified. Submission of the actual peer review memorandum alleviates manual quarterly data collection efforts required for consolidated submission of the HQ DOC recurring reports to DASA(P). The Peer Review Chair (or BOB support) shall ensure **all** peer review best practices and lessons learned from **all levels** are posted to the Central Peer Review Site. CECT-ASD will maintain the site.

(7) *Peer Review Cancellations*. If it becomes necessary to cancel a peer review valued at $50M or greater due to a withdrawal or cancellation of the project, the District/Center BOB will document the justification in a memorandum to the PARC or the HQ DOC. The cancellation memorandum shall be submitted as soon as the withdrawal or cancellation of the project becomes known.

SUBPART 1.2 — ADMINISTRATION

1.201-100 Maintenance of the UAI.

(a) The UAI will be maintained by the HQ DOC. Recommendations for changes, additions, and deletions to the UAI are encouraged and should be submitted to the HQ DOC Contracting Policy Division Community of Practice (CoP) website and posted under the "Coordination Corner – UAI" section. (Note: when submission(s) are posted, the applicable FAR Part must be selected).

(b) It is anticipated that the UAI will be updated on an fiscal year annual basis, and on a semi-annual basis; typically in the months of November (annual) and June (semi-annual). The HQ DOC Contracting Policy Division *may* update the UAI with links to most recently issued Army or USACE policy alerts, and other minor edits as needed, without formal coordination required.

(c) The UAI contains numerous internal and external hyperlinks. Please report any issues with hyperlinks to HQ DOC Contracting Policy Division mailbox, HQ-CECT-PolicyMailbox@usace.army.mil.

1.201-101 Interim Changes of the UAI.

The USACE HQ DOC may issue interim changes to this instruction, published as Interim Policy Directives (IPD), effective until formal incorporation into the UAI (at least annually), rescission, cancellation or expiration. In addition to the UAI, Procurement Instruction Letters (PILs) may be issued to provide internal USACE acquisition standard operating procedures (SOP) related to the "how-to." PILs are located electronically at the USACE Contracting Policy Division CoP Website. (Note: HQ DOC Policy Memorandums (PMs) may be issued when required. HQ DOC PMs are enduring documents related to policy concerns necessary to be addressed as a result of an audit. HQ DOC PMs are also accessible at the CoP Website).

SUBPART 1.4 – DEVIATIONS FROM THE FAR

1.402 Policy.

The Assistant Secretary of the Army (Acquisition, Logistics, and Technology) (ASA(ALT)) approves class deviations to the FAR and DFARS. Individual deviations may be approved by the PARC. See AFARS 5101.4 for details on Army deviation process. For deviations requiring higher headquarters approval, or publication in the *Federal Register*, the KO shall submit the request to the PARC with a copy to the Contracting Policy Division mailbox at: HQ-CECT-PolicyMailbox@usace.army.mil for review, coordination and staffing.

SUBPART 1.6 – CAREER DEVELOPMENT, CONTRACTING AUTHORITY AND RESPONSIBILITIES

5101.601-100 General.

(5) **Principal Assistant Responsible for Contracting (PARC) – Responsibilities.**

The Command PARC, the Deputy Director of Contracting, HQ, is responsible for oversight of the PARC with regional areas of responsibility (AORs). The PARC is responsible for oversight and execution of the contracting functions within their assigned mission area. There are three PARCs assigned to geographical AORs in USACE: PARC – Atlanta, PARC – Winchester and PARC - Dallas.

1.602-1-100 Authority.

(a) *Administrative Contracting Officer (ACO) Appointment*. An ACO shall be appointed by the PARC with specified warrant authority, not greater than $500,000.

(1) The ACO is authorized to obligate the Government only to the limits delegated in individual contract appointment letters issued by the KO. 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; and
(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) at FAR 13.101.

(b) Refer to **UAI 1.604-100** for guidance related to the KO review of ACO files and input into ACO performance objectives.

1.602-2-100 Responsibilities.

(a) Each contract action with a total estimated **absolute value** expected to exceed $500,000 shall be reviewed by Counsel for legal sufficiency (as noted at AFARS 5101.602-2(c)(i)-(iv)) prior to issuance. Each contract file shall contain written documentation indicating the date each contract action was reviewed and the identity of the Counsel who performed the review. The KO shall document the disposition of any written legal comments prior to issuance of the solicitation, contract award, and/or modification. In addition the KO may request legal sufficiency review for actions at any dollar value and may request advice from Office of Counsel.

(b) Regardless of dollar value 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) D&Fs;
(10) Individual surety bond request;
(11) J&As (includes J&As for FAR 16.5 – Exceptions to Fair Opportunity);
(12) Non-responsiveness determination;
(13) Novation agreements;
(14) Ratification and Non-Ratifiable contract implied-in-fact quantum meriut actions,
(15) KO Response to Requests for Letters of Recommendation for Contractors;
(16) Rejection of all bids,
(17) Reassignment of Claims,
(18) Substitution of sureties;
(19) Tax/duty issues
(20) Terminations;
(21) Unacknowledged amendments

(c) Differences between the KO and legal counsel as to legal sufficiency that cannot be satisfactorily resolved within the District/Center/Division shall be referred to the PARC and PARC Counsel for resolution through the proper channels.

1.602-2-90-100 Appointment of Ordering Officers.
(a) The KO is the appointing authority; however, the DCC/CCC 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 COR, as identified at PIL 2012-06-R1.

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

(1) 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

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

(c) All ordering officer appointments shall be in compliance with AFARS 5101.602-2-90. The exception is for job order contract (JOC) ordering officer appointments which shall be made in compliance with AFARS 5117.9006.

1.604-100 Appointment of Contracting Officer's Representative (COR).
(a) *General*. Each District/Center 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 DFARS 201.602-2).

(b) *Nomination*. In order to be considered by the Contracting Officer (KO) for designation as a COR, the COR must submit their nomination in the Virtual Contracting Enterprise (VCE) Contracting Officer's Representative Module (CORM) and the COR's supervisor must approve the nomination. IAW OPORD 2012-53, all COR nominations, appointments, and records shall be processed, tracked and managed within CORM. The COR nomination provides the KO with the necessary information to determine if the nominee is qualified to serve as COR for a specific contract and requires the nominee's supervisor to support the nomination. The nomination shall clearly demonstrate that the nominee meets all training and experience requirements articulated in the PIL 2012-06-R1. (Clarification on the OPORD 2012-41 Annex A (1) a "face-to-face" training between PCO and COR is provided in HQ USACE DOC Policy Alert 13-0003). The KO will accept, return for additional information, or reject the nomination through CORM. If the nomination is rejected, the KO will note the reason(s) for the rejection and return it to the COR. IAW DASA(P) PARC Policy Alert 14-03, Army Class Deviation to the Use of the DoD COR Tool (CORT), Army activities shall continue to utilize the VCE CORM to nominate, designate, and review CORs.

(c) *Architect-Engineering (A-E) Services, Other Services, and Construction.* KO shall designate a properly trained COR in writing before awarding any service or construction contract IAW DFARS 201.602-2 and PGI 201.602-2(i)(A), and if one or more of the below conditions apply.

(1) For A-E services contract with a total dollar value (including options) greater than $25K;

(2) When the contract or action is for complex services that have quality or performance standards for which contractual conformance must be established progressively through precise measurements, tests, and controls applied during purchasing, performance, and functional operation either as an individual service or in conjunction with other services;

(3) If the contract or action is for a critical service in which the failure of the service could injure personnel or jeopardize a vital agency mission and the KO determines it appropriate.

(4) Prior contractor past performance indicates a need for Government oversight; or,

(5) The KO otherwise determines a COR is necessary.

(d) *Construction CORs:* The CORs designated on construction contracts will generally be a person other than the ACO. The COR designation letter will be created within VCE CORM. If the KO determines it is practicable for the ACO to perform the duties performed by a COR in addition to their ACO duties, then the PCO must approve a COR designation within VCE CORM, and include an ACO designation letter notating that COR assignment conducted within VCE CORM within the body of the letter, in which case do not designate the ACO, by title, as a COR.

(e) *Duties*. The CORs should be the subject matter expert or specialist in specific areas related to contract performance (e.g., A-E, construction, environmental, information technology, operations, etc). They advise the KO (and/or the ACO on construction contracts) regarding the progress towards successful achievement of the contract requirements and assist in the technical monitoring and coordination with the KO and/or ACO for contract administration (the independent government estimate (IGE) can assist in defining thresholds/tasks). The COR designation memorandum 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 designation memorandum.

(f) *Request for Proposal (RFP) Letters*.

(1) The PCO is the sole authority for signing RFP letters for new requirements, task or delivery orders and contract modifications for supply or service contracts.

(2) The ACO may sign RFP letters for construction modifications within their warranted authority. For construction actions above the warrant threshold of the ACO, the PCO will be the sole authority to sign RFP letters unless the ACO has been specifically authorized in their delegation letter from the KO to issue RFP letters for modifications over their warrant authority. Copies of RFP letters for modifications over the ACO's authority shall be provided to the KO immediately upon issuance.

(3) CORs are not authorized to sign RFP letters under any circumstance; however, CORs may prepare RFP letters for signature and issuance by a USACE KO.

(g) *Quality Assurance*. Quality assurance shall be performed on all contracts per FAR Subpart 46.102 and 37.604.

(1) *Other Services (excluding A-E):* A quality assurance surveillance plan (QASP) is necessary to ensure the Government receives and pays for an acceptable level of quality services required by the contract. A QASP shall be prepared in conjunction with the performance work statement (PWS) and documented in writing whenever a COR is appointed, unless specifically exempted in writing by the KO. KO shall not exempt surveillance plan preparation and execution without a justifiable reason. During contract administration, the Government QASP shall ensure systematic quality assurance methods are used. The level of surveillance described in the plan should be commensurate with the dollar value, risk, complexity and criticality of the acquisition. The Defense Acquisition University (DAU) Continuous Learning Module, (CLC 013) Performance-Based Services Acquisition, provides instructions on developing and, writing the performance work statement and QASP. Additional related resource materials are at the Performance-Based Acquisition Community of Practice, and Acquisition Center of Excellence Community of Practice.

(2) *Construction:* Quality assurance shall be performed by the Government, with the contractor conducting quality control as specified in the contract specifications (refer to ER 1180-1-6 Construction Quality Management).

(3) *A-E Services:* Quality assurance shall be performed by the Government IAW Engineer Pamphlet (EP) 715-1-7, Architect-Engineer Contracting and IAW Engineering Regulation (ER) 1110-1-12.

(h) *COR and ACO Performance Objectives.* HQ USACE OPORD 2012-54 requires CORs to include a standard performance objective in their Total Army Performance Evaluation System (TAPES) that addresses contract quality and compliance. Additionally, the HQ USACE OPORD 2012-41 requires the KO to provide input on the COR's performance annually to the COR's supervisor. (Refer to: Engineering Construction Bulletin (ECB), 2013-10; the HQ USACE DOC Memorandum, Subject: Standardized TAPES Performance Objectives for Administrative Contracting Officers and Contracting Officers Representatives, dated 20 September 2012 for TAPES objective referenced in the ECB; and, the recommended ACO and COR Performance Evaluation Checklist details (also referenced in the ECB). Per

the HQ USACE DOC Memorandum, the KO shall document and provide annual input on the COR's performance to the COR's Supervisor.

(i) *PCO Annual COR, Ordering Officer and ACO File Review*. The KO shall conduct an annual review of the COR, Ordering Officer, and ACO file(s) (refer to OPORD 2012-41). At a minimum, the PCO should conduct review of COR(s) and Ordering Officer(s) annually, in the anniversary month of the COR's/Ordering Officer's designation. For contracts with a period of performance less than one year, the review shall take place upon the completion of the contract. At a minimum, the PCO should conduct review of ACO(s) prior year's files annually within the first quarter of the new fiscal year (FY). The reviews must be documented on either the Annual COR (or Ordering Officer/ACO, as applicable) File Inspection Checklist, specified at the attachments to ECB 2013-10 (refer to recommended ACO and COR Performance Evaluation Checklists), or the CORM COR Audit Form . The File Inspection Checklist for CORs shall be prepared and submitted in CORM. The ACO File Inspection Checklist shall be filed in the Paperless Contract File (PCF). (Ordering Officer review shall be conducted using the ACO File Inspection Checklist).

(j) *COR Monthly Reports*. CORs are required to submit a Monthly Status Report in CORM by the 15th of every month. This report covers the actions for the preceding one month period. This is true even for the month of designation. For instance, if a COR is designated on 30 April, CORM expects a Monthly Status Report for April to be filed by 15 May. CORM monitors missing reports on a weekly basis. It is the responsibility of the COR's supervisor, and KO to ensure CORs are filing timely and complete Monthly Status Reports in CORM. Once a COR files a Monthly Status Report the KO will receive a system generated e-mail informing them that the Monthly Status Report was submitted. It is the responsibility of the KO to review and either approve or reject the report. Note: Either the KO or the contract specialist identified on the COR designation in CORM can perform the approval process. Any systemic issues in the quality or timeliness of the COR Monthly Status Reports should be documented and provided as part of the PCO's input on the COR's performance to the COR's supervisor. (See the ECB 2013-10 ACO and COR Requirement Update for particular guidance from the USACE HQ Engineering & Construction Directorate).

(1) *Construction CORs.* CORs on construction contracts shall use the RMS Contract Status Sheet for the Monthly Status Report. CORs will run this report in RMS, follow the appropriate steps to add the report to the Contract File Section in RMS, and then upload an Adobe PDF copy of the report to the Monthly Status Report sub-section in the "COR'S ONLINE FILE" in CORM.

(2) *Non-Construction CORs.* CORs on non-construction contracts shall either use the CORM system generated online Monthly Status Report form or upload a Custom Monthly Status Report form. The KO and the COR will determine whether the system form or a custom form would be more appropriate given the nature of the contract being administered.

(k) *Contingency COR.* HQ USACE DOC Policy Alert 13-0006 provides notice of availability of the DoD Contingency COR Handbook (may also refer to UAI Section 25).

SUBPART 5101.690 – PROCUREMENT MANAGEMENT ASSISTANCE

5101.690-100 Procurement Management Reviews

Refer to AFARS Appendix CC for the Army Procurement Management Review (PMR) Program. DASA(P) PARC Policy Alert 14-29 provides notice of FY14 Army PMR Toolkits. The HQ USACE DOC, Strategic Operations Division (CECT-SO) is responsible for all USACE specific procurement management reviews and the USACE PMR Program (at OPORD 2012-41).

5101.690-1-100 Management Controls.

Refer to AFARS Appendix BB for the Army Checklists for support in District/Center management reviews. The CECT-SO is the office of responsibility for the DOC Management Internal Controls Program (MICP).

SUBPART 1.90 – NON-APPROPRIATED FUNDS (NAF)

5101.9002-100 Contracting Authority.

The KO is advised to comply with DoDI 4105.71, Page 3, Paragraph 6.1.3, which states "personnel with appropriated fund procurement authority are not required to have a separate certificate of appointment for NAF." Reference AR 215-4 for comprehensive acquisition policy for NAF contracts.

PART 2 – DEFINITION OF WORDS AND TERMS

SUBPART 2.1 — DEFINITIONS

2.101-100 Definitions.

"Administrative Contracting Officer (ACO)" means a USACE individual warranted by a PARC and delegated authority, in writing, by a PCO with limited authorities to administer construction contracts, task orders, and/or modifications.

"*CECT-ASD*" refers to the HQ DOC Acquisition Support Division.

"*CECT-SO*" refers to the HQ DOC Strategic Operations Division.

"*Chief of the Contracting Office*" means the District Contracting Chief (DCC) or a Center Contracting Chief (CCC). This individual serves as the DOC at the District or Center (not to be confused with HQ DOC).

"Contracting Officer (KO)" within the UAI is a general term used to refer to actions required by 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.

"Directorate of *Contracting (DOC)"* is the USACE HQ Directorate of Contracting, led by the Director of Contracting, who is responsible for the oversight and management of all contract activities initiated and administered in support of the USACE mission.

"DOC Document Review and Approval Matrix" provides thresholds, approval authorities, and applicable regulatory/policy references for the review/approval of acquisition documents (**UAI Appendix 2-1**).

"Head of the Contracting Activity (HCA)" is the Chief of Engineers, the USACE Commanding General.

"Independent Government Estimate (IGE)" (aka Independent Government Cost Estimate (IGCE)) is the formal, approved estimate prepared to support a contract/task order award or modification. (Refer to the PIL 2012-03-R1 Requirements for Independent Estimates for further guidance).

"*Interim Policy Directive (IPD)*" means an interim change to this instruction, published by the DOC as an IPD, and effective until formal incorporation into the UAI (at least semi-annually), rescission, cancellation or expiration.

"Policy Memorandum" means an HQ DOC memorandum written to be an enduring document related to policy concerns that are necessary to specifically address as a result of an audit. These memorandums are enduring until specifically rescinded or cancelled.

"*Procurement Instruction Letter (PIL*)" means acquisition companion operating procedure resource issued by the USACE HQ DOC that will direct compliance with mandatory or non-mandatory internal USACE acquisition processes. Non-mandatory procedures are used at the discretion of the PCO.

"*Principal Assistant Responsible for Contracting (PARC)*" means the Deputy Director of Contracting (DDOC) appointed as USACE Command PARC, and PARCs with regional areas of responsibility, PARC – Atlanta, PARC – Dallas, and PARC – Winchester.

"*Regional Contracting Chief (RCC*)" means the principal contracting advisor to Division Commanders/Center Directors, as well as, the principal advisor providing directed acquisition on-the-job training for the Districts/Centers within their Division area of responsibility (AOR). The RCC is responsible for overseeing the District and Center contracting and leveraging contract support regionally.

PART 3 – IMPROPER BUSINESS PRACTICES AND PERSONAL CONFLICTS OF INTEREST

SUBPART 3.1 – SAFEGUARDS

3.104-2-100 General.

(a) All USACE employees shall be familiar with the Standards of Ethical Conduct (5 CFR 2365) and the Joint Ethics Regulation (DoD 5500.7-R). Briefly stated, "a Government employee has a responsibility to uphold the public's trust in the United States Government. Unlike private industry, a Government employee must ensure that their actions are "fair" to all parties of the process. Understanding the public perceptions of "fairness" is the guiding principle on how a Government employee deals with contractors."

(b) All USACE acquisition employees shall complete DAU Course, CLM 003, Overview of Acquisition Ethics, a computer-based training module before or within the first 30 days of arrival. Access can be obtained through the DAU website: www.dau.mil. USACE acquisition personnel include:

(1) Civilian and military professionals in the Army Acquisition, Logistics and Technology Workforce and all Army Acquisition Corps members,
(2) All USACE warranted ACOs, CORs and Contracting Officer Technical Representatives (COTRs)
(3) All Government Purchase Card holders and Billing Officials,
(4) All Ordering Officers,
(5) Any significant acquisition-related position identified by a supervisor, manager or commander.

(c) Report prohibited acts immediately through the chain of command to the PARC and the local Ethics Advisor, Procurement Fraud Advisor, Commander, or the Engineer Inspector General (EIG). Use the Commander's Critical Information Requirements (CCIR) report form and send report via e-mail, if available. Include the specifics detailed in AFARS 5103.203. The EIG contact information is located at: http://www.usace.army.mil/EngineerInspectorGeneral.aspx. DASA(P) PARC Policy Alert 14-35, Notification of Critical Information Requirements with Contracting Issues, provides additional guidance related to completing the CCIR for USACE.

SUBPART 3.2 – CONTRACTOR GRATUITIES TO GOVERNMENT PERSONNEL

3.203-100 Reporting Suspected Violations of the Gratuities Clause.

All USACE personnel shall report any suspected violations of the Gratuities Clause to the KO, Ethics Counselor, Procurement Fraud Advisor, or Commander. IAW AFARS 5103.203(a)(i), if evaluation supports applicability of the Gratuities Clause, the matter shall be sent directly to the HCA by the Commander and reported IAW DASA(P) PARC Policy Alert 13-57 to the Army Suspension and Debarment Official (SDO).

PART 4 – ADMINISTRATIVE MATTERS

SUBPART 4.4 – SAFEGUARDING CLASSIFIED INFORMATION WITHIN INDUSTRY

4.402-100 – Responsibilities of KO.

In addition to the DFARS and AFARS 5104.403 regulations, refer to DASA(P) PARC Policy Alert 13-74 for guidance related to references and training available for actions that would use the DD Form 254.

SUBPART 4.8 — GOVERNMENT CONTRACT FILES

4.802-100 Contract Files.

(a) Maintenance of the official contract file is the overall responsibility of the PCO. The PCO shall maintain all contract file documentation using the VCE PCF IAW OPORD 2012-66 (Available at ENGLink under Documents; OPORDS) and any FRAGOS issued to date. The PCO shall ensure that during the contract administration of construction contracts, the COR and/or ACO maintain contract documents electronically IAW OPORD 2012-66 (Available at ENGLink under Documents; OPORDS). (Note: Maintenance of the contract file is now electronic, creating a requirement to utilize the functionality within PCF to "finalize." This supports effective virtual procurement reviews). DASA(P) PARC Policy Alert 13-79, Revised Standard Contract File Index, requires that contracting activities shall use the revised Contract File Index for new contract files effective 1 October 2013. (PCF User Note: Contracting activities that use PCF shall comply with this requirement by incorporating the above changes into their PCF index).

(b) At the time of contract closeout, all contractual records shall be retired IAW standards found at FAR 4.804 and DFARS 204.8. DASA(P) PARC Policy Alert 13-39, 'De-obligation of Funds Less than $1,000 on Physically Complete Contracts,' indicates that it is a best practice for the KO to de-obligate contracts that have been physically complete for 12 months or more and have less than $1,000 funds remaining. Written consent from the funds holder and the KO is required before de-obligating funds; however a formal contract modification is not required, unless otherwise determined necessary by the KO. Refer to DoD FMR 7000.14R, Vol. 3, Chapter 8 for additional information.

(c) *Contract File Documentation*. The official contract file shall be electronic in PCF. All files shall be in PCF except those files or documents identified in the PCF OPORD 2012-66. In these instances,, the contract file shall include cross-reference to document location (e.g., payrolls, submittals, labor interviews, etc.) maintained by the ACO and/or COR at an external site. All COR documentation should be in CORMS and interfaced directly to PCF; however, if the PCF interface from CORMS is not bringing in the COR documentation to PCF in its entirety, request assistance from the CECT-SO. The COR and/or ACO documentation (e.g., qualifications, training, designation letters, etc.), if centrally maintained within the Contracting office, shall be cross-referenced.

(d) *Distribution of Contract Materials that are Sensitive*.

(1) The following guidance is provided to the KO in the course of military operations, including, but not limited to, contingency operations as defined in 10 U.S.C. 101(a)(13) or humanitarian or peacekeeping operations as defined in 10 U.S.C. 2302(7) to assist in determining whether a solicitation/RFP contains information that requires additional controls to monitor access and

distribution (e.g., technical data, specifications, maps, building designs, schedules, etc). Desk reference (January 2012), "Integrating Antiterrorism (AT) and Operations Security (OPSEC) into the Contract Support Process" to ATTP 4-10 (FM 3-100.21), "Operational Contract Support Tactics, Techniques, and Procedures (June 2011)" identifies appropriate actions for OPSEC during the contracting process during both CONUS and OCONUS situations. Applicability is discussed for all stakeholders during the entire acquisition process.

(2) Contracting in a contingency environment poses additional risks and complications that may warrant alternative measures for the distribution and handling of contracting information determined to be sensitive but not necessarily classified. In particular, there have been several incidents where questions were raised about whether appropriate security measures were exercised before drawings were distributed on unsecure websites.

(3) Determination of Sensitivity. According to AR 530-1, OPSEC, the definition of sensitive information (formerly known as sensitive but unclassified (SBU) information) is information requiring special protection from disclosure that, if disclosed, could cause compromise or threat to our national security, an Army organization, activity, family member, Department of the Army (DA) civilian, or DoD contractor.

(4) The User Agency (UA) or the Requiring Agency (RA) should ultimately decide whether the contract or certain contract information is sensitive. In the case of projects located on base, the Commander, the Deputy Commander, the OPSEC officer and the Program Manager for the project should determine what, if any, contract information needs to be treated as sensitive. The determination of sensitivity needs also to be weighed against the following factors which may be impacted:

(i) Time - delays in the execution of the project
(ii) Execution - impact on ability to execute project
(iii) Cost - additional cost of treating information as sensitive
(iv) Competition - limiting the number of available contractors, including preclusion of local contractors.

(5) If contract information is determined to be sensitive, the KO shall decide upon the most practicable and cost effective alternative for managing the information. Alternatives to be considered include, but are not limited to, the following:

(i) Issue sensitive technical information via CD/DVD to the contractor(s) with a restriction that specified information for subcontracting purposes will be published on a secure site that requires password protection.
(ii) Establishes an official secured file transfer protocol site with password protection for dissemination of sensitive technical information that can only be utilized by authorized contractors and subcontractors.
(iii) Per OPORD 2011-55, "USACE Disablement of Internal External File Transfer Protocol (FTP)" (Available at ENGLink under Documents; OPORDS), all FTP server files that appeared to be For Official Use Only (FOUO) and/or sensitive information which were freely available to the public are no longer public information. USACE reconfigured all USACE FTP servers to disable internal and external FTP in order to ensure sensitive information is protected as is our network. For

additional information concerning transfer of sensitive material over the USACE network refer to USACE OPORD 2011-55 (Available at ENGLink under Documents; OPORDS).
(iv) When releasing sensitive information via the alternatives listed above, or by other means that the KO deems appropriate, prudent actions shall be taken to ensure the individual receiving the information is a legitimate business concern. This practice should also be addressed to the prime contractor when seeking subcontractors.

(6) When RFPs and amendments are issued to contractors with sensitive information included, the following special language should be added in the RFP as Special Conditions, Special Contract Requirements, 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."*

(7) Prime contractors shall not distribute pertinent information, i.e., plans and specifications, to any individuals or subcontractors, over an electronic system, without security measures in place to ensure information is not shared with other than those parties on a need-to-know basis. For additional situational awareness on the release of information to the public, refer to: CEMP/CECC Memo, 18 Nov 08, subject: Release of Information to the Public. For additional situational awareness on essential elements of friendly information, refer to: USACE OPORD 2013-33, USACE Operations Security Program (Available at ENGLink under Documents; OPORDS).

SUBPART 4.13 – PERSONAL IDENTITY VERIFICATION

4.1302 Acquisition of Approved Products and Services for Personal Identity Verification

DASA(P) PARC Policy 13-58, Physical Access Control Equipment Compliance, provides notice of additional guidance relating to contracts for physical access control systems (PACS) and physical access control equipment.

SUBPART 204.71 – UNIFORM CONTRACT LINE ITEM NUMBERING SYSTEM

204.7103-100 – Scope.

DASA(P) PARC Policy Alert 12-27 provides notice of DoD emphasis on the importance of contract line item integrity and selecting the appropriate unit of measure on each contract action (supplies and services to include construction), rather than selecting "lump sum," "dollars," or "lot" (other choices for construction, for example could be "Job"* or "Project." A list of available units of measure can be found at http://www.acq.osd.mil/dpap/pdi/eb/procurement_data_standard.html (on the right hand of the screen and titled, "Line Item Unit of Measure List)." (Refer to DFARS PGI 204.7103)

*Note: It is understood that presently PD^2 does not have the automated selection choice of "Job" for Unit of Measure; however, the local District System Administrator (SA) for PD^2 can insert the "Unit of Measure" through the Superuser/SA function for "Job." The Superuser/SA should follow the DPAP guidance stated in the DPAP Training Slides presented at the 2012 DoD eBusiness Procurement Conference. CEFMS was updated, effective 24 June 2014, to exclude use of lump sum, and include ability to use "job" or "project."

PART 5 – PUBLICIZING CONTRACT ACTIONS

SUBPART 5.2 – SYNOPSES OF PROPOSED CONTRACT ACTIONS

5.203-100 Publicizing and Response Time.

For a proposed contract action the Government intends to solicit and negotiate with only one source under the authority of FAR 6.302, the District/Center shall submit the J&A to the Special Competition Advocate (SCA) prior to the end of the 15-day notice period and a review of any capabilities statements received. Any exceptions to this guidance must be approved by the SCA.

SUBPART 5.3 – SYNOPSES OF CONTRACT AWARDS

5.303 Announcement of Contract Awards.

DASA(P) PARC Policy Alert 13-77 (reissued December 2013), Proper Announcement of Contract Awards, includes the Army requirements for electronic award notification and the Army Points of Contact for all inquiries related to announcements.

SUBPART 5.4 – RELEASE OF INFORMATION

5.403-100 Requests from Members of Congress.

Processing of congressional inquiries will follow these procedures:

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

(b) Inquiries received by the Headquarters (HQs) Command Staff Group, or by the HQs Future Directions Branch (responsible for congressional liaison activities), directly from the Member or Member's staff, will be processed for action by CECW-IF. 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 CECW-IF, and take no further action unless tasked with the formal response.

(c) Congressional inquiries with contracting issues or aspects may be routed to the PARC for coordination of a draft response with the District/Center.

(d) 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.

(e) When a direct response is required by the PARC, the following procedures are applicable:

(1) The congressional inquiry package will be sent by the PARC office via email to the responsible DCC/CCC) (with a courtesy copy to the RCC), for preparation of the "draft" response for PARC review, coordination and signature. The email shall include the suspense date and tasking number. The "draft" response shall be fully coordinated at the District/Center level to include review and approval by the local Commander, or designee, and the Local Congressional Liaison. Generally, a

"Staff Action Summary Sheet" is the preferred method to route and track staffing actions per guidance from the Chief of Staff.

(2) If the established suspense date cannot be met, an interim reply will be drafted for signature by the PARC. It will contain as much information as available at the time, inform the Member of Congress the reason for the delay (if appropriate), and set a specific time period for a final response. The final response must meet the deadline. The PARC will coordinate with CECW-IF prior to signing; and a copy of the signed interim will be provided to CECT-SO.

(3) Once the "draft" response is received by the PARC office, the response, along with the congressional inquiry (requires a minimum of 2 days for review), will be coordinated with CECW-IF, and then finalized for PARC signature.

(4) After the PARC has signed the response, the original will be sent to the Member as indicated on the Staff Action Control Sheet. The response, along with the congressional inquiry package, will be sent via email to the DOC Congressional Liaison for forwarding to HQ Congressional Liaison and closeout of the suspense. The RCC and DCC/CCC will be included as a courtesy on this email. The DCC/CCC will ensure that the response is provided to the District Commander and Local Congressional Liaison for information.

(5) In some cases, the same congressional inquiry may be received at various levels of the organization from a single or multiple Member(s) or a similar/identical inquiry received at a later date. It is important that coordination occur so that the appropriate level for responding is identified and/or a consistent response is provided to the Member(s).

(f) 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.

SUBPART 5.5 — PAID ADVERTISEMENTS

5.502-100 Authority.

The HCA delegates, without power of redelegation, the authority to approve paid advertisements in newspapers to: the Deputy Chief of Engineers, the PARC, and Commanders.

PART 6 – COMPETITION REQUIREMENTS

SUBPART 6.3 — OTHER THAN FULL AND OPEN COMPETITION

6.301-100 Policy.

(a) Refer to UAI 5.203-100 for requirements to provide notice of intent to make sole source award.

(b) Refer to UAI 215.406-3-100 for requirements relating to sole source data input for DoD Contract Business Analysis Repository (CBAR).

6.302-2-100 Unusual and Compelling Urgency – SCA Approval to Proceed with an After-the-Fact J&A.

(c)(1) A J&A for other than full and open competition is required to be approved *prior* to contract award, except in the specific circumstances stated at FAR 6.302-2(c)(1) and DFARS PGI 206.302-2 for unusual and compelling urgency. When contracting under the authority of 10 U.S.C. 2304(c)(2) for a proposed contract over $650K (for J&A less than or valued at $650K see FAR 6.304(a)(1) for approval authority), where an unusual and compelling urgency precludes full and open competition, and delay in the award of a contract would result in serious injury, financial or other, to the Government (see permissible conditions stated at DFARS PGI 206.302-2) would occur, verbal approval by the SCA must be obtained using the following upward reporting procedures:

(1) Prior to taking any action on an acquisition under the 10 U.S.C. 2304(c)(2) authority, the DCC/CCC or the PCO must obtain verbal approval of the SCA in order to proceed. The SCA shall maintain record of verbal approvals and may be required to provide report of SCA verbal approvals to the USACE Command SCA. The requestor, when contacting the SCA, 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;

(2) Within one working day after verbal approval to proceed, the DCC/CCC shall submit a completed After-the-Fact J&A Upward Reporting Form (at **UAI Appendix 6-1**) to the SCA (and when applicable the SCA will provide the form to the USACE Command SCA).

6.302-4-100 International Agreement

(c) *Limitations.*

(1) Authority. The authority 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 is delegated by the HCA to the DCC/CCC, without power to delegate further.

(2) PCO Action. This document shall be prepared as a 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.

(3) 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 IAW the requirements of the 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.

(4) USACE Reporting Requirement. The DCC/CCC shall post information on approved D&Fs electronically to the DOC Acquisition Support Sharepoint site within five (5) days of approval, with an email notice to the RCC and PARC of action accomplished. The PARC shall include a list of approved D&Fs in their submittal for the HQ DOC monthly report. This reporting will provide the USACE Command PARC and HQ DOC visibility of the magnitude of the USACE FMS program.

6.303-2-100 Content.

Justifications which require approval by the HCA or SPE must be prepared, coordinated, and approved in accordance AFARS 5106.303-2-90, using the formats for the justification review document (JRD) and J&A located at AFARS 5153.9004 and AFARS 5153.9005.

6.304-100 Approval of the Justification.

(a) Approval authority for justifications based on dollar value are designated in UAI Appendix 2-1, DOC Document Review and Approval Matrix are illustrated on table below. The table also depicts *typical* roles and responsibilities associated with the preparation, coordination, and review of justifications.

J&A Threshold	Prepared By	Coordinated By	Approved By
≤$650K	Contract Specialist/ PCO Technical Official Requirements Official	Small Business Legal Deputy District Commander or Deputy Center Director	Contracting Officer
>$650K≤$12.5M	PCO Technical Official Requirements Official	Small Business Legal District Commander or Center Director	SCA
>$12.5M≤$85.5M	PCO Technical Official Requirements Official	Small Business Legal Division Commander or Center Director SCA	HCA or Delegee
>$85.5M	PCO Technical Official Requirements Official	Small Business Legal Program Manager (HQ or Division) SCA HCA or Delegee	SPE

(b) A copy of all justifications less than or equal to $650K shall be provided to the SCA within 15 days of Contracting Officer approval.

SUBPART 6.4 — SEALED BIDDING AND COMPETITIVE PROPOSALS

6.401-100 Sealed Bidding and Competitive Proposals.

A Justification of Procurement Method (format at **UAI Appendix 6-2**) shall be prepared for all competitively negotiated acquisitions, regardless of the dollar value, addressing each of the four criteria outlined in FAR 6.401(a). Exceptions to this requirement are Brooks Act A-E contracts; and FAR Part 13 procurements when the PCO does not incorporate FAR Part 15 evaluation procedures (FAR 13.106-2(b)), or actions conducted under FAR Part 8 (although certain documentation IAW FAR Part 8.404 and particularly 8.405-4(g) is required when ordering from the FSS). (USACE DOC Policy FAQ#44 and FAQ#48 apply to this topic).

SUBPART 6.5 — COMPETITION ADVOCATES

6.501-100 Requirement.

PARC Policy Alert 14-24 revised AFARS 5106.501 to change the HCA's authority to appoint SCAs to a delegable HCA authority, to a level no lower than a PARC. Consistent with this policy change and the existing delegation of HCA delegable authorities; the DOC is delegated authority to appoint SCAs and alternate SCAs. Current SCA appointments may be found at Contracting CoP, Appointments and Delegations.

PART 7 – ACQUISITION PLANNING

SUBPART 7.1 — ACQUISITION PLANS

7.102-100 Policy.

(a) Acquisition planning and market research shall be performed for all acquisitions. In general, there are two levels of acquisition planning:

(1) The annual overall acquisition strategy for the District/Center contracting activity's total anticipated workload; and

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

(b) *Formal Acquisitions Plans.*

(1) A formal acquisition plan shall be prepared IAW DFARS 207.103 for:

(iv) Acquisitions for A-E services, construction, other services or non-commercial item supplies, when the total cost for the contract(s) is/are estimated at $50M or more for all years, or at $25M or more for any FY (for example: requirements that will be contracted for via multiple award contracts, multiple contracts for a single program, or multiple requirements to be awarded under a single contract);

(v) Acquisitions for development, as defined in FAR 35.001, when the total cost of all contracts for the acquisition program is estimated at $10M or more;

(vi) Nationwide projects or projects that exceed a Division's geographic boundaries at any threshold, except as excluded under paragraph (3);

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

(viii) Any acquisition determined by the PARC, to be of such significance so as to impact a major USACE initiative, various Small Business Programs, raise serious or unique environmental matters, implement a deviation from the FAR, concerns significant Congressional or political interest beyond normal constituent service, and/or as otherwise requested by the PARC.

(2) The Project Management Plan (PMP) required in ER 5-1-11, USACE Business Process, paragraph 7.b. (2), shall include the formal acquisition plan, if applicable, as an attachment.

(3) Formal acquisition plans are not required for the following:

(i) Single/discrete construction projects unless requested by the PARC; and

(ii) For requirements below the thresholds in DFARS 207.103, extending beyond a Division's geographic boundaries to align with supported customers' specific needs, IAW a signed Memorandum of Agreement (MOA), Memorandum of Understanding (MOU), or designation as the Center of Expertise or "one door to the Corps." A copy of the signed MOA/MOU/

designation and a copy of the PMP, which complies with paragraph 5 b (5) of ER 5-1-10, Corps-Wide Area of Work Responsibility, may serve as the informal acquisition plan for these actions.

(c) *Informal Acquisition Plans.* The acquisition strategy portion of the PMP will serve as the informal acquisition plan for requirements with a total value below the thresholds identified in paragraph (b). The PMP shall be made a part of the official contract file. For further guidance refer to the Project Management Business Process Manual, PROC 2000, PMP Development, and PROC 2050, Project Delivery Acquisition Strategy.

(d) *Acquisition Plan Assistance.* At present, for sample and templates of formal acquisition plans, see FAR 7.105, DFARS 207.105, AFARS 5107.1, and the PARC June 2012 Acquisition Plan Preparation Guide and Template. The template provides a format and guidelines for the contents of formal acquisition plans – the PCO shall ensure that all aspects required within the regulations are included in any formal acquisition plan.

7.102-101 Policy - Overall Acquisition Strategies.

(a) For USACE, prior to the beginning of each FY, the Program and Project Management Division (PPMD), with the assistance of Contracting and the Small Business Program Office, at each District or Center, may develop a written overall acquisition strategy (OAS) covering all anticipated contracts over $1M. 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.

(b) 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:

(i) Type of work
(ii) Anticipated work load
(iii) Impact on competition
(iv) Most effective contract type (including, for example, fixed-price, cost-reimbursement, incentive, and indefinite delivery contracts (IDCs)),
(v) Overall mix or contract sizes, and
(vi) Impact on small business and other business participation (see (c) below) and socio-economic concerns.

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

207.170-100 Consolidation of Contract Requirements.

New construction requirements are not categorically exempt from the definition of "consolidation" under the applicable statute, 15 U.S.C. 657q(a)(2), and a new construction requirement that meets the definition of consolidation would be subject to the analysis, documentation, and approval for

consolidation IAW DFARS 207.170. (Refer to DASA(P) PARC Policy Alert 14-12, and the accompanying DPAP Class Deviation for regulation on the minimum contract consolidation threshold of $2M).

SUBPART 7.91 – INTEGRATING ANTITERRORISM AND OPERATIONS SECURITY

7.9100–100 Scope.

This subpart prescribes policy for integrating antiterrorism (AT) and operations security (OPSEC) considerations into USACE contracts IAW ALARACT 015/2012 "Use of AT/OPSEC in Contracting Cover Sheet for integrating AT/OPSEC" and DASA(P) PARC Policy Alert # 12-22 "Integrating AT and OPSEC Contract Support Desk Reference."

7.9101–100 Policy.

A signed AT/OPSEC cover sheet is required to be included in all Army requirements packages, *except for supply contracts under the SAT, field ordering officer actions, and Government purchase card purchases.*

7.9102–100 Procedures.

USACE functional representatives covering operations security and antiterrorism will comply with OPORD 2013-74, Integrating AT/OPSEC into the USACE Acquisition Process.

The KO shall not prepare or approve the AT/OPSEC Cover Sheet, regardless of the level of their AT/OPSEC certification. Preparation and submission of approved AT/OPSEC Cover Sheets are the responsibility of the USACE AT/OPSEC officers, Requiring Activities customers and PDT. Solicitations cannot be released until the AT/OPSEC Cover Sheet has been incorporated into the procurement package.

The KO is responsible to ensure:

(a) Requirements packages submitted after 15 November 2013 must include the signed AT/OPSEC Cover Sheet, unless an exception applies. A copy of the approved AT/OPSEC Cover Sheet is included in the contract file.

(b) Performance Work Statement (PWS), Statement of Work (SOW), Procurement Request (PR), QASPs, and solicitation evaluation criteria include recommended AT/OPSEC language, as identified on the AT/OPSEC Cover Sheet.

(c) Acquisition plans address AT considerations, as required by DFARS PGI 207.105(b)(20)(D).

(d) Incorporation, when prescribed, of the following solicitation provisions and contract clauses:

52.204-2	Security Requirements
252.225-7040	Contractor Personnel Authorized to Accompany U.S. Armed Forces Deployed Outside the United States (DEVIATION 2013-O0015)
252.225-7043	Antiterrorism/Force Protection Policy for Defense Contractors Outside the United States
252.225-7995	Contractor Personnel Performing in the United States Central Command Area of Responsibility (DEVIATION 2013 – O0015)
252.228-7003	Capture and Detention
252.237-7019	Training for Contractor Personnel Interacting with Detainees

252.239-7001 Information Assurance Contractor Training and Certification

(e) Compliance for Solicitations, Contracts, and Task/Delivery/Call Orders of requirements within:

DFARS PGI 225.74	Defense Contractors Outside the United States.
DFARS PGI 225.7401	Contracts Requiring Performance or Delivery in a Foreign Country
DFARS PGI 225.7402	Contractor Personnel Authorized to Accompany U.S. Armed Forces Deployed Outside the United States

PART 8 – REQUIRED SOURCES OF SUPPLIES AND SERVICES

SUBPART 8.4 – FEDERAL SUPPLY SCHEDULES

8.405-5-100 Small Business.

FAR Part 8.405-5 permits, at PCO discretion, to set-asides orders for Small Business on Federal Supply schedules and Blanket Purchase Agreements utilizing Federal Supply Schedules. Small business set-asides are encouraged when using Federal Supply Schedules.

SUBPART 8.7 – ACQUISITION FROM NONPROFIT AGENCIES EMPLOYING PEOPLE WHO ARE BLIND OR SEVERLY DISABLED

8.700-100 Scope of Subpart.

Note: DASA(P) PARC Policy Alerts 12-47 and 14-59 encourage increasing contracting opportunities with the AbilityOne Program.

8.705-100 Procedures – Mandatory Use of AbilityOne Program Contract Closeout Services.

(a) The placement of contract closeout services on the AbilityOne Program Procurement List requires all DoD components to contact the AbilityOne Program when a determination is made to outsource contract closeout work. The AbilityOne Program will assess the work required, and, if the capacity to provide the contract closeout services is not available to meet the customer's needs then the Committee for Purchase from People Who Are Blind or Severely Disabled will issue a Purchase Exception to the requesting organization.

(b) The AbilityOne closeout support services contract provides non-inherently governmental contract closeout support and creates career oriented, upwardly mobile employment opportunities for people who are blind or have other significant disabilities, to include Wounded Warriors and service disabled veterans. The contract also fulfills a critical need by reducing the contract closeout administrative workload, thus allowing the contracting workforce to focus resources on critical mission support to the Warfighter. Information on the AbilityOne Contract Closeout Services may be obtained by contacting the National Industries for the Blind (NIB) Services Department.

SUBPART 8.74 – ENTERPRISE SOFTWARE AGREEMENTS

8.7403-100 Acquisition Procedures.

The KO shall comply with the Army requirement to use the Computer Hardware, Enterprise Solutions (CHESS) (see AFARS 5108.7403 and UAI Section 39 and AFARS 5139.101 for further policy).

PART 9 — CONTRACTOR QUALIFICATIONS

SUBPART 209.1 – RESPONSIBLE PROSPECTIVE CONTRACTORS

209.106-100 Responsible Prospective Contractors

See DFARS 209.1 and the Class Deviations under DFARS 209.106, as well as, the DASA(P) PARC Policy Alert 14-20 for instructions to the PCO regarding the "Prohibition against Contracting with Corporations that have an Unpaid Delinquent Tax Liability or a Felony Conviction under Federal Law."

PART 10 — MARKET RESEARCH

SUBPART 10.002 – PROCEDURES

210.002-100 Procedures.

Apply the FAR, DFARS, and AFARS, ensuring market research is conducted and documented. DASA(P) PARC Policy Alert 13-07 notified the Army of DFARS change incorporating the DoD Market Research Guide. Although market research is the responsibility of program managers or the requiring activity, all members of the acquisition team, to include contracting personnel, must work as a team to gather market data needed to make decisions. All acquisition personnel should therefore familiarize themselves with contents of the Guide.

PART 11 — DESCRIBING AGENCY NEEDS

SUBPART 11.7 – VARIATION IN QUANTITY

11.703-100 Contract Clauses.

(c) The PCO shall insert the provision at 52.211-5000, Evaluation of Subdivided Items, and the statement at 52.211-5001, 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.

PART 12 — ACQUISITION OF COMMERCIAL ITEMS – RESERVED

PART 13 — SIMPLIFIED ACQUISITION PROCEDURES

SUBPART 5113.2 – ACTIONS AT OR BELOW MICRO-PURCHASE THRESHOLD

5113.270-90-100 Use of Government wide Commercial Purchase Card

DASA(P) PARC Policy Alert 13-42 announced the Army Purchase Card Online System (PCOLS) Deployment Plan and Policy. PCOLS is monitored and managed within USACE by the CECT-SO.

DASA(P) PARC Policy Alert 13-31 REV 1, notifies Army Government Purchase Card Holders, Billing Officials and Agency Official Program Coordinators of the Army Government wide Purchase Card Operating Guide at AFARS Appendix EE.

PART 14 – SEALED BIDDING

SUBPART 14.2 – SOLICITATION OF BIDS

14.201-100 Preparation of Invitation for Bids - Construction Contracts.

(a) For USACE construction contracts issued as IFBs, the Construction Specifications Institute (CSI) MasterFormat in Table 14.201-1 shall be used in lieu of the Uniform Contract Format (UCF), referenced in FAR 14.201-1. The general relationship between the UCF format and the USACE CSI MasterFormat are shown in Table 14.201-1 for illustration purposes only.

(b) The USACE Construction Specifications Steering Committee (CSSC) will periodically issue technical specifications guidance to standardize the specific content of the various technical CSI sections used for USACE construction contracts. This will ensure relevancy and standardization with CSI MasterFormat updates.

Table 14.201-1

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	
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PART 15 – CONTRACTING BY NEGOTIATION

SUBPART 15.2 – SOLICITATION AND RECEIPT OF PROPOSALS AND INFORMATION

15.203-100 Request for Proposals.

Refer to UAI 4.8 for guidance on the distribution of contract materials that are sensitive.

15.204-100 Contract Format.

(a) For construction contracts, PCOs shall use the current CSI MasterFormat in lieu of the UCF. The CSI MasterFormat is a master list of titles and numbers used to organize specifications and other project information for most commercial building design and construction projects in North America. It lists titles and section numbers for organizing data about construction requirements, products, and activities. By standardizing such information, CSI MasterFormat facilitates communication among architects, specification writers, contractors and suppliers.

(b) The CSI MasterFormat shall also be used for USACE construction contracts acquired using IFB (see UAI 14.201-100).

(c) The general relationship between the UCF format and the CSI MasterFormat is shown in UAI Table 14.201-1 for illustration purposes only.

SUBPART 15.3 – SOURCE SELECTION

15.300-100 Scope of Subpart – Army Source Selection Supplement Manual.

(a) The Army Source Selection Supplement (AS3) Manual (dated 21 December 2012) supplements the mandatory DoD Source Selection Procedures for all competitive acquisitions utilizing FAR Part 15 procedures (includes stand-alone/base contracts and applicable task/delivery orders that utilize aspects of FAR Part 15 procedures). The AS3 and the DoD Source Selection Procedures can be found on the Contracting CoP Portal and at AFARS Appendix AA (per (DASA(P) PARC Policy Alert 13-37).

(b) *Source Selection*.

(1) *Informal or Streamlined Source Selection*. Informal or streamlined source selection is the process used when the PCO is the 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. The DoD Source Selection Procedures states that in a formal source selection, the Source Selection Team (SST) generally consists of the SSA, a Source Selection Advisory Council (SSAC), and a SSEB. The SST shall be established prior to issuance of the solicitation. An action with a value at $100M or more requires a SSAC.

(c) *Training, Ethics and Non-Disclosure Statements*. IAW the USACE OPORD 2012-54 FRAGO 4, paragraph (k), SST participants (aka source selection officials) on formal source selections shall complete the training specified in OPORD 2012-54(k)(1) and (2). It is strongly encouraged that SST officials also consider taking DAU CLC 007, Contract Source Selection. This training is available at http://www.dau.mil

in the Continuous Learning Section; and, time permits participants are strongly encouraged to complete the USACE Prospect Formal Source Selection Course #183. This training is available at http://ulc.usace.army.mil/. 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 participants in the source selection process. Participants assigned to the SSEB, whether formal or informal, shall receive a standard of conduct briefing provided by the Office of Counsel. Upon completion of SSEB training and prior to the commencement of the evaluation board, each board member/evaluator shall execute a non-disclosure statement.

(d) *SSA Hierarchy*.

(1) SSA Appointments for Source Selections over $100M. For SSA appointments made on source selections valued at $100M or greater, additional items must be addressed in the nomination for SSA appointment, to include: (Reference - *PARC Policy Alert 14-30)*

(a) A formal memorandum from the DCC/CCC, PARC or HCA to the SSA appointment authority, requesting the appointment of the nominee as SSA. (Note: If the SSA nominee is outside the contracting chain, only the PARC or HCA must make a statement within the memorandum specifically indicating that the HCA (or PARC) has approved the nominee being outside of the contracting chain and why the nominee is qualified).

(b) A biography of the SSA nominee detailing the training, knowledge, and experience that qualifies them for this appointment.

(c) A memorandum for the record signed by the supporting legal office/ethics counselor, detailing the ethics briefing conducted with the nominee for this source selection.

(d) The SSA Nomination package shall be processed through the PARC to HQ USACE DOC Acquisition Support Division – via encrypted email hq-cect-acquisitionsupport@usace.army.mil, who will submit the action to the DASA(P) Procurement Acquisition Support Directorate for review and approval.

(2) 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, 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.

(3) The experience/grade level of the individual selected to serve as the SSA shall be commensurate with the complexity and dollar value of the acquisition. The following SSA appointment hierarchy applies within USACE Contracting Offices:

Threshold	SSA/Appointment Authority
Less than $50M	PCO
Over $50M to $100M*	One level above PCO (Otherwise an Individual Appointed by the PARC)
Over $100M to $250M*	Appointed by PARC

Over $250M to $500M*	Appointed by HCA or HCA Delegee
Construction & Supply Greater than $500M*	Appointed by HCA or HCA Delegee
Services Greater than $500M*	Appointed by DASA(P)

**Note: Refer to 15.300-100(d)(1)(a) regarding an SSA approval outside the contracting chain.*

Note: DASA(P) PARC Policy Alert 14-24 revised the delegation statement at AFARS 5115.303(a)(iii) for coordination of SSA appointments on ACAT II and III programs (USACE does not typically perform ACAT II or III acquisitions).

(d) *Disclosure of Proprietary and Source Selection Information*.

(1) The SST members are subject to the requirements of the Procurement Integrity Act. This precludes the SST from knowingly disclosing source selection information and contractor bid or proposal information before award of a federal contract to which the information relates. This Act and other similar statutes and regulations impose stringent requirements related to safeguarding of source selection information (SSI), contractor bid, or proposal information and other integrity issues. Violation of these requirements could result in civil and/or criminal penalties. (See FAR Part 3.104, Procurement Integrity, to ensure a thorough and complete understanding of disclosure procedures, protection of data and information that may or may not be released.)

(2) The SST is strongly discouraged from releasing any source selection information to anyone outside of the appointed SST. The PCO is authorized to approve access to or release of source selection information IAW DoD Source Selection Procedures Section 1.4.2.2.3, and the SSA is authorized to approve access to the Source Selection Plan to anyone outside the SST IAW AS3 Section 2.2, paragraph titled "Access to the Source Selection Plan," in formal source selections after issuance of the solicitation to other authorized Government officials that have signed a non-disclosure statement providing the release would not jeopardize the integrity or successful completion of the procurement. The PCO will only consider release of source selection information when the disclosure will benefit the source selection process as actions in connection with participation in a source selection are subject to intense scrutiny and participants must conduct themselves in a manner that will not adversely affect the confidence of the public. Participants must avoid any action, whether or not prohibited, that could result in or create the appearance of losing independence or impartiality. The SSA will ensure all involved in the source selection are briefed and knowledgeable of Subsection 27(a) of the Office of Federal Procurement Policy Act (41 U.S.C. 423). Refer to DASA(P) PARC Policy Alert 14-63 regarding access to bid/proposal and SSI on USACE acquisitions that may require review at the DASA(P) or higher.

(3) Title 18 U.S.C. 1905, Disclosure of Confidential Information, applies to disclosure by a government employee of any information provided to the government by a company or other non-government organization, if the provider of the information identified it as proprietary or as being provided to the government in confidence. The penalty is mandatory removal from office (termination of employment), and the offender may be fined and/or imprisoned. Proprietary data or information that is covered under the Trade Secrets Act (18 U.S.C. 1905) is protected against permanent disclosure. It is imperative that the SSA coordinates with their PDT legal representative when disclosure of source selection information is being requested.

(f) *Non-Government Advisors*. Use of non-Government personnel as advisors may be authorized, but should be minimized. Refer to Section 1.4.5.2 of the DoD Source Selection Procedures for guidance on the use of non-Government advisors, and Appendix K (K-2 through K-4) of the AS3 for a sample D&F for authority to use non-Government advisors in source selections. Ensure that DFARS 207.503(S-70)(1)(ii) with regards to potential for organizational conflicts of interest are addressed when using non-Government advisors.

15.304-100 Evaluation Factors and Significant Subfactors.

(a) *Past Performance.* The Naval Facilities (NAVFAC)/USACE Past Performance Questionnaire (PPQ) form is included under **UAI Appendix 15-1**. This form applies to all types of procurements for which the submission of PPQs are sought/permitted within the solicitation.

The FAR requires that contractor performance information be collected (FAR Part 42) and used in source selection evaluations (FAR Part 15). CPARS is the required system and the preferred source of past performance information, when available. In addition to CPARS, the use of the PPQ has traditionally been another tool for collecting relevant and recent past performance information on prospective offerors for use by PCOs in source selections.

(b) *Small Business Participation* shall be evaluated in all unrestricted acquisitions expected to exceed $650K ($1.5M for construction), except those based on the lowest priced technically acceptable (LPTA) source selection process. Refer to DoD Source Selection Plan Section 3.1.3.4. and AS3 Section 2.3, paragraph titled "Small Business Participation," and its applicable Appendix F. Source Selection Plans shall use Adjectival Ratings and their corresponding color codes for Small Business Participation Plan (SBPP) evaluations. It is strongly recommended that the District Small Business Specialist serve as a voting member of the SSEB for evaluation of all SBPP proposals.

Note: Do not confuse the SBPP evaluation with the requirement for submission and evaluation of a Subcontracting Plan required of large businesses only for specific thresholds, as per FAR guidance.

SUBPART 15.4 – CONTRACT PRICING

15.403-100 Requirements for Obtaining Certified Cost or Pricing Data.

HQ USACE DOC Policy Alert 13-0019, provided notice of the DOC Policy Memorandum, 13-PM-04, as corrective action response to Finding A-4 of the U.S. Army Audit Agency (AAA) Report Number A-2011-0144- ALC, "Contracting Operations in support of Arlington National Cemetery – U.S. Army Corps of Engineers, North Atlantic Division, Baltimore District," dated 28 June 2011.

215.404-73-100 Alternate Structured Approaches.

(b)(2) Facilities capital cost of money shall not apply to contracts where reimbursement is provided to contractors through construction equipment use rates or allowances (ref: FAR 31.105(d)). In other situations where facilities capital cost of money is proposed and verified, follow the offset procedures in DFARS 215.404-73(b)(2).

215.404-73-101 Alternate Structured Approaches – Construction Contracts.
(a) The following alternate structured approach shall be used for all firm-fixed price construction and A-E contract actions. 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%		

(b) 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.

(1) *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.

(2) *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 in to some extend with 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.

(3) *Size of Job.* Work of $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.

(4) *Period of Performance.* Work not to exceed 1 month is to be proportionately 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.

(5) *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.

(6) *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.

(7) *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.

215.404-73-102 Alternate Structured Approaches – A-E Contracts.

(a) The prenegotiation 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, EP 715-1-7, A-E Contracting in USACE, and as provided for below. The profit object for all other types of A-E contracts will be determined IAW DFARS 215.404-71.

Profit Objective = Cost x (Technical Complexity Factor + Length Factor + Support of Socioeconomic Program Factor)

Profit Objective =
Cost x (Technical Complexity Factor + Length Factor + Support of Socioeconomic Program Factor)

Where:

(1) *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 airfares, reproduction, lab tests, express mail and materials) in developing the cost base.

(2) *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.

(3) *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.

(4) *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.

(b) 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).

15.406-1-100 Prenegotiation Objectives .

For sole source actions and contract modifications above the SAT, a formal POM/PNO must be prepared for all negotiations. An informal POM is required for actions below the SAT. The scope and depth of both formal and informal POMs should be directly related to the action's dollar value, importance and complexity. All POMs shall be approved by a KO, within the limits of their warrants and designation letters.

215.406-3-100 Documenting the Negotiation.

(a)(11) IAW DFARS PGI 215.406-3, and DASA(P) PARC Policy Alert 13-48 (updated19 April 2013), KOs are responsible for entry of pre-and post negotiation data into CBAR within 30 calendar days of award. This applies only to sole-source actions exceeding $25M [includes sole source acquisitions made under FAR Part 6.302-5 for 8(a)].

215.408-100 Solicitation Provisions and Contract Clauses.

DASA(P) PARC Policy Alert 13-19, titled, "DFARS 252.215-7003 and 252.215-7004," provided notice of DFARS change that, although the requirement to submit cost and pricing data has been waived [see DFARS 215.403-1(c)(4)(C)] for the Canadian Commercial Corporation, the requirement to submit data *other than certified cost or pricing data* has not been waived.

SUBPART 15.5 – PREAWARD, AWARD, AND POSTAWARD NOTIFICATIONS, PROTESTS, AND MISTAKES

15.503-100 Notifications to Unsuccessful Offerors.

Preaward notices. For A-E contracts, refer to FAR Part 36, as supplemented by the DFARS, AFARS and EP 715-1-7.

15.504-100 Award to Successful Offeror.

All award letters issued by the KO to contractors will include the following statement. This statement shall also be read to the contractor at the postaward conference by a USACE official, preferably the PCO, either in person or telephonically. The names and contact information of both the PCO and 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 delegated 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."

15.505-100 Pre-Award Debriefing of Offerors.

For A-E contracts, see FAR Part 36, as supplemented by the DFARS, AFARS and EP 715-1-7

PART 16 – TYPES OF CONTRACTS

SUBPART 16.1 – SELECTING CONTRACT TYPES

16.103-100 Negotiating Contract Type.

The PCO must prepare a D&F justifying the contract type IAW ASA(AL&T) Memorandum dated 20 December 2011. The HCA (or the HQ DOC under HCA delegated authority) is the approval authority for all D&Fs for actions greater than $250M. The PARC is the approval authority for all D&Fs for actions greater than $100M but not exceeding $250M.

SUBPART 16.4 – INCENTIVE CONTRACTS

16.405-2-100 Cost-Plus-Award-Fee (CPAF) Contracts.

(a) *Appointment of Award Fee Determining Official (AFDO).* The PARCs are delegated authority, without power to redelgate, to appoint the AFDO for CPAF contracts IAW AFARS 5116.405-2(b)(2)(C). A Checklist for Appointment of the AFDO for CPAF Contracts may be found at **UAI Appendix 16-1**. Prior to the appointment, it is highly recommended that the AFDO enroll in the USACE PROSPECT course, entitled "Cost Reimbursement Contracts," which includes training on the proper administration of award fee type contracts.

(b) *D&F Document for CPAF.* All CPAF contract type actions, including actions with both fixed price and CPAF elements (aka "hybrid" contracts), require a D&F approved by the PARC (if delegated by HCA) prior to issuance of the solicitation. The D&F shall, at a minimum, include the following support documentation in order to justify the use of a CPAF contract vehicle:

(1) Cost-Benefit Analysis **(UAI Appendix 16-1)**. The PCO shall perform a cost-benefit analysis between the expected benefits and all additional administrative effort and costs associated with required to monitor and evaluate performance, before considering the use of a CPAF contract vehicle. This analysis is in addition to the requirements of FAR 16.104, Factors in Selecting Contract Types. The value added to the procurement by using a CPAF type contract must be greater than the costs to administer it.

(2) KO Statement. A written statement from the KO that the request to use a CPAF contract vehicle is in the best interest of the Government and is IAW FAR 16.301-3, Cost-Reimbursement Contracts-Limitations.

(3) Evidence of Adequate Resources. Evidence of adequate resources IAW FAR 16.301-3(a)(4), to include properly trained and experienced surveillance personnel to administer the contract throughout the period of performance. As a minimum requirement, the contracting organization shall have dedicated Contracting personnel that have successfully completed at least two (2) formal CPAF training courses where a certificate of completion is received; have experience with at least one (1) prior CPAF type contract; and, are able to support the administrative efforts required to properly execute this type of contract vehicle.

(4) Meets Suitability Criteria. Evidence that the requirement meets the suitability criteria at FAR 16.401(e)(l).

(5) Evaluation of Past Effectiveness of CPAF Usage. As part of the acquisition planning process (FAR 7.105), and determination to use CPAF contract type (FAR Part 16), utilize the agency's relevant data on award fee and incentive fees paid to contractors to evaluate past effectiveness of CPAF as incentive for improving contractor performance and achieving desired program outcomes. (Include the details of when and where CPAF was effective in the past within the CPAF D&F).

(c) *Award Fee Plan (AFP)*: IAW AFARS 5116.405-2(b)(2), DFARS216.4, and FAR 16.401(e)(3), each CPAF contract action awarded by USACE shall have an AFP. The AFP shall clearly identify and emphasize the areas of contract performance most important to the Government, listing specific award fee evaluation criteria for assessing contractor performance on those identified areas. The criteria should take into account program risk, as well as be appropriate for the designated award fee period. All USACE CPAF type contract AFPs shall include all applicable items IAW DFARS PGI 216.4 and FAR Part 16, and shall specifically include:

(1) Appropriate rating criteria, definitions, and related award fee pool percentages; and
(2) Objective versus subjective evaluation criteria; and,
(3) No rollover of unearned fee; and,
(4) Appropriate non-arbitrary, periodic evaluation periods, timed to most effectively access actual progress and contract performance.

(d) *Assignments and Documentation for Award Fee Evaluation Board (AFEB).* IAW AFARS 5116.405-2(b)(2)(C), the AFDO shall, in writing, appoint the AFEB and its chairperson. Such appointment letters will clearly outline the responsibilities and limitations of the AFEB and its chairperson. AFEB membership should consist of those contracting and acquisition management personnel (including contract administration personnel) most knowledgeable of the requirements and contractor performance in the areas to be evaluated. To ensure proper AFEB composition, the selection of board members must be coordinated with management officials responsible for the technical requirements. The AFEB chairperson is responsible for ensuring that all AFEB evaluators are sufficiently trained in their responsibilities.

(e) *Award Fee Determination*. The AFEB and AFDO will document the rationale for their decision. The AFDO may alter the AFEB recommended award fee; however, the AFDO decision must be documented in sufficient detail to show that the integrity of the award fee determination process has been maintained. It is the AFEB responsibility to support the board's recommendations and the AFDO duty to document the concurrence/non-concurrence and reasoning with that recommendation.

(1) Performance Evaluation Documentation. The COR, or other individual assigned to monitor contractor performance (ex. performance monitor (PM)) shall maintain documentation of the contractor performance in sufficient detail and terms addressing performance related to the AFP criteria to support the AFEB performance descriptions and ratings. The AFEB documentation shall be such as to permit the AFDO to form an independent judgment as to how the contract performance rates against the AFP criteria. All official award fee documentation must be maintained in the contract file.

(2) Award Fee Evaluation Documentation. With regards to award fee, remember IAW AFARS 5116.405-2(b)(2)(B), "... the contractor begins each evaluation period with 0% of the available

award fee and works up to the evaluated fee for each evaluation period. Contractors do not begin with 100% of the available award fee and have deductions withdrawn to arrive at the evaluated fee for each evaluation period. Contractors shall not receive award fee (above the base fee) for simply meeting contract requirements. Earning of award fee should be IAW the AFP and should be directly commensurate with the level of performance under the contract. A contractor should not receive the maximum amount of award fee under a contract without a demonstrated superior level of performance, as provided for in the AFP. Note that maximum contract fee is the sum of all fees (not just the award fee) and incentives payable under the contract, including any noted performance and/or subcontracting incentives. Paying a significant amount of fees for satisfactory or good performance undermines the effectiveness of award fees as a motivational tool, and reduces accountability for contract outcomes.

(f) *CPAF Process by Acquisition Stage*.

(1) Pre-Award: Comprehensive procurement planning should begin in the early stages of the contracting cycle when the requirement for a contract is established. Discussions between functional, legal, contracting and other personnel can go far toward initiating timely actions leading to the successful development and administration of the CPAF contract.

(i) Identify the Requirement. This should be customer driven.

(ii) Receive the PWS from Requiring Activity. In coordination with the Project Manager and Contracting personnel, a PWS shall be developed and accompany any identification of requirement submitted to Contracting.

(iii) Prepare and Evaluate Cost-Benefit Analysis/Worksheet. This should be prepared and evaluated during the pre-award process to determine if the benefits of using the award fee incentive on performance is worth/exceeds the administrative costs associated with use of a CPAF type contract.

(iv) Process CPAF D&F for approval. Request approval of the D&F by the PARC, for the use of a CPAF type contract vehicle.

(v) Select Contract Type. Determine commerciality of supplies/services. (Note: Fee shall not be paid on commercial items in accordance with FAR 12.207, which prohibits the use of CPAF contracts for commercial items).

(vi) Identify COR/PM (can include customer personnel). CORs/PMs provide the continuous evaluation of the contractor's performance in specifically assigned areas of responsibility. CORs/PMs are working-level specialists, such as engineers, quality assurance evaluators (QAEs), functional area evaluators, or technical monitors who are familiar with their assigned evaluation areas of responsibility. Technical performance monitors will not be members of the AFEB.

(vii) Develop AFP. AFP must be tailored to project with specific performance criteria. AFP must include objective criteria for evaluation.

(viii) Develop QASP and Performance Requirements Summary (PRS), where applicable, such as for service contracts.

(ix) Develop Award Fee Schedule.

(x) Assign AFEB members.

(xi) Conduct and determine through cost analysis the Base Fee and Award Fee percentages.

(xii) Request appointment for AFDO.

(2) Award.

(i) Ensure Base Fee and Award Fee percentages do not exceed cost-benefit analysis.

(ii) Ensure CPAF contract clauses are incorporated into official contract.

(iii) Ensure AFP is incorporated into official contract.

(3) Post-Award.

(i) Hold a post-award conference with the successful offeror. This conference shall include discussion of award fee administration. (To ensure that communication channels are established early and that all key Government and contractor personnel understand their responsibilities under the contract, it is important to hold a postaward conference soon after contract award. Attendees should review and discuss the performance evaluation plan, as well as contract requirements).

(ii) Send letter of delegation to CORs/PMs.

(iii) Conduct training for CORs/PMs. KO shall conduct training for all CORs/PMs on contract planning, administration, and records keeping requirements on CPAF contract vehicles. CORs/PMs must be provided with all necessary documentation (i.e. AFP) to evaluate performance in strict accordance with the AFP criteria.

(iv) Document PRS and Acceptable Quality Level (AQL).

(v) Execute Performance Evaluation Boards (PEBs) by CORs/PMs, to include evaluation of the contractor self-assessment, prior to the AFEB. Conduct bilateral development of Award Fee Pool.

(vi) Schedule and execute award fee board. The AFEB and AFDO shall 1) Review and, if applicable, refine the cost-benefit analysis; 2) Review AFP/criteria/weighting; 3) Conduct AFEB evaluation (includes complete analysis of the performance evaluation and COR/PM documentation); 4) AFDO review and document final decision; 5) Send letter of results to the contractor.

(vii) Conduct turnover training for any new COR/PM assignees.

(viii) Submit report on semi-annual data call regarding the Award Fee program(s).

(ix) If, acting officer authority will be transferred to another organization, coordinate transition of CPAF responsibilities.

(g) *Contracting Officer Responsibilities*. The KO is responsible for ensuring that all processes and procedures identified above are accomplished for CPAF contract vehicles and properly documented in the contract file. Additionally, the KO shall set up and ensure a knowledgeable and experienced team will be available to conduct oversight, prior to issuing a solicitation for a CPAF type contract vehicle. It shall be the responsibility of the KO to ensure that the roles and responsibilities of the Government oversight team are clearly identified, understood, and performed by each member. Frequent and honest communication is essential, both between the Government and contractor and within their respective organizational frameworks. The administration of CPAF contracts is vital to contract success, whether in contingency environment or non-contingency. CORs/PMs must maintain detailed documentation and close communication with KO in regards to contractor performance as it relates to each evaluation criteria specified in the AFP.

SUBPART 16.5 – INDEFINITE-DELIVERY CONTRACTS

16.504-100 Indefinite-Quantity Contracts.

(c) *Multiple Award Preference.* Applicable to the planning of acquisitions other than acquisition of A-E, the PCO shall explore every opportunity to award Multiple Award Task/Delivery Order Contract (MATOC) pools for the same or similar supplies or services to two or more sources on both an unrestricted and restricted/set-aside basis. Market research shall be documented in the contract file (or acquisition plan as appropriate) to support the decision making process. (See **UAI Appendix 2-1** for documentation and approval required for single-award task/delivery order contracts exceeding $103M).

16.505-100 Ordering.

(b) *Orders under multiple-award contracts--*

(1) *Exceptions to fair opportunity process.* The format for documenting the exception to fair opportunity can be found at FAR 16.505(b)(2)(ii).

(8) *Task-Order and Delivery-Order Ombudsman.* The HCA has delegated task/delivery order ombudsman authority to the Command PARC, as well as to each PARC for their area of responsibility. All Districts/Centers shall identify their PARC as the primary ombudsmen and the Command PARC as the secondary ombudsmen for all multiple award and task/delivery order contracts. The ombudsman shall have the responsibilities and authorities stated at AFARS 5116.505 (refer to Appointments and Delegations). The PCO shall identify in all multiple award and task/delivery order solicitations and contracts the individual(s) that have been appointed as primary ombudsman and secondary ombudsman respectively for USACE:

(1) Primary: (Insert name of PARC and mailing address, phone number, e-mail address)

Secondary: (Insert name of Deputy DOC and mailing address, phone number, e-mail address)

(2) A contractor who receives an award under a multiple award contract may contact the ombudsman with a complaint concerning the award of a particular task/delivery order placed under the multiple award contract.

(3) The contractor is encouraged to first try to resolve the issue with the task/delivery order PCO prior to contacting the ombudsman. Ombudsman complaints sent via e-mail are acceptable; however, contractors are encouraged to identify in the subject line of the e-mail "Ombudsman Complaint" to ensure appropriate and prompt attention by the ombudsman.

(4) Upon review of the facts, the ombudsman will determine whether the contractor was afforded a fair opportunity consistent with the procedures in the contract and either:
   (i) Deny the contractor's complaint; or,
   (ii) Require the PCO to take corrective action regarding the complaint;

(5) The ombudsman will communicate their determination on the matter to the contractor and the PCO.

SUBPART 16.6 — TIME-AND-MATERIALS, LABOR-HOUR, AND LETTER CONTRACTS

16.603-100 Letter Contracts.

Limitations. For application to emergency/disaster situations see subpart 17.74.

PART 17 – SPECIAL CONTRACTING METHODS

SUBPART 17.2 – OPTIONS

17.200-100 Scope of Subpart.

The FAR does not preclude the use of options in services involving the construction, alteration, or repair (including dredging, excavating, and painting) of buildings, bridges, roads, or other kinds of real property; A-E services; and research and development services. When it is determined necessary to include an option(s) under those contract solicitations, the PCO will include the justification required by FAR 17.205 in the contract file. (Note that for sealed bid solicitations, DFARS 217.208 precludes the use of options unless there is a reasonable likelihood that the options will be exercised (10 USC 2305(a)(5)) – and this limitation applies to contract or actions excluded by FAR 17.200).

17.207-100 Exercise of Options.

Per DASA(P) PARC Policy Alert 12-37, titled, "Additional Documentation Required Prior to Exercise of Options," the D&F required per FAR 17.207(c)-(f), shall address the following three additional items noted within the Alert (expected to be incorporated into the AFARS by FY15):

(1) Affirmation that the Contract/Task order is registered in the Contractor Performance Assessment Reporting System (CPARS).
(2) Affirmation, when applicable, that a COR has been duly appointed for the Contract/Task order. If a COR has not been appointed, notation that the duties have been retained by the KO.
(3) Affirmation, when applicable, that a Quality Assurance Surveillance Plan (QASP) has been prepared and that the COR appointment letter includes reference to the QASP.

SUBPART 17.5 – INTERAGENCY ACQUISITIONS

17.500-100 Scope of Subpart.

USACE Districts/Centers, Divisions, or Headquarters and the responsible contracting office shall follow the FAR 17.5, FAR 17.7, DFARS 217.78, AFARS 5117.5 and AFARS 5117.7802 when conducting interagency acquisitions under any authority except as provided at FAR 17.500(c). Decisions regarding this type of contract action are initiated with the requiring activity, and should involve the entire PDT including Resource Management, Office of Counsel, and Contracting. Army templates for interagency determinations are provided in DASA(P) PARC Policy Alert 14-64 (for revised AFARS 5153). (Note: The DASA(P) PARC Policy Alert 14-64 also includes the revised AFARS 5117.5 and 5117.78 which should be used as reference until the AFARS is updated).

Documentation related to use of interagency acquisitions may include:

(a) *Determination of the Best Procurement Approach.* Required for assisted or direct acquisitions in accordance with (IAW) FAR 17.502-1(a)(1) or (2) and AFARS 5117.502-1(a).

(b) *Interagency Support Agreements.* Required for assisted acquisitions IAW FAR 17.502-1(b) and AFARS 5117.502-1(b).

(c) *Business Case Analysis (BCA).* Required for multiagency contracts and Government-wide acquisition contracts IAW FAR 17.502-1(c) and AFARS 5117.502-1(c).

(d) *Economy Act Determination*. Required for both assisted and direct acquisitions pursuant to the Economy Act IAW FAR 17.502-1(c) and AFARS 5117.502-1(c). References for the approval authority for assisted or direct Economy Act D&F are at AFARS 5117.502-2(a).

Note: a "*non-economy act order"* is an order placed with specific statutory authority for the order to be placed and unless an order meets the definition of a non-economy act order per FAR 17.502-2(b), it is an "*economy act order."* An economy act nor a non-economy act order extends the life of appropriations - for additional information, refer to DoD FMR, Vol. 11A, Chapters 2, 3, & 18; DoDI 4000.19, and Chapter 3, Section 030204 of DoD FMR (7000.14-R).

SUBPART 17.74 — UNDEFINITIZED CONTRACT ACTIONS

217.7404-1-100 Authorization.

(a) IAW the delegation of authority from the HCA, PARCs are authorized to approve an undefinitized contract action (UCA). The below process is to be followed:

Prior to entering into a UCA, approval shall be obtained from the PARC. Documentation shall include:

(1) A full explanation as to the need to begin performance before definitization, including the adverse impact on agency requirements resulting from delays in beginning performance.
(2) A complete written description of the requirement and the rationale for using a UCA as opposed to a fully negotiated contract or order.
(3) If including requirements for non-urgent spare parts and support equipment in a UCA, the request shall demonstrate that inclusion of the non-urgent items is consistent with good business practices and in the best interest of the United States.
(4) If modifying the scope of a UCA when performance has already begun, the request shall document that the modification is consistent with good business practices and in the best interests of the United States.

(b) Unpriced change orders/modifications (UCOs) are not considered undefinitized contract actions (UCAs). Refer to FAR Part 43 for additional information on UCOs.

217.7405-100 Plans and Reports.

(a) All UCAs, regardless of amount, must be reported by the DCC/CCC to the PARC. UCAs include letter contracts, and undefinitized orders issued against basic ordering agreements or task/delivery order contracts. Within five (5) working days of issuing the UCA, documentation and a definitization schedule IAW DFARS 217.7404-3 shall be submitted to the PARC, reporting the use of a UCA;

(b) Actions submitted to the PARC shall be forwarded by the DCC/CCC. In the event of any UCA that will not be definitized as scheduled, the PCO shall submit written notification to the PARC via the DCC/CCC at least 45 days prior to the 180 day definitization deadline or, in the case of percentage of funds obligated, at least 45 days prior to the anticipated date on which funding will exceed 50% of the not-to-exceed (NTE) price. The notification shall explain the reasons the UCA has not been definitized and

provide a revised milestone schedule for definitization with corrective actions the PCO will take to ensure the revised definitization schedule will be met.

SUBPART 17.7 – INTERAGENCY ACQUISITIONS – ACQUISITIONS BY NONDEFENSE AGENCIES ON BEHALF OF THE DEPARTMENT OF DEFENSE

17.7802-100 Policy.

USACE Districts/Centers, Divisions, or Headquarters and the responsible contracting office shall follow the procedures at FAR 17.5, FAR 17.7, DFARS 217.78, AFARS 5117.5 and 5117.7802, when conducting interagency acquisitions under any authority except as provided at FAR 17.500(c)., when requesting interagency acquisitions be conducted by Non-DoD agencies on behalf of DoD. Decisions regarding this type of contract action should involve the entire PDT including Resource Management, Office of Counsel, and Project Management. Note: A "non-economy act order" is an order placed with specific statutory authority for the order to be placed. Unless an order meets the definition of a non-economy act order it is an "economy act order." An economy act nor a non-economy act order extends the life of appropriations. For additional information, refer to DoD FMR, Vol. 11A, Chapters 2, 3, & 18; DFAS-IN Chapter 12; and, DoDI 4000.19. (For additional Army policy refer to DASA(P) PARC Policy Alert 14-64).

PART 18 — EMERGENCY ACQUISITIONS – RESERVED

PART 19 – SMALL BUSINESS PROGRAM

SUBPART 19.2 — POLICIES

19.201-100 General Policy.

(a) To implement AFARS 5119.201(d)(6), the USACE Associate Director, Office of Small Business Programs (OSBP), shall be afforded an opportunity to serve as intermediate rater or comment upon and contribute to the performance evaluation of Deputies for Small Business at USACE Centers. The Assistant Directors OSBP at Divisions shall be afforded the same opportunity for the Deputies for Small Business at USACE Districts.

(b) Small Business Specialists shall review and document recommendations on the DD Form 2579 under the following circumstances (see instructions at PIL 2009-03 DD Form 2579 Process):

(1) All acquisitions over $10K, including orders placed against FSS contracts authorized under FAR Part 8.4, unless:

(i) Under the SAT, and
(ii)100% set aside for small business concerns (IAW FAR 19.502-2).

(2) All acquisitions proposed for task order solicitations under unrestricted IDIQs prior to solicitation, when:

(i) The dollar value is below the SAT (comply with FAR 19.502-2),
(ii) There are both restricted and unrestricted IDIQ pools available and the acquisition strategy proposes use of the unrestricted IDIQ pool,
(iii) The set-aside pools within an approved acquisition strategy or plan has not been fully executed.
(iv) Exception: No DD Form 2579 is required when following IDIQ ordering instructions that specify when to use the restricted pool and when to use the unrestricted pool.

(3) For contract modification (out-of-scope modifications).

(c) District Commanders and Center Directors are not precluded from requiring Small Business Specialists review of actions under the SAT that are 100% set aside for small business to assist with identifying opportunities for other sub-category small business set-aside programs (e.g., HUBZone, 8(a), WOSB, and SDVOSB) in order to meet specific sub-category small business goals. The District or Center Small Business Specialist shall make recommendations not less than quarterly to the Commander or Director whether to require Small Business review of acquisitions below the SAT that are set aside for small business based upon whether the contracting activity is achieving their socio-economic goals

(d) District Commanders and Center Directors shall forward the nominee for Deputy for Small Business, along with a summary of qualifications, to the USACE Associate Director OSBP, for review and coordination prior to appointment. The Secretary of the Army, Director of Small Business Programs must be afforded an opportunity, prior to an appointment, to review and provide concurrence with individual appointments of Associate Directors, Assistant Directors, and other Small Business Specialists

at contracting activities, contract management activities, subordinate activities, and direct reporting units (see definitions in DOD Directive 4205.01).

(e) The Secretary of the Army, Director of Small Business Programs is authorized to waive the DOD Directive 4205.01 requirement to appoint a full-time Associate Director, Assistant Director, and other Small Business Specialists and to appoint a part-time individual where circumstances justify. The HQ USACE Small Business Office will assist District Commanders and Center Directors by preparing and coordinating waiver requests.

SUBPART 19.5 — SET-ASIDES FOR SMALL BUSINESS

19.502-2-100 Total Small Business Set-Asides.

Acquisitions under the SAT shall be automatically reserved for small business concerns, and should not be solicited under 'unrestricted' MATOCs or other 'unrestricted' means (IAW FAR 19.502-2(a)). Also refer to DFARS 219.502-2 for further guidance on total set asides for A-E services for military construction or family housing, other construction and dredging. The following chart is provided as a guide:

Value $	Type	8(a) Set-asides	All Other SB	Unrestricted
ANY	SRM (OMA) funding	YES	YES	YES
ANY	CIVIL WORKS	YES	YES	YES
Under $350k	Military Construction & Family Housing	YES	YES	NO

19.502-4-100 Multiple-Award Contracts and Small Business Set-Asides.

See FAR 19.502-4 for rules on set-asides when developing MATOC Acquisition Plans.

19.508-100 – Solicitation Provisions and Contract Clauses.

For USACE application of the DASA(P) Alert 13-51, Accountability of Compliance with FAR Clause 52.219-14 Limitations on Subcontracting, refer to the alert.

SUBPART 19.7 — THE SMALL BUSINESS SUBCONTRACTING PROGRAM

19.705-6-100 Postaward Responsibilities of the KO.

IAW the DoD Class Deviation 2013-O0014 (refer to DASA(P) PARC Policy Alert 14-17), the KO shall ensure prescribed language is inserted/placed in solicitations or existing contracts and appropriate modifications when using FAR 52.219-9 (or any alternates), Attachment 1, or DFARS 252.219-7003 (or its alternate), Attachment 2. The DoD Class Deviation 2013-O0014, 1) reduces the frequency of submission of the SSR submitted under an Individual Subcontracting Plan from biannual to annual (Oct 1-Sep 30); 2) eliminates the requirement for multiple SSRs submitted under an Individual Subcontract Plan for construction and related maintenance and repair contracts to one consolidated report; 3) changes the entity to which the contractor submits the SSR in the Electronic Subcontracting Reporting System (eSRS) for an individual subcontract plan from the DoD component to the DoD; and, 4) removes the requirements for the Year-End Supplementary Report for Small Disadvantaged Business and the report for Small Disadvantaged Participation.

SUBPART 19.8 – CONTRACTING WITH THE SMALL BUSINESS ADMINISTRATION

19.805-100 Competitive 8(a) – General.

USACE strongly encourages the use of Competitive 8(a) when acquisition(s) are eligible and meet criteria outlined in FAR 19.805-1.

PART 20 — RESERVED

PART 21 — RESERVED

PART 22 — APPLICATION OF LABOR LAWS TO GOVERNMENT ACQUISITIONS

SUBPART 22.3 — CONTRACT WORK HOURS AND SAFETY STANDARDS ACT

22.302-100 Liquidated Damages and Overtime Pay.

(c) The Chief Counsel and Deputy Chief Counsel, HQ USACE, are delegated authority to waive or adjust Contract Work Hours and Safety Standards Act (CWHSSA) liquidated damages totaling $500 or less, when such damages are nonwillful, inadvertent, and occurred despite the exercise of due care by the contractor or its agent.

SUBPART 22.4 — LABOR STANDARDS FOR CONTRACTS INVOLVING CONSTRUCTION

22.406-6-100 Payroll and Statements.

(a) The Special Contract Requirement (SCR), "Contractor Supply and Use of Electronic Software for Processing Davis-Bacon Act Certified Labor Payrolls" (April 2011), below, encourages contractors to supply and use a commercially-available electronic system to process and submit certified Davis-Bacon Act (DBA) payrolls electronically to the Government. Contractor compliance with DBA requirements can be a complex requirement for both contractors and the Government in the performance of larger construction contracts that typically include a large number and variety of workers within both the prime contractor's workforce and the subcontractors' workforces. Experience and analysis indicate that contractors' use of these commercially-available electronic payroll processing systems aids them in their compliance with the requirements to prepare, process, and maintain the relevant payrolls and basic records during the course of work under construction contracts, and providing data on these payrolls and related basic records for the required 3 years after contract completion.

(1) Accuracy, timeliness, efficiency, and effectiveness of the prime contractor and the sub-contractors are normally improved by the use of these electronic systems to process weekly payrolls.

(2) These benefits are greatest when the duration, cost, number of subcontractors and types of labor classifications associated with the contract are substantial, and the resultant payroll processing activities are more complex.

Contractor Supply and Use of Electronic Software for Processing Davis-Bacon Act Certified Labor Payrolls – April 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 Davis-Bacon Act as stated in FAR clause 52.222-8, Payrolls and Basic Records and FAR clause 52.222-13, Compliance with Davis-Bacon and Related Act Regulations.

(b) If the contractor elects to use an electronic Davis-Bacon Act 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 Davis-Bacon and Related Act Regulations. When the contractor uses an electronic Davis-Bacon Act 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 Davis-Bacon Act payroll system, then the contractor shall obtain and provide electronic system access to the Government, as required to comply with the Davis-Bacon and Related Act Regulations over the duration of this construction contract. The access shall include electronic review access by the Government contract admin 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: commercially available; compliant with appropriate Davis Bacon Act payroll provisions in the FAR; able to accommodate the required numbers of employees and subcontractors planned to be employed under the contract; capable of producing an Excel spreadsheet-compatible electronic output of weekly payroll records (format at http://rms.usace.army.mil/guides.aspx) 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 Resident Management System (RMS); demonstrated security of data and data entry rights; ability to produce contractor-certified electronic versions of weekly payroll data; ability to identify erroneous entries and track the data/time of all versions of the certified Davis-Bacon Act payrolls submitted to the government over the life of the contract; 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 D-B 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 Davis-Bacon Act compliance using electronic payroll processing services shall not be a separately bid or reimbursed item under this contract.

(End of special contract requirement)

22.407-100 Solicitation Provisions and Contract Clauses/Special Contract Requirements.
(a) The DCC/CCC is hereby delegated the authority to approve wage rates submitted under the procedures of FAR 52.222-16, Approval of Wage Rates, after coordination with the local Contractor Industrial Relations (CIR) Specialist.

(b) In accordance with 22.406-6-100, specification writers shall insert the SCR, "Contractor Supply and Use of Electronic Software for Processing Davis-Bacon Act Certified Labor Payrolls (April 2011)," in Section 00 73 00 (Supplementary Conditions) of the technical specifications for construction contracts, subject to Davis-Bacon Act requirements, with a value greater than $5M, or a period of performance greater than one year. Specification writers may insert the SCR in contracts not meeting these thresholds.

SUBPART 22.5 USE OF PROJECT LABOR AGREEMENTS ON FEDERAL CONSTRUCTION PROJECTS

22.503-100 Policy.

In the publication of the FAR Rule, Case 2009-005 – 75 FR 19168, the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council concluded that the structure and organization of a contracting agency's review team, the agency or external resources consulted, and the documentation supporting any decisions relating to the use of a Project Labor Agreement (PLA), should be left to the discretion of each agency.

(a) *PLA Application*. Analysis for application of PLAs apply to construction solicitations (including task order request for proposals (RFPs)), with performance in the United States, with an anticipated contract value of $25M or greater, and issued after 15 October 2010. Further, with respect to solicitations to establish new MATOCs and Single Award Task Order Contracts (SATOC) issued after 15 October 2010, the following language shall be included at an appropriate location in the solicitation: "Pursuant to FAR 22.503, a PLA may be considered for certain projects under 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." (*Active solicitations* as of 15 October 2010 shall be amended to include this language. With respect to solicitations of task orders under previously awarded MATOCS and SATOCS, if the PDT determines that the project is appropriate for a PLA, the underlying MATOC or SATOC shall be modified to include the language above).

(b) *PLA Defined.* A PLA is 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. PLAs are permissible pre-hire agreements under sections 8(e) and (f) of the National Labor Relations Act, which authorizes the use of these agreements between labor organizations and employers engaged primarily in the building and construction industry. *Since USACE is not an employer engaged primarily in the building and construction industry, USACE will neither negotiate nor become signatory to a PLA*. (Refer to **UAI Appendix 22-1** for PLA Frequently Asked Questions (FAQs)).

(c) *PLAs and Acquisition Planning*. IAW FAR 7.103(x), during acquisition planning consider the use of a PLA for construction acquisitions on a project-by-project basis. The PDT should consider the factors identified at FAR 22.503(b) and (c). Additional factors USACE PDTs may deem appropriate 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.

(d) *PCO Responsibilities to Determine Use of PLA*: Market research shall be conducted IAW the instructions provided within the PLA Determination Tool (**UAI Appendix 22-2**). For each construction

project with an anticipated value of $25M or more, the PDT may wish to solicit the perspectives of Division and HQ USACE Directorates (i.e. CECW-CE, CESB, CECC-C, etc.) with particular expertise in affected program areas. As an essential component of their market research, PDTs should examine the project location's labor market by soliciting the views of various construction community stakeholders as they specifically address the factors set forth at FAR 22.503(b) and (c), as well as the additional factors noted above. The PCO shall prepare a PLA Decision Memorandum for all construction projects with an anticipated contract value of $25M and above. The memorandum will address whether or not the particular project satisfies the criteria set forth in FAR 22.503(b) and (c) and shall follow the "Review Checklist" template provided at **UAI Appendix 22-2**. 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. The market research shall contain the seven (7) USACE standard questions noted at **UAI Appendix 22-2**, and may contain one or more of the other suggested market research questions. The market research report and completion of the decision memorandum (required for every evaluation whether or not a PLA is to be requested for proposal) should be undertaken **prior** to the issuance of the solicitation.

(e) *Determination to Include PLA within Solicitation:* When it is determined that a PLA may be accompanying offerors' proposals, the PCO shall ensure:

(1) Insertion of the following language into 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 an appropriate location in the solicitation (or in the Task Order RFP): "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."

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

(4) 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 ___ 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 PL*A. Note: The number of days for submission of the executed PLA cannot be more than the number of days to NTP."

(f) *Evaluation of Proposed Use of PLA*: The proposed use of a PLA must be evaluated during the source selection process. The SSP shall address how an offeror's proposed use of a PLA will be evaluated during the source selection. (When determination is made that PLA will be pursued on the project, IFB or LPTA procedures shall not be used, as such approach would not enable the SSA to weigh an offerors' proposed use of a PLA in the source selection process). 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. Offerors proposing the use of a PLA may be evaluated more favorably. However, since proposing a PLA is optional, offerors who do not propose the use of a PLA still meet the minimum requirement. 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.

(g) *Review of the PLA:* When the Contractor submits the fully executed PLA after contract award the PCO, Office of Counsel, 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.

(h) *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):

(a) "During the term of this PLA, there shall be no strikes, pickets, work stoppages, slowdowns 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."

(b) "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."

(c) "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 be required only if, and to the extent that, the benefits immediately accrue to the direct benefit of such employees and do not require membership in the Labor Organization."

(d) "Nothing in this PLA shall be deemed to limit a Contractors or its subcontractors' right to reject proposed employees, provided that such right is exercised in good faith, or to use their own employees."

(i) *PLA Quarterly Reporting Requirement*: USACE must report action relating to the PLA Executive Order 13502, quarterly. The report is pulled by the HQ USACE DOC through the Army Business Intelligence System (ACBIS). The data is given to the HQ USACE CECC-C CIR Officer, who may coordinate with Districts/Centers contracting officers to verify the information concerning if a PLA was used on the contracts listed and a brief explanation of the consideration in deciding whether a PLA was appropriate for the project. HQ USACE CECC-CCIR Officer shall submit the USACE report to OMB. The report contains construction requirements valued at $25M and above and includes: Contract Number; Dollar Value of the Total Contract Award; Product and Service Code Describing the Project; Whether a PLA was Required in the Solicitation; Brief explanation of the Considerations in Deciding Whether a PLA was Appropriate for the Project; and, the Organizational Level at Which the Decision was Made.

SUBPART 22.13 — EQUAL OPPORTUNITY FOR VETERANS

22.1302-100 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(PWS)/statement of work (SOW)/ statement of objectives (SOO) (i.e. construction specifications, insert at "01 00 00)."

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:

Federal Veteran employment information at **http://www.fedshirevets.gov/index.aspx**
Department of Labor Veterans Employment Assistance **http://www.dol.gov/vets/**
Department of Veterans Affairs–VOW to Hire Heros Act **http://benefits.va.gov/vow/**
Army Wounded Warrior Program – **http://wtc.army.mil/modules/employers/index.html**
U.S. Chamber of Commerce Foundation–Hiring Our Heros **http://www.hiringourheroes.org/**
Guide to Hiring Veterans – Reference Material
http://www.whitehouse.gov/sites/default/files/docs/white_house_business_council_-_guide_to_hiring_veterans_0.pdf

(End of special contract requirement)

PART 23 – ENVIRONMENT, ENERGY AND WATER EFFICIENCY, RENEWABLE ENERGY TECHNOLOGIES, OCCUPATIONAL SAFETY, AND DRUG-FREE WORKPLACE

SUBPART 23.1 – SUSTAINABLE ACQUISITION POLICY

23.103-100 Sustainable Acquisition.

USACE shall advance sustainable acquisition FAR Part 23 and the Army Green Procurement Guide by ensuring that 95 percent of all applicable new contract actions include sustainability requirements, such as procuring federally-designated green products. USACE will provide a procurement preference for products that are EPA-designated recycled content, ENERGY STAR®-qualified, Federal Energy Management Program (FEMP)-designated, low standby power, USDA-designated biobased, environmentally preferable, Electronic Product Environmental Assessment Tool (EPEAT)-registered, water efficient, non-ozone depleting, and non-toxic or less toxic. Achieving the advancement of sustainable acquisition must occur at all levels within USACE, it is not possible without the commitment to sustainability policies through proper implementation of environmental policy.

(a) Promoting environmental stewardship through USACE acquisition practices is critical to our ongoing efforts to meet our environmental responsibilities and protect our country's natural resources. USACE is driving a commitment to environmentally preferable purchasing decisions at every level of our organization through the USACE Campaign Plan Priority Action 1c1 "Achieve federal sustainability and energy goals and targets within USACE's internal operations and infrastructure." Sustainable acquisition constitutes an effective tool for development of sustainable production and consumption patterns, and will contribute to the development of the market of more environmentally-friendly goods and services. DASA(P) PARC Policy Alert 14-21, Updated Guidance on Sustainable Procurement, provides helpful links and access to the Sustainable Acquisition Guidance (like the ECB 2012-24, Sustainability & Energy(S&E)/Centers of Expertise Website Launched, which contains the S&E portal website and additional sustainability initiatives).

(b) Sustainable acquisition has significant environmental stewardship benefits. Purchasing decisions can significantly influence the environmental performance on USACE contracts. 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.

(c) By including sustainable considerations into purchasing decisions, along with the traditional focus on price, quality, performance, and availability, USACE will remain fiscally responsible while promoting practices that improve safety, reduce pollution, conserve natural resources, and support manufacturers and vendors that reduce the adverse environmental impact of their production and distribution systems.

(d) USACE recognizes that the implementation of sustainable acquisition is the responsibility of every USACE employee. USACE working to ensure that all functional elements within the PDT are involved in assuring environmental considerations are included throughout the acquisition process; from the procurement request originators to contracting officials, including purchase cardholders; are aware of the criticality of their role to the success of this initiative. However the primary responsibility for sustainable products and services procurement lies with the USACE field offices.

(e) KOs shall review all procurement requests to ascertain and validate whether sustainable products or services are involved in the procurement action. PCOs are encouraged to provide guidance to procurement request originators and facilitating acquisition planning with respect to sustainable products and services as business advisers.

(f) KOs will include the FAR provisions specified in the section below to the maximum extent feasible in all new solicitations under their responsibility.

(1) The following FAR clause is required at the greatest extent possible in all solicitations above the Simplified Acquisition Threshold:

Clause Number	**Title**
52.204-4	Printed and Copied Double-Sided on Postconsumer Fiber Content Paper

(2) The following FAR clauses are required at the greatest extent possible in all Construction solicitations:

Clause Number	**Title**
52.223-2	Affirmative Procurement of Biobased Products under Service and Construction Contracts
52.223-17	Affirmative Procurement of EPA-Designated Items in Service and Construction Contracts

(3) The following FAR clause is required at the greatest extent possible in all Information Technology (IT) solicitations for personal computer products:

Clause Number	**Title**
52.223-16	IEEE 1680 Standard for the Environmental Assessment of Personal Computer Products

(g) If any of the five conditions below apply, the KO is encouraged to document the contract file justifying the omission of the sustainability clause. KOs shall make maximum use of the FAR provisions and clauses below unless:

(1) The use of the clause would prevent the contractor from performing competitively within the timeframe providing compliance with the contract performance schedule;

(2) Adversely impact meeting contract performance requirements;

(3) Create an exorbitant cost to the Government;

(4) Contracts performed outside of the United States; or

(5) Weapon systems

(h) Reporting Sustainable Acquisition. The KO shall ensure that each Contract Action Report (CAR) in FPDS-NG includes the appropriate data element for "recovered materials/sustainability and Use of EPA Designated Products" according to the DoD guidance (see DPAP Memorandum, dated 04 October 2011).

(i) Procedures.

(1) Ensure that applicable FAR clauses on sustainable acquisition requirements are inserted appropriately in all new solicitations;

(2) Maintain required documents in the contract file to include certifications, and written justifications for exceptions when required;

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

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

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

PART 24 — PROTECTION OF PRIVACY AND FREEDOM OF INFORMATION

SUBPART 24.1 – PROTECTION OF INDIVIDUAL PRIVACY

24.101-100 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. The Privacy Act of 1974 requires the Government to protect personal information that is contained in a system of records. A "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. The affirmative responsibility to protect personal information extends to contractors who design, develop, or operate (including access) a system of records for the Government. Some recent incidents have threatened the security of PII under the control of contractors, thereby signifying that the Army must take further actions to ensure the protection of PII during the performance of its contracts.

24.103-100 Procedures.

Refer to DASA(P) PARC Policy Alert 12-52 REV 1, which contains notice of the Army policy regarding PII. Links to the DoD Privacy Program Directives, 5400.11 and 5400.11-R. The DoD Privacy and Civil Liberties Office website is: http://dpclo.defense.gov/privacy/About_The_Office/policy_guidance.html. Protected Health Information (PHI) and other community-specific protected information will also be handled as PII. **UAI Appendix 24-1** contains sample (requiring activities are encouraged to tailor the language as necessary to fit each unique requirement) PII requirements language for insertion by the Program/Project Manager or other requiring activity into the work statement(s). **UAI Appendix 24-2** contains sample PII Breach Contractual language. This language is advisory only; requiring activities are encouraged to tailor the language as necessary to fit each unique requirement. The ASA(ALT) Memorandum on PII, dated 04 September 2012, includes links to DoD 6025.18-R (DoD Health Information Privacy Regulation); DoD 8580.02-R (DoD Health Information Security Regulation); http://www.tricare.mil/tma/privacy/hipaa.aspx; and, http://www.hhs.gov/ocr/privacy/hipaa/administrative/breachnotificationrule/index.html.

SUBPART 24.2 — FREEDOM OF INFORMATION ACT

24.203-100 Procedures.

The KO must ensure that all freedom of information act (FOIA) requests and responses are coordinated with the Office of Counsel and the Office of Counsel will coordinate the action for response to the requestor and for any applicable concurrences or approvals required by the HCA or HCA Designee.

PART 25 — FOREIGN ACQUISITIONS

SUBPART 25.2 — BUY AMERICAN ACT – CONSTRUCTION MATERIALS

25.202-100 Exceptions.

(a)(1) IAW AFARS 5125.202(a)(1), the HCA has delegated the authority to make the determination that the use of a particular domestic construction material is impracticable, as follows:

(i) At one level above the PCO for acquisitions valued at or below the SAT;

(ii) At the chief of the contracting office (DCC/CCC) for acquisitions with a value greater than the SAT but less than $1.5M; or

(iii) At the PARC for acquisitions valued at $1.5M or more.

SUBPART 225.3 — CONTRACTS PERFORMED OUTSIDE THE UNITED STATES

225.301-4-100 Contract Clause.

The KO shall comply with any Synchronized Pre-deployment and Operational Tracker (SPOT) requirement set forth by the geographic combatant commander for all contract requirements in their respective Area of Responsibility (AOR). SPOT, the designated system for collecting required contractor personnel data, is crucial in providing leaders with awareness of contractor footprint in their AORs for contingency and force protection planning.

IAW PARC Policy Alert 14-61 and DFARS 225.7402-5, use the clause at the Defense Federal Acquisition Regulation Supplement (DFARS) 252.225-7995 in lieu of DFARS clause 252.225-7040 in all solicitation and contracts that require performance in the U.S. Central Command (CENTCOM) AOR. SPOT training, registration, and information are available at the Office of the Deputy Assistant Secretary of Defense website. Also refer to DFARS 225.74.

SPOT updating by the contractor and acknowledgement and maintenance by the KO is required. See enclosure 2, page 16, of DoDI 3020.41. Under the terms and conditions of their contracts, contractors are required to maintain policies and procedures for knowing the general location of their employees and to follow the procedures provided to them to submit up-to-date, real-time information reflecting all personnel deployed or to be deployed in support of contingency, humanitarian assistance, and peacekeeping operations.

IAW the Defense Procurement and Acquisition Policy (DPAP) memorandum dated 3 February 2014, subject: SPOT Non-Compliance for Contractors Executing in Afghanistan, the KO must take appropriate action with contractors to document performance deficiencies and require SPOT compliance consistent with the terms of their contract. The KO supporting Outside the United States (OCONUS) requirements when the DFARS Clauses 252.225-7040 or 252.225-7995 apply shall request a SPOT account at https://spot.dmdc.mil/privacy.aspx. Districts with any eligible requirements shall initiate and maintain a Total Operational Picture Support System (TOPSS) account at https://topss.dmdc.mil/, take the scheduled training and run an OPL-09 Operations Visibility Report monthly to gain visibility of the

discrepant records within their AOR. KOs may use a letter similar to the "USACE SPOT Non-Compliance Letter Template" available in Appendix 25-1 to notify contractors of their non-compliance with DFARS Clauses 252.225-7040 or 252.225-7995.

For requirements with performance in Afghanistan, refer to the CENTCOM Joint Theater Support Contracting Command (C-JTSCC) Acquisition Instruction, the C-TJSCC Acquisition Policies website and the Office of the Deputy Assistant Secretary of Defense website for SPOT policy updates/changes, business rules, and frequently asked questions.

225.302-100 Contracting Reachback in Support of Forward Districts Operating in Overseas Contingency Operations within CENTCOM.

The PCOs shall follow the procedures below for Contracting Reachback in support of forward Districts operating in Overseas Contingency Operations (OCO) within the CENTCOM 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 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.

(a) Pre-Award.

(1) Project Acceptance. IAW OPORD 2011-35, Contingency District Reachback, dated 2 February 2012, the Reachback Acceptance Monitoring System (RAMS), a project management-driven system, is used for project acceptance by Reachback Districts. Project acceptance is a PM function; PCOs and contract specialists will NOT accept projects or provide any Reachback assistance unless the requested function has already been accepted by the Reachback District PM in RAMS.

(2) 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 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.

(3) 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. As soon as the contracting personnel supporting a Reachback project are assigned, they should initiate registrations in the Joint Contingency Contracting System (JCCS), the SPOT system, the forward District's contract writing database, and the forward District's CEFMS database. For SPS/PD-2 support, the Reachback Contracting Division will interface with the TAM System Administrator.

(4) Contract File Initiation. All contract documents will be kept in the Paperless Contract File (PCF) system IAW OPORD 2012-66. During the pre-award phase of a Reachback acquisition, the contract file will be kept in the Reachback District's PCF Document Library.

(5) Pre-Solicitation Theater Business Clearance (TBC). The PCO in the Reachback District must receive an approved preliminary TBC clearance prior to executing a solicitation for the project. The TBC will be submitted through the JCCS website. The request must be submitted with an approved Government Furnished Life Support Validation (GFLSV) Request and Approval Form if the Government will be providing contractor support services. Refer to the C-JTSCC HCA Bulletin 13-04, Sponsorship and Coordination of GFLSV for Contractor Personnel Operating in the Combined Joint Operations Area – Afghanistan, for the most recent GFLSV form. Refer to UAI 225.74 for additional information relative to TBC.

(b) Award. Contract award will be made by the Reachback PCO in the contract writing system (currently SPS/PD^2) database of the forward supported District.

(1) Final TBC. Final TBC approval must be provided by the Theater Business Clearance Office prior to making contract award. The final TBC request is submitted through JCCS 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 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.

(2) 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 CENTCOM. Vendor Vetting is accomplished through the JCCS website. Refer to the JCCS – TBC User Guide for additional information.

(3) 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.

(4) 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.

(5) Protests. All pre-award and award protests will be adjudicated by the Reachback District.

(c) 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.

(1) SPOT. Within 3 business days after award, 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. Refer to UAI Subpart 225.3 for additional information relative to SPOT.

(2) NTP. Prior to issuing the NTP, the contractor must provide substantiating evidence that all requirements of the Notice of Award letter have been met.

(3) PCF and other file transfers. After issuance of NTP, the Reachback District contracting System Administrator will transfer the PCF cabinet to the TAD PCF cabinet for forward support District administration. Coordination with the TAM contracting System Administration may be necessary to ensure the cabinet is transferred properly.

(4) 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.

(5) 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.

(6) 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.

SUBPART 225.73 — ACQUISITIONS FOR FOREIGN MILITARY SALES

225.7303-5-100 Acquisitions Wholly Paid For From Nonrepayable Funds.

(d) The Arms Export Control Act (22 U.S.C. 2791(c)) prohibits using funds made available under the Act for procurement outside the United States unless the President determines that such procurement does not have an adverse effect on the economy of the U.S. or the industrial mobilization base. Prior to awarding a contract that is funded with Foreign Military Financing appropriations, the PCO shall ensure that an offshore procurement determination, if required by DoD 5105.38-M, SAMM, has been made. The PCO shall include a copy of this determination in the contract file.

SUBPART 225.74 — DEFENSE CONTRACTORS OUTSIDE THE UNITED STATES

225.7401-100 Contracts Requiring Performance or Delivery in a Foreign Country.

IAW DFARS PGI 225.7401(a)(ii), KOs shall comply with any TBC requirement set forth by the geographic combatant commander during declared contingency operations for all solicitations and contracts that relate to the delivery of supplies and services to the designated area(s) of operation. IAW the DPAP Director's memorandum dated 27 Jul 2012, subject: Theater Business Clearance/Contract Administration Delegation Update – Integration of TBC with the Joint Contingency Contracting System Platform, KOs shall use the JCCS Platform's TBC Module to submit TBC requests for proposed contract efforts. Refer to the aforementioned memorandum for the JCCS website and JCCS TBC Module Training. For requirements with performance in Iraq and Afghanistan, refer to the CENTCOM Joint Theater Support Contracting Command (C-JTSCC) Acquisition Instruction, the C-TJSCC Acquisition Policies website and the DPAP Contingency Contracting Policy website for TBC policy updates/changes.

SUBPART 225.77 — ACQUISITIONS IN SUPPORT OF OPERATIONS IN AFGHANISTAN

225.7703-100 Enhanced Authority to Acquire Products or Services from Afghanistan.

Refer to PIL 2013-01 for USACE policy and instruction regarding the Enhanced Authority to Acquire Products and Services Produced in Iraq and Afghanistan, with the exception of paragraph e.(ii). The chart at paragraph e.(ii) of PIL 2013-01 is outdated and replaced in its entirety as follows:

Nature of Contract Action	Concurring Authority
Individual Acquisition Above the Simplified Acquisition Threshold to $7.864 million*	DCC/CCC
Individual Acquisition Above $7.864 million*	PARC

*The thresholds are established at the Federal Acquisition Regulation (FAR) 25.402(b), and are subject to revision by the U.S. Trade Representative every 2 years.

PART 26 — OTHER SOCIOECONOMIC PROGAMS – RESERVED

PART 27 — PATENTS, DATA, AND COPYRIGHTS – RESERVED

PART 28 – BONDS AND INSURANCE

SUBPART 28.3 — INSURANCE

28.305-100 Overseas Workers' Compensation and War Hazard Insurance.

USACE contractors shall obtain commercially available Defense Base Act (DBA) insurance from a Department of Labor (DOL) authorized insurance carrier unless the contractor is under a self insurance program approved by the DOL or performance of work is in a location country with a current DOL waiver. DOL approved carriers and self insured employers are listed at http://www.dol.gov/owcp/dlhwc/lscarrier.htm.

The PCO is encouraged to provide USACE contractors with the DOL's primary Defense Base Act (DBA) insurance carriers' information as follows:

Company	Contact Information
ACE	(215) 640-4836
Allied World Assurance Company (AWAC)	(646) 794-0511
American International Group (AIG Chartis)	(212) 458-3593
Continental Insurance Company (CNA)	(212) 440-7207
Starr Indemnity & Liability Company	(646) 227-6466
Zurich NA	(215) 861-6792

Fiscal Year (FY) 14 and FY15 geographic waivers provided in the DASA(P) PARC Policy Alert 14-34, Defense Base Act (DBA) Waivers and Listing for 2014-2015, to include waiver number 2014-18 dated 12 June 2014 for the State of Queensland, Australia, release the contracting agencies and contractors from the requirement to purchase Defense Base Act (DBA) insurance for foreign workers as stated in FAR Clauses 52.228-3 and 52.228-4. These waivers apply to employees other than U.S. citizens, residents of the U.S., or those hired in the U.S. under the following circumstances: such employees to whom the waiver will apply will 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. Copies of geographic waivers are available at the Defense Procurement and Acquisition Policy (DPAP) website, Defense Base Act (DBA) tab.

Where a waiver is needed, the PCO should investigate the host country's workers' compensation program. If a waiver is justified, the PCO shall request a waiver from the DOL (utilizing DOL Form BEC-565, Request for Waiver–DBA) through the USACE National Contractor Industrial Relations (CIR) Specialist (currently Ms. Vanessa Shaw-Jennings, vanessa.l.shawjennings@usace.army.mil, 202-761-8559) allowing a response time of not less than 30 workdays. If a waiver has expired or is about to expire, the same waiver request process should be followed. PCOs are reminded that dated waivers, not listed at the DPAP website, should be reinvestigated to ensure current Defense Base Act (DBA) coverage by the host country's workers' compensation laws. Supporting documentation for the nonlisted waivers should also be submitted through the CIR. If approved, the renewed waiver will be posted at the DPAP website.

The PCO is responsible to ensure that the contractor obtains and maintains valid Defense Base Act (DBA) insurance before allowing performance or issuing a 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. Refer to HQ USACE DOC Policy Alert 14-0014 for documentation required by open market Defense Base Act (DBA) insurance carriers and their respective brokers in providing contractors a quote, and subsequent policy, for Defense Base Act (DBA) insurance.

Refer to HQ USACE DOC Policy Alert 13-0031 for instructions regarding the expired USACE Defense Base Act (DBA) insurance program refund process for unbilled premiums against contract W912HQ-11-D-0004.

PART 29 — TAXES

SUBPART 29.402 – FOREIGN CONTRACT TAXES

29.402-100 General.

DoD contracts being performed, in whole or part, in Afghanistan may be affected by tax provisions in the international agreements identified below. DASA(P) PARC Policy Alert 13-33, C-CENTOM Joint Theater Support Contracting Command (JTSCC) HCA Bulletin Number 13-02 Taxation of DoD Contractors Performing in Afghanistan, reminds the acquisition workforce of the current policies in place relating to foreign tax activity in Afghanistan. Additional helpful information and templates can be located on JTSCC policies and procedures can be found at CJTSCC website. HQ USACE DOC provided notice of the DOC Policy Memorandum, 13-PM-05, as corrective action response to recommendations three, four, and five of the Special Inspector General for Afghanistan Reconstruction (SIGAR) Report Number 13-8, Taxes: "Afghan Government Has Levied Nearly a Billion Dollars in Business Taxes on Contractors Supporting U.S. Government Efforts in Afghanistan," dated 14 May 2013.

(a) Diplomatic Note 202, Agreement regarding the status of United States (US) military and civilian personnel of the DoD present in Afghanistan with cooperative efforts in response to terrorism, humanitarian and civic assistance, military training and exercises, and other activities, entered into between the US and Afghanistan on 28 May 2003; and,

(b) Military Technical Agreement (MTA) entered into between the International Security Assistance Forces (ISAF) and Interim Administration of Afghanistan in April 2002 and the 2011 Letter of Interpretation issued by the Commander of ISAF on 9 March 2011.

(c) In general, Diplomatic Note 202 will govern contracts or portions of contracts that obligate U.S. appropriated funds and that are awarded by DoD contracting activities in support of DoD requiring activities carrying out operations consistent with the purposes in the Diplomatic Note. In contrast, the MTA will govern contracts or portions of contracts that obligate another nation's funds and that are awarded by the (North Atlantic Treaty Organization) NATO/ISAF theatre head of contracts in support of NATO/ISAF requiring activities carrying out operations consistent with the purposes of the MTA. The PCO will consult with the legal and policy office to make these determinations.

29.402-101 Definitions

"Local Contractor" - Any commercial enterprise owned by an Afghan citizen or resident; any commercial enterprise that only conducts business within Afghanistan; or any commercial enterprise headquartered in Afghanistan. A local contractor may be a prime or subcontractor.

"NATO/ISAF Contractor" - Any contractor other than a local contractor or any subcontractor other than a local contractor employed by NATO/ISAF, NATO/ISAF subordinate organizations, NATO member States, or non-NATO member States participating in the ISAF.

29.402-102 Diplomatic Note 202.

(a) Diplomatic Note 202 applies to DoD military and civilian personnel, and contractors and contractor personnel. Contracts affected by this agreement are awarded in accordance with the laws and regulations of the United States. As a result, the terms contractor and contractor personnel are

interpreted to include subcontractors and subcontractor personnel. This agreement contains broad tax exemptions:

"The Government of the United States of America, its military and civilian personnel, contractors and contractor personnel shall not be liable to pay any tax or similar charge assessed with Afghanistan." "Acquisition of articles and services in the republic of Afghanistan by or on behalf of the Government of the United States of America in implementing this agreement shall not be subject to any taxes, customs duties or similar charges in Afghanistan."

(b) These exemptions cover DoD contractors, subcontractors and their U.S. and other non-Afghan employees (i.e., non-Afghan citizens or residents). DoD contractors and subcontractors performing contracts subject to the Diplomatic Note should not include any taxes in its contract price. Afghan employees of DoD contractors and subcontractors remain subject to Afghan tax laws. Contractors and subcontractors are required to withhold tax from the wages of these employees and to emit those payments to the Afghanistan Revenue Department. These withholdings are an individual's liability, not a tax against the contractor or subcontractor. Contractors and subcontractors shall exclude the taxes withheld on an Afghan employee's wages from its contract price.

29.402-103 Military Technical Agreement.

(a) The MTA applies to the military and civilian personnel of the ISAF and coalition forces and to ISAF contractors, subcontractors and their employees. The MTA contains broad tax exemptions: "ISAF will be allowed to contract direct with suppliers for services and supplies in Afghanistan without payment of tax or duties. Such services and supplies will not be subject to sales or other taxes."

(b) On 9 March 2011, the Commander of ISAF issued the 2011 Letter of Interpretation (LOI) which modified the MTA's tax exemptions in two respects.

(1) The LOI waived the "local contractors" tax exempt status "for profits earned from NATO/ISAF contracts as of 21 March 2011." This limited waiver only affects profits. Other direct and indirect costs of goods, materials and supplies acquired and the services provided by local contractors for the use of NATO/ISAF, NATO member States, and non-NATO member States participating in the ISAF remain exempt from all taxes, duties, sales or other taxes, import fees, or fees of any kind. A contractor or subcontractor may include the tax on profits in its contract price.

(2) The LOI waived the tax exempt status for any Afghan citizen employed by NATO/ISAF contractors, local contractors or their subcontractors as of 21 March 2011. Afghan citizens employed by these contractors and subcontractors are subject to Afghan tax laws. Contractors and subcontractors are required to withhold tax from the wages of these employees and to remit those withholdings to the Afghanistan Revenue Department. These withholdings are an individual's liability, not a tax against the contractor or subcontractor. Contractors and subcontractors shall exclude the taxes withheld on an Afghan citizen's wages from its contract price.

29.402-104 Solicitation Provisions and Clauses.

FAR Part 29.402 and DFARS 209.402 contain the prescribed solicitation provisions and contract clauses relating to Foreign Taxes, to include but not limited to 52.229-6 Foreign Fixed-Price Contracts; 52.229-7 Fixed-Price Contracts with Foreign Governments; 52.229-8 Foreign Cost-Reimbursement Contracts; and, 52.229-9 Cost-Reimbursement Contracts with Foreign Governments. Contracting officers will insert

clause 252.229-7999, Taxes – Foreign Contracts in Afghanistan (Class Deviation 2013-O0016), in all solicitations and resulting contracts with performance in Afghanistan. For contract actions in support of NATO in Afghanistan, a special tax clause will apply and must be approved by CJTSCC prior to issuing the solicitation.

PART 30 — COST ACCOUNTING STANDARDS ADMINISTRATION – RESERVED

PART 31 – CONTRACT COST PRINCIPLES AND PROCEDURES

SUBPART 31.1 — APPLICABILITY

31.105-100 Construction and A-E Contracts.

IAW FAR 31.105(d)(2)(i)(b), equipment ownership and operating costs shall be determined using EP 1110-1-8, Construction Equipment Ownership and Operating Expense Schedule.

31.105-101 Special Contract Requirements.

The PCO shall insert the SCR, "Equipment Ownership and Operating Expense Schedule," in Section 00 73 00, in all solicitations and contracts for construction within the United States that are expected to exceed the micro-purchase threshold.

Equipment Ownership and Operating Expense Schedule (MAR 1995)

(a) This special contract requirement does not apply to terminations. See 52.249-5000, Basis for Settlement of Proposals, and FAR Part 49.

(b) Allowable cost 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 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, Rental Costs. 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 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 special contract requirement)

PART 32 – CONTRACT FINANCING

SUBPART 32.1 — NON-COMMERCIAL ITEM PURCHASE FINANCING

32.102-100 Description of Contract Financing Methods.

IAW FAR 32.102, DFARS 232.102(e)(2) – Non-Commercial Item Purchase Financing, and FAR Clause 52.232-5, 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, the PCO shall insert the contract clause at 52.232-5000, Payment for Material Delivered Off-Site, in solicitations and contracts.

SUBPART 32.7 — CONTRACT FUNDING

32.703-2-100 Contracts Conditioned Upon Availability of Funds – Civil Works – Continuing Contracts.

(a) The PCO, when appropriate, shall insert the contract clause at 52.232-5001, Continuing Contracts, Special Continuing Contract for Civil Works Projects 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 and for which future FY funding is provided in the budget. This shall be used for all civil works projects when funds are appropriated for the project from either the operation and maintenance (O&M) account in the Energy and Water Development Appropriations Act (E&WDAA) or the O&M portion of the Mississippi River and Tributaries account in the E&WDAA and sufficient funds are not available to complete the contract. The PCO must insert the sum being reserved in the clause and reserve this amount stated in subsection (a) of the clause at contract award and modify the contract each FY to reflect the amount reserved. This clause is currently required through 30 September 2010 IAW Section 103 of the E&QDAA, 2010, Public Law 111-85. If future appropriations acts continue in the same manner, the requirement will be extended as appropriate beyond FY2010. See the annual Engineering Circular on the Execution of the Civil Works program for additional guidance and restrictions on the use of this clause.

(b) The language for ALTERNATE I of clause 52.232-5001, Continuing Contracts, Special Continuing Contract for Civil Works Projects Managed by the USACE [DEVIATION], may be used 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 DFARS 252.232-7007, Limitation of Government's Obligation, could be used. The PCO must insert the sum being reserved in the clause and reserve this amount stated in subsection (a) of the clause at contract award and modify the contract each FY to reflect the amount reserved. Section 103 of the E&WDAA, 2010, Public Law 111-85. If future appropriations acts continue in the same manner, the requirement will be extended as appropriate beyond FY2010.

32.705-2-100 Contract Clauses.

As prescribed at 32.703-2-100, the PCO shall insert the clause at 52.232-5001, Special Continuing Contract for Civil Works Project Managed by the USACE [DEVIATION].

PART 33 – PROTESTS, DISPUTES, AND APPEALS

SUBPART 33.1 — PROTESTS

33.102-100 General.

(a) The PCO retains the inherent authority to resolve protests by taking corrective action. The PCO may also communicate with the protester in an attempt to discuss withdrawal of the protest.

(b)(iii) In the event an agency protest is sustained, the protester shall be advised of its right to file a claim for costs to the PCO within 60 days after receipt of the agency's decision. Failure to file the claim within that time may result in forfeiture of the protester's right to recover its costs. The PCO will evaluate the claim and submit to the Office of the Chief Counsel through Counsel channels, within 30 days, a recommendation as to payment of appropriate agency protest costs.

(b)(iv) The PCO should refer to **UAI Appendix 33-1** when coordinating contract requests, claims, and appeals. All communication to the Office of the Chief Counsel shall be addressed to HQ USACE, (Attn: CECC-C).

33.103-100 Protests to the Agency.

(d)(4)(ii) – *Protests to the Agency*. The USACE agency protest process provides an independent review at a level above the PCO. USACE procedures for processing an agency protest are set out below (refer to **UAI Appendix 33-1** as necessary).

(i) In response to each agency protest, the appropriate PCO shall submit an agency protest report, with the analysis and documentation set forth in FAR 33.104(a)(3) and 33.190-101. The deciding official shall issue the decision within 35 days after receiving an agency protest. However, if a decision will not be issued within the 35 day period, the deciding official shall notify the protester when a decision will be issued. The notification shall be issued before expiration of the 35 day period of the date

(ii) Where appropriate, alternative dispute resolution procedures may be used to resolve protests.

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

(iv) The Chief Counsel has delegated authority to decide agency level protests in the Humphreys Engineer Center Support Activity and the Engineer Research Development Center to the HQ USACE Assistant Chief Counsel for Procurement Law and Contract Disputes.

(v) 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.

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

(vii) In those cases in which the Chief Counsel has retained the authority to decide the agency bid protest, the District 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. Center Counsels shall submit the PCO's report directly to CECC-C for final decision. CECC-C requires two copies of the PCO's report be furnished.

(f) *Action Upon Receipt of Protest.*

(1) Upon receipt of a protest before award, a contract may not be awarded, pending agency resolution of a protest, unless contract award is justified, in writing, for urgent and compelling reasons or is determined, in writing, to be in the best interest of the Government. Such determination shall be processed IAW AFARS 5133.104(b) and (c).

(2) Upon receipt of a protest within 10 days after contract award or within five days after a debriefing date offered to the protester under a timely debriefing request IAW FAR 15.505 or 15.506, whichever is later, the PCO shall immediately suspend performance pending resolution of the protest within the agency, unless continued performance is justified, in writing, for urgent and compelling reasons or is determined, in writing, to be in the best interest of the Government. Such determination shall be processed IAW AFARS 5133.104(b) and (c).

33.103-101 Disclosure of Government Estimate.

If, after bid opening, an apparent low bidder protests the reasonableness of the Government estimate, the PCO shall provide the details of the Government estimate to the protester upon receipt of complete details of the protester's estimate. The details of the Government and protester's estimates are not to be disclosed to third parties.

33.103-90-100 Annual Agency Bid Protest Report.

A year-end report of all agency and GAO bid protest cases decided during the FY shall be submitted to the Office of the Chief Counsel by each Division and Center Counsel. The report should include a summary and analysis identifying the number of protests by District, types of decisions, repetitive issues, trends, and any emerging guidance or patterns of decisions. The year-end report shall be submitted, no later than 15 October to: U.S. ARMY CORPS OF ENGINEERS; ATTN: CECC-C; 441 G STREET, NW; WASHINGTON, DC 20314-1000

33.104-100 Protests to GAO.

(a) *General Procedures.* The Chief Counsel has the authority to determine the final agency position for GAO protests, with power of delegation, and the Chief Counsel has delegated authority to determine the final agency position for GAO protests to the following Division/Center Counsels: LRD, NAD, NWD, POD (for Alaska District only), SAD, SPD, SWD, TAD, ERDC, and HNC. Such authority includes the power for Division Counsel to redelegate to the Districts. Delegated protests shall be processed IAW procedures established by the respective Division Counsels.

(i) 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 Chief Counsel, draft copies may be requested for review prior to transmission to GAO.

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

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

(1) The Chief Counsel has retained authority to determine the final agency position for GAO bid protests in the MVD, HECSA, 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 UAI 33.190-1-100.

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

(3) 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.

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

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

(iii) Counsel without delegated bid protest authority should advise the CECC-C attorney assigned to the protest of any known bases for summary dismissal. Documents supporting the summary dismissal request should be transmitted, primarily via e-mail or secondarily via facsimile, to Office of the Chief Counsel.

(4) Each office of counsel responsible for responding to protests at the GAO must transmit via e-mail and facsimile a written notice of appearance to the GAO, protester, CECC-C, and intervenor if any, not later than three days after being notified of the protest by the Office of the Chief Counsel.

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

(b)(1) *Protests Before Award.*

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 PARC to the USACE HQ DOC for processing and transmittal to DASA(P). Generally such request shall be submitted to the USACE HQ 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 CICA Override Guidebook_June 2008 for reference and additional policy guidance for GAO protests both prior to award and after award.

(c) *Protests After Award.* The findings for authorization of contract performance should be processed IAW the requirements provided at 33.104-100(b)(1), Protests Before Award.

33.190-100 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.

(c) The PCO's report should be assembled in a secure binder fastened at the left side with a fastener that will permit the full page to be read. The index of all documents should be placed as the first page. Each document should be separated by a divider with a tab attached. The PCO's statement should be paginated. Sizable files should be divided into two or more volumes. The cover of the report should identify it as the protest file and include the file number. Drawings should be folded and placed into an envelope in the binder. The solicitation/contract should be enclosed as a separate exhibit if it is voluminous in size. With GAO's prior approval, the administrative report may be submitted on a compact disc or via e-mail. If submitting an administrative report electronically, the documents shall be submitted in ".pdf" format.

33.190-1-100 Bid Protest Action Report.

The requirement for after action reporting will be satisfied by entering the required data in the Matter Tracking System (MTS) Bid Protest Notebook, described in UAI 33.102-101, USACE Automated Legal System MTS, as soon as practicable. GAO bid protest decisions are posted on the Internet within 24

hours after they are issued (unless subject to protective order), at:
http://www.gao.gov/decisions/bidpro/bidpro.htm

SUBPART 33.2 — DISPUTES AND APPEALS

33.203-100 Applicability - Agency Board of Contract Appeals for Civil Works Contracts.
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. The procedures for handling contract appeals are set forth in Appendix 33-1 – Contract Requests, Claims, and Appeals.

PART 34 — MAJOR ACQUISITION SYSTEMS – RESERVED

PART 35 — RESEARCH AND DEVELOPMENT ACQUISITION – RESERVED

PART 36 – CONSTRUCTION AND ARCHITECT-ENGINEER CONTRACTS

SUBPART 36.1 — GENERAL

36.102-100 Definitions

"Metric Ombudsman" as defined by Public Law 104-289, Savings in Construction Act of 1996, is the advocate responsible for reviewing and responding to complaints from prospective bidders, subcontractors, suppliers, or their designated representatives regarding the use of metric standards and materials.

36.104-100 Policy

(a) The Deputy Assistant Secretary of the Army (DASA(I,L&E)) in a 19 May 1997 memorandum, appointed the USACE PARC (CEPR-ZA), now the USACE HQ Director of Contracting (CECT-ZA), as the DA Metric Ombudsman and the Chief of Contracting Policy Division, Office of the PARC (CEPR-P), now Chief of Contracting Policy Division, USACE HQ Directorate of Contracting (CECT-P), as the alternate DA Metric Ombudsman. This responsibility extends to the U.S. Army Reserve (USAR) and the Army National Guard (ARNG) projects under the execution of USACE. The Metric Ombudsman is to enforce PL 104-289 and the DoD metric design policy by offering prime contractors the option of using metric concrete masonry units and recessed lighting fixtures or inch-pound substitutes so that selection can be based on the total installation price.

(b) *Authority for Construction and A-E Contracting.* ERDC and associated laboratories are not authorized to procure construction or A-E services and shall obtain contracting support from another District or Center.

36.14-100 USACE Policy Alerts

HQ USACE DOC Policy Alert 13-0014, titled, "Issuance of Updated ER-415-1-11 BCOES Reviews" provides updated guidance of the ER 415-1-11 regarding policies for the biddability, constructability, operability, environmental, and sustainability characteristics.

SUBPART 36.2 — SPECIAL ASPECTS OF CONTRACTING FOR CONSTRUCTION

36.201-100 Evaluation of Contractor Performance.

(a) *Preparation of Performance Evaluation Reports.*

(1) The KO shall notify the contractor at the preconstruction conference of the elements that will be used to evaluate performance. This notification shall be documented in the contract file. Documentation to support the evaluation shall be collected and evaluated throughout the span of the contract. Follow the dollar thresholds for evaluations IAW DFARS 242.15 and AFARS 5142.15. (Also for construction and A-E contractor performance evaluations, refer to ER 415-1-17, Construction Contractor Performance Evaluations, and EP 715-1-7, A-E Contracting in USACE).

(2) An interim performance evaluation shall be prepared on contracts where a contractor's performance has been generally unsatisfactory for any element for a period of three months, or as appropriate. A new evaluation need not be prepared if unsatisfactory performance continues for additional periods, but the files should be fully documented. An interim performance evaluation shall also be prepared whenever the contractor's performance has been unsatisfactory for any

period that could affect overall contract performance. An interim performance evaluation shall be submitted in the same manner as for completed contracts (ref: Subpart 42, ER 415-1-17 and EP 715-1-7).

(3) Prior to issuance of an interim unsatisfactory evaluation, the contractor shall be advised of the basis for the evaluation and offered an opportunity to submit comments.

(4) After the issuance of an interim unsatisfactory rating, the ACO shall continue to document and to reevaluate the contractor's performance. Documentation used in the re-evaluation process shall address all new instances of unsatisfactory performance, as well as efforts made by the contractor to improve performance deficiencies. Should the contractor's performance on any evaluation element change, the original interim rating may be amended with a written addendum which reflects the change.

(5) The final report may be supplemented or amended as necessary through the contract closeout and warranty period to reflect changes in the evaluation of performance elements caused by resolution of contractor claims or compliance with warranty requirements.

(6) Following issuance of a final unsatisfactory evaluation, the KO shall promptly assess the circumstances to determine whether pursuit of a suspension or debarment action under FAR Subpart 9.4 is appropriate. The KO's rationale for or against such an action shall be documented in writing and maintained in the contract file.

36.203-100 Government Estimate of Construction Costs.

Refer to the current PIL 2012-03-R1, Requirements for Development, Review and Approval of the Independent Government Estimates (IGE), and **UAI Appendix 36-1** for the IGE Approval Matrix.

36.203-101 Civil Works Contracts.

(a) Government estimates shall be based on the estimated comparable cost of doing the work by Government plant (see 33 U.S.C. 624, Limitation on [River and Harbor] Improvement Work by Private Contract) under the following conditions:

(1) If suitable Government plant is reasonably available for use within the time limits that would be allowed a contractor, or

(2) If, in the judgment of the commander, the work could be done at a reasonable cost with plant purchased or leased for the project and if the commander is prepared, if bids are rejected, to recommend doing the work with Government plant and labor.

(b) In estimating the cost of doing the work under (a)(1) above, proper charges for labor and materials, plant depreciation, all supervision and overhead expenses, and interest on the capital invested in the Government plant shall be taken into account (the rate of interest shall not exceed the maximum prevailing rate being paid by the Government on current issues of bonds).

(c) Under any other conditions, Government estimates shall be based on the fair and reasonable estimated cost of a well equipped contractor doing the work. Proper charges for labor and materials, plant depreciation, all expenses for supervision, overhead, worker's compensation, general liability

insurance, and interest on capital invested in plant shall be taken into account. An allowance for profit shall not be included.

36.203-102 Revision of Government Estimate.

When the Government estimate is changed during or subsequent to conferences or negotiation, the basis for the revision or changes in price or prices shall be fully explained and documented in the POM, price negotiation memorandum (PNM), and/or appropriate SSDD.

36.205-100 Statutory Cost Limitations – Civil Works Contracts.

IAW 33 U.S.C. 622 and 624, no civil works construction contract shall be awarded if the contract price exceeds the Government estimate by more than 25%. IAW UAI 36.203-101(c), the estimate shall not include an allowance for contractor profit.

36.205-101 Cost Limitations – Military Construction Contracts.

(a) Award of a contract for military construction shall be approved by the District/Center 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 O&M Construction.* Installation Commander or designee approval shall be obtained prior to award of a contract if the proposed contract price exceeds:

(1) The Government estimate by more than 15%, or

(2) The funds initially made available by the installation.

SUBPART 36.3 – TWO-PHASE DESIGN-BUILD SELECTION PROCEDURES

36.303-100 Procedures.

Single-phase design-build approach is only authorized for military construction projects or unspecified minor military construction. The single-phase approach can only be used where authorized, the PCO makes the determination in FAR 36.301 and the package contains the technical approvals IAW ECB 2012-23. In the event of a disagreement between the PCO's determination and the HQ USACE technical approvals, the concern shall be elevated to the HQ USACE DOC and Chief of E&C. 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 36.5 – CONTRACT CLAUSES

36.516-100 Quantity Surveys - Hydrographic.

The PCO shall insert the clause at FAR 52.236-16, Quantity Surveys, for dredging or underwater material placement when payment is to be based on quantity surveys. *Alternate I* may be used only in exceptional circumstances with the prior approval of the DCC/CCC (or approval of the PARC when the DCC/CCC is the PCO). The preferred methods of performing hydrographic quantity surveys (in descending order) are as follows:

(1) The Government shall perform quantity surveys by using qualified in-house survey crews, if available.

(2) The Government shall provide quantity surveys by contracting directly with qualified independent hydrographic survey contractors.

(3) The Government shall permit, in exceptional circumstances only, the use of the dredging contractor's surveys, if the contracting officer determines that such surveys are adequate and reasonable for payment purposes, and a Government inspector, qualified in hydrographic surveying, is present during the collection of the survey data.

36.570-100 Additional Solicitation Provisions and Contract Clauses.

(a) IAW DFARS 236.570(b)(2), the DCC/CCC is hereby authorized, without power of redelegation, to approve the use of either of the clauses at DFARS 252.236-7003 (Payment for Mobilization and Preparatory work), or DFARS 252.236-7004 (Payment for Mobilization and Demobilization) in solicitations and contracts for construction.

(b) This section applies to single phase and supplements FAR 36.3, Two-Phase Design-Build Selection Procedures, to prescribe clauses for insertion in solicitations and contracts for design-build contracts.

(1) The PCO shall insert the following clauses in all design-build solicitations and contracts—
- (i) 52.236-5000, Design-Build Order of Precedence
- (ii) 52.236-5001, Personnel, Subcontractors and Outside Associates or Consultants
- (iii) 52.236-5002, Government-Furnished Drawings, Surveys, and Specifications in the Request for Proposal
- (iv) 52.236-5003, Government-Furnished Specifications and Drawings for Construction
- (v) 52.236-5004, Responsibility of the Contractor for Design
- (vi) 52.236-5005, Warranty of Design
- (vii) 52.236-5006, Deviating from the Accepted Design
- (viii) 52.236-5007, Contractor's Role during Design Process
- (ix) 52.236-5008, Value Engineering after Award
- (x) 52.236-5009, Partnering.
  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.
- (xi) 52.236-5010 Government Re-Use of Design

SUBPART 36.6 — ARCHITECT-ENGINEER (A-E) SERVICES

13-0016 – HQ USACE DOC PM 13-PM-01, FAR Part 36.6, Acquiring Professional A-E Services

36.600-100 Scope of Subpart.

(a) See UAI Part 37 for guidance on development of an acquisition strategy for A-E services, including design services in support of construction, valued at/above the SAT.

(b) The acquisition strategy requirement noted under AFARS Subpart 5137.5 is unrelated to the Overall Acquisition Strategy (OAS) requirement in UAI 7.102, since the annual OAS relates to the District/Center contracting activity's total anticipated workload, whereas the AFARS acquisition strategy requirement

relates to a specific program/contract/task order requirement. Therefore, the preparation of an OAS does not replace the AFARS requirement for development of an A-E acquisition strategy for a specific program/contract/task order that meets the applicable criteria. USACE A-E Acquisition Strategy and Planning policy is further detailed in EP 715-1-7 Chapter 2.

36.601-3-100 Applicable Contracting Procedures.

Professional A-E services acquisitions will be procured under the Brooks Act, the provisions outlined in FAR Part 36.6, and the procedures provided in EP 715-1-7, Architect-Engineer Contracting. *(Non-A-E services that do not require performance by a registered or licensed architect or engineer, (notwithstanding the fact that such architect-engineers also may perform those services) should be acquired pursuant to the provisions in FAR Parts 13, 14, and 15, utilizing performance based acquisition methods to the maximum extent practicable, and shall be evaluated utilizing the DoD Source Selection Procedures, when applicable).*

36.601-3-90-100 Limitations.

(a) IDIQs for A-E services shall comply with UAI. (See UAI Part 37 for guidance on development of an acquisition strategy for A-E services, including design services in support of construction, valued at/above the SAT).

(b) Appropriate consideration should be taken into account to have an equitable distribution of differing business sizes and classes of A-E firms based on the anticipated needs of the District/Center.

(c) For any task order expected to exceed $700K, not specifically identified in an approved acquisition strategy and/or plan, the District/Center Chief of Engineering shall provide a memo to the PCO justifying why a task order will be used instead of publicly announcing the requirement.

36.601-4-100 Implementation.

Implementation guidance on surveying and mapping requirements is provided in EP 715-1-7, Appendix I.

36.602-2-100 Evaluation Boards.

(a) USACE Commanders are authorized to appoint pre-selection and selection evaluation boards for all contracts.

(b) USACE Federal and non-Federal customers may be invited to nominate representatives, including private practitioners of architecture, engineering and related professions, as members of the evaluation boards for their projects. A-E support contractors who prepared the preliminary RFP drawings and/or specifications may be used by the evaluation board, provided the PCO approves written documentation which supports there are measures in place to ensure no situation exists where there is a conflict of interest which might bias the contractor's judgment and allow an unfair competitive advantage (ref: DFARS Subpart 207.503(S-70)(1)(ii)); and ensures that no inherently governmental functions (e.g., may not act as voting members) will be performed by those support contractors. All other A-E support contractors, including non-Federal customers (e.g., state and local officials), must be supported by a D&F prepared by the PCO and address the elements identified under DFARS Subpart 207.503, with regard to inherently governmental functions and avoidance of potential organizational conflicts of interest IAW FAR Subpart 9.505. The D&F requires approval by the PARC prior to release of the solicitation. The A-E announcement must contain information to advise potential offerors of the support contractor participation as a non-government participant. Although these support contractors

may be used to evaluate or analyze any specific aspect of a proposal, they *may not* be voting members or participate in rating proposals or recommending a selection. In addition, these support contractors may o*nly* have access to those portions of the proposal and selection information that they need to perform their specific duties. These support contractors may *not* have access to past performance or price/cost data.

(c) Evaluation boards shall meet the requirements of EP 715-1-7, Paragraph 3-6 a. and b. Note: The purpose of a pre-selection board is to recommend to the selection board only the highly qualified firms that have a reasonable chance of being considered as most highly qualified by the selection board.

36.602-4-100 Selection Authority.

(a) Division/Center Commanders/Directors shall be the selection authority. This authority may be re-delegated in writing, including, but not limited to, their deputies, district commanders, KOs, directors or chiefs of engineering, or other appropriate officials who do not have a conflict of interest.

(b) The DCC/CCC is responsible for the procurement related content of public announcements for A-E services, and for general oversight of the A-E selection process to ensure regulatory compliance.

36.602-5-100 Short Selection Process for Contracts Not to Exceed the SAT.

One person with the appropriate expertise may constitute the selection board for an A-E selection that does not exceed the SAT. A brief selection report will be prepared for the file listing at least three most highly qualified firms that were considered and the reason(s) the firm selected for negotiations was the highest qualified.

36.603-100 Collecting Data on and Appraising Firms' Qualifications.

All Standard Forms (SF) 330 received from firms in response to a public announcement shall be retained at least 30 days after the last debriefing is held. The SF 330 of the selected firms (see FAR 36.602-4(b)) need to be retained in the Contracting Office official contract files to satisfy the requirements of FAR 4.803(a)(10).

36.604-100 Performance Evaluation.

Performance Evaluation requirements for A-E contracts are prepared as referenced under UAI Part 42 and EP 715-1-7, Chapter 6.

36.605-100 Government Cost Estimate for Architect-Engineer Work.

An IGE shall be prepared, along with a determination of fair and reasonable price to the Government. Follow procedures as outlined under EP 715-1-7 for specific guidance regarding cost estimates for A-E contract actions. (Refer to the current PIL 2012-03-R1 and **UAI Appendix 36-1**).

36.606-70-100 Statutory Fee Limitation.

See FAR 15.404-4(c)(4)(i)(B) and DFARS 236.606-70 for statutory fee limitation. For A-E services for public works or utilities, the contract price or the estimated cost and fee for production and delivery of designs, plans, drawings, and specifications shall not exceed 6% of the estimated cost of construction of the public work or utility, excluding fees. Application of the statutory limit and items included and not included in the statutory fee limitation of design to construction costs are referenced in EP 715-1-7, Appendix Y, paragraphs 5 and 6.

36.609-1-100 Design Within Funding Limitations.

(a) The PCO shall insert FAR Clause 52.236-22, Design Within Funding Limitations, in A-E IDC, when applicable. In place of a specific construction funding limitation, insert "as specified in individual task orders."

(b) District/Center Chiefs of Engineering, or the individual in the equivalent position, are delegated the authority to make the FAR 36.609-1(c) determination not to insert FAR Clause 52.236-22, Design Within Funding Limitations.

PART 37 – SERVICE CONTRACTING

SUBPART 37.1 — SERVICE CONTRACTS - GENERAL

37.104-100 Personal Services Contracts.

33 U.S.C. 569a authorizes the Chief of Engineers to procure the temporary services of consultants in connection with the civil works functions of USACE without regard to 5 U.S.C. 5101-5115 and 5521-5527; provided that the highest rate of pay for each day of services does not exceed the daily rate of the Senior Level equivalent to the former GS-18 grade.

SUBPART 37.5 — MANAGEMENT OVERSIGHT OF SERVICE CONTRACTS

37.590-100 Army Management and Oversight of the Acquisition of Services.

(a) *General.* Refer to and comply with the interim policy set forth by the ASA(ALT) Memorandum dated 20 December 2011, and the USACE OPORD 2012-81 (with all applicable Annexes A-F and any related FRAGOs) (which provides the USACE internal processes for the management oversight of service contracts as outlined under AFARS Subpart 5137.5). The ASA(ALT) interim guidance and other recent guidance issued by the DASA(P) Senior Services Manager (SSM) and DASA(P) Policy Division change the thresholds at the AFARS 5137 – all Army services acquisition strategies valued at $250M to less than $1B will be processed through the DASA(P) SSM. The DASA(P) SSM will also be the designated Chairperson for all Army Services Strategy Panels (ASSP). This instruction does not apply to construction activities IAW AFARS Subpart 5137.590-2(g) or to Civil Works funded acquisitions. The ASA(ALT) Interim Policy excludes R&D, except Advisory and Assistance acquisitions in support of R&D.

(b) *USACE Command Services Executive (CSE)*. Approvals of all services requirements (to include services acquisition IDIQ proposals) with the value of $10M or greater over the life of the contract require USACE CSE review and approval to continue proceeding with the services acquisition. Refer to USACE OPORD 2012-81 (with all applicable Annexes A-F and any related FRAGOs). This OPORD 2012-81 is the USACE CSE policy for the management oversight of service acquisitions conducted at USACE.

(c) *Coordination with Services Portfolio Manager.* The USACE CSE Program Manager will coordinate all applicable services acquisitions with the appropriate Portfolio Manager. Each services acquisition proposed valued at $10M or greater must contain written notice of coordination with the Portfolio Manager.

(d) *Service Contract Approval Request (SCAR)*. For USACE implementing policy, refer to the USACE CSE Policy Memorandum attached to the HQ USACE DOC Policy Alert 13-0027, titled, Situational Awareness of Functional Policy Memorandum Related to Services Acquisition Certifications.

(e) *Contractor Manpower Reporting.* IAW AFARS 5137.9601(b) and with DoD Memorandum, dated 28 November 2012, titled, "Enterprise-wide Contractor Manpower Reporting Application (eCMRA)," applicable USACE services acquisitions require contractor manpower reporting regardless of the source of the funding or acquisition agent. eCMRA reporting applies to services acquisitions where organization that is receiving or benefiting from the contracted services is a DoD organization, including reimbursable appropriated funding sources from non-DoD executive agencies where the DoD

Component requiring activity is executive agent for the function performed. Army specific policy states that eCMRA reporting applies to repairs, maintenance, construction, and demolition projects that utilize Operations and Maintenance funds (Army CMRA FAQ #4). The DoD and Army noted exceptions to the eCMRA reporting policy include:

(1) FMS (CMRA FAQ #4);
(2) Acquisitions for Manufacturing (CMRA FAQ #4);
(3) Construction using MILCON funds (CMRA FAQ #4);
(4) Civil Works funded acquisitions (CMRA FAQ #5);
(5) Utilities (Army CMRA FAQ #4); and
(6) Services acquisitions where the DoD Component is merely a contracting agent for another executive agency; and,
(6) Grants and Other Agreements (CMRA FAQ #9).

Requiring activities and/or USACE functional proponents writing the statement of work/performance work statement must ensure these documents contain the language prescribed within the DoD Memorandum, as follows:

"The contractor shall report ALL contractor labor hours (including subcontractor labor hours) required for performance of services provided under this contract **for the [NAMED COMPONENT]** via a secure data collection site. The contractor is required to completely fill in all required data fields using the following web address: https://cmra.army.mil/default.aspx?ReturnUrl=%2f. Reporting inputs will be for the labor executed during the period of performance during each Government fiscal year (FY), which runs October 1 through September 30. While inputs may be reported any time during the FY, all data shall be reported no later than October 31 of each calendar year of contract/task order performance. Contractors may direct questions to the help desk at help desk at: http://www.ecmra.mil to review user manuals and gain an understanding about the data fields that will be included in the reporting structure that is hosted at http://www.ecmra.mil/."

Information from the secure web site is considered to be proprietary in nature when the contract number and contractor identity are associated with the direct labor hours and direct labor dollars. At no time will any data be released to the public with the contractor name and contract number associated with the data.

(f) *Services Acquisition Workshop (SAW)*. The completion of a SAW is required, or a waiver approved, for all acquisitions valued at $250M or greater before the service acquisition strategy will be approved by the DASA(P) or the Director, DPAP. (Refer to HQ USACE DOC Policy Alert 13-0007 for additional guidance on SAWs).

37.590-6-100 Army Service Strategy Panel Procedures.

(c) Supporting documentation for service acquisitions over $250M. (The PARC may also request similar supporting documentation for services acquisitions valued at $10M or greater). (Generally, the USACE CSE requires the service acquisition approval certification or SCAR and an Acquisition Brief for CSE approval – see requirements at OPORD 2012-81). Documentation that supports the acquisition strategy may vary with the approach anticipated, but at a minimum should contain the following, when applicable:

(1) DD Form 2579 – Small Business Coordination Record
(2) IGE (Draft)
(3) Market Research Report
(4) PWS
(5) QASP
(6) Requirements Validation Document/SCAR
(7) SAW Memorandum of Record, when applicable (or waiver)
(8) SSP (without any names of Members or the SSA)
(9) D&F(s) as appropriate for the specific acquisition
    a. D&F bundled or consolidated requirements
    b. Cost Benefit Analysis (CBA) for all services(DASA(P) PARC Policy Alert 14-36)
    c. D&F for SATOC
(10) J&A(s) (for actions competed on other than full and open basis)
(11) Award Fee Plan, when applicable
(12) Section L (Instructions, Conditions and Notices to Offerors)
(13) Section M (Evaluation Factors for Award)
(14) If a hybrid contract, a percentage break-out of orders issued for each contract type
(15) ASSP Briefing slides

Note 1: See Appendix 37-1 – Acquisition Strategy Content Guide, for further explanation and considerations based on lessons learned from previous ASSPs.

Note 2: Refer to HQ USACE DOC Policy Alert 13-0009, titled, Service Acquisition Strategies Requiring Army, DoD, and Higher Coordination Documentation, for information regarding written file record of the DASA(P) SSM coordination and review.

Note 3: For situational awareness, in addition to the items outlined at UAI 37.590-6-100(c), the following review and approval documents are required:

- USACE CSE Program Manager Coordination with Services Portfolio Manager(s)
- USACE CSE Review and Approval Memorandum

PART 38 — FEDERAL SUPPLY SCHEDULE CONTRACTING – RESERVED

PART 39 — ACQUISITION OF INFORMATION TECHNOLOGY

SUBPART 39.1 — GENERAL

39.101-100 Policy.

(S-90)(a) When procuring any commercial or commercial off-the-shelf (COTS) IT equipment (even for NETCOM IT requirements), regardless of the dollar value – the requiring activity, in coordination with the PCO, shall use CHESS. Access CHESS at the website to locate the appropriate contract vehicle (https://chess.army.mil).

(S-90)(c) The PCO shall abide by this requirement or request a waiver be provided IAW AFARS 5108.7403 (if applicable), DASA(P) PARC Policy Alert 13-66 – Army Waiver Process for Non-CHESS COTS IT Purchases, and AFARS 5139.101. All documentation relating to CHESS or a waiver shall be placed in the official contract file. Justifications for waivers to allow use of non-CHESS vehicles for purchase of equipment and software must provide the rationale explaining the extenuating circumstances or unique configurations required by mission and note non-availability through CHESS contracts. Any USACE Goal 1 Waiver requests will require coordination through USACE HQ Corporate Information Directorate. Non-Army customer requests for IT should be carefully evaluated prior to making the acquisition but the Goal 1 Waiver does not apply to non-Army funded IT acquisitions.

Note: Refer to DASA(P) PARC Policy Alert 14-31, Army Wide Management of Printing and Copying Devices, when anticipating purchase of any printers, copying devices and related services.

PART 40 — RESERVED

PART 41 — ACQUISITION OF UTILITY SERVICES

SUBPART 41.1 — GENERAL

5141.102-100 Applicability.

To access the Army Regulation applicable to acquisition and sale of utility services, use the following link: http://www.apd.army.mil/pdffiles/r420_41.pdf

PART 42 – CONTRACT ADMINISTRATION AND AUDIT SERVICES

SUBPART 42.1 — CONTRACT AUDIT SERVICES

5142.1-90-1-100 Responsibilities.

(c) HQ DOC/DCC/CCC shall ensure that the KO (both PCO and ACO), the Contract Audit Follow-up (CAFU) Monitor, and the Monitor's supervisor (at least one level above the Monitor) have a factor (related to the follow-up duties described immediately below) included in their performance objectives and resulting performance appraisal(s).

HQ DOC/DCC/CCC shall –

(1) Demonstrate personal interest in all contract audit reports, tracking and assisting the KO (PCO and ACO) in the resolution and disposition of those audit recommendations which appear unlikely to be resolved within six months of the date of an audit report.

(2) Appoint a monitor to be responsible for providing updates on all open audits to the USACE CAFU Monitor.

(3) Establish a system where both PCOs and ACOs, on a routine basis, directly report their Contract Audit Follow-up related actions and seek advisement from supervisor and/or the DCC/CCC.

(4) Submit plans of action for timely resolution and disposition of audit recommendations upon request by the PARC.

(5) Assure participation by the KO in overage audit review boards when requested by the PARC.

SUBPART 42.2 — ASSIGNMENT OF CONTRACT ADMINISTRATION

42.202-100 Assignment of Contract Administration.

(a) 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 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.

SUBPART 42.3 — CONTRACT ADMINISTRATION OFFICE FUNCTIONS

42.302-100 Contract Administration Functions - Administrative Contracting Officer.

(a) The PCO may delegate an 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 1.602-1-100 for the authorities in a typical designation letter. The ACO shall routinely confer with the contracting officer on the status of each of their assigned contracts.

The PCO shall have access to Resident Management System (RMS) in order to remotely monitor contract performance.

(b) The KO is required to execute contract actions and the Contract Action Reports (CARs) in the Standard Procurement System/Procurement Desktop-Defense (SPS/PD2) simultaneously with signing the award/modification document.

(c) The ACO is required to provide to the PCO office, immediately upon execution, original contract modifications and supporting documentation; correspondence; interim unsatisfactory performance evaluations; and any other contract administration documents requested by the PCO.

(d) The official contract file shall include cross-reference notation to the location of documentation (e.g., payrolls, submittals, labor interviews, etc.) maintained by ACO and the COR.

SUBPART 42.490 — FOLLOW-UP ON CONTRACT AUDIT REPORTS

5142.490-4-100 Overage Audit Review Boards.

(c) Audits reported as 6-12 months old, unresolved or overage in the "Status Report on Specified Contract Audit Reports," shall have an Overage Audit Review Board Plan of Action including a milestone plan to achieve proper resolution and disposition. The Plan of Action shall be prepared and forwarded to DOC Acquisition Support no later than 15 May and 15 November. The Plan of Action shall be in sufficient detail to include all requirements stated in AFARS 5142.490-4(c)(2).

SUBPART 42.15 — CONTRACTOR PERFORMANCE INFORMATION

42.1502-100 Policy.

(1) Contractor performance assessments shall be completed in accordance with the FAR 42.15, DFARS 215.304 and 242.15, as well as, AFARS 5117.9005 and 5142.15.

(2) Contractor Performance Assessment Repository System (CPARS) is the site for initiating, reporting, and completing contractor performance evaluations. The CPARS User Manual should be used for CPARS actions https://www.cpars.gov/cparsfiles/pdfs/CPARS_User_Manual.pdf). The systems formerly known as Architect-Engineer Contract Administration Support System (ACASS) and Construction Contractor Appraisal Support System (CCASS) were incorporated into the CPARS (https://www.cpars.gov). Timely completion of CPARS evaluations are of utmost importance. CPARS evaluations should contain meaningful information to support effective evaluation of past performance during source selections (refer to FAR Part 15 and DFARS 215.304).

(3) USACE Roles and Responsibilities for CPARS: The ER 415-1-17 sets forth the roles, responsibilities and time requirements for construction contractor performance assessments. For Architect-Engineering (A-E) contractor performance evaluation roles and responsibilities are established within the Engineering Pamphlet (EP) 715-1-7. For evaluations of contractor performance on other services acquisition (other than construction or architect-engineering), the responsible roles are:

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

(b) Services Acquisition Reviewing Official (RO): The RO shall be one level above the KO (or where a COR is designated the COR's Supervisor) assigned to the services acquisition and responsible for the management of the services acquisition performance.

(4) Each USACE District/Center shall have a local CPARS Point of Contact (POC). The local CPARS POC will support the DOC CPARS Agency POC. The Agency POC is within the Headquarters, DOC CECT-SO. Consolidated metrics and reporting of contractor performance assessment data is managed by the Agency POC, CECT-SO.

PART 43 – CONTRACT MODIFICATIONS

SUBPART 43.1 — GENERAL

43.102-100 Policy.

(b) The policy and procedures at DFARS 217.74 shall be used to the maximum extent practicable for contract modifications within the scope of the contract that are not "undefinitized contract actions" (UCAs) as defined by DFARS 217.7401(d) (e.g., unpriced change orders (UCOs)). A D&F, signed by the PCO prior to issuance of any such modification, shall contain, as a minimum, the following:

(1) The reason normal contract modification procedures and lead times are not practicable;

(2) The date the requirement was first identified;

(3) The consequences of missing the required delivery date;

(4) The definitization schedule for the contract modification;

(5) An explanation for any deviation from the definitization schedule;

(6) The percentage of contract modification work completed by the contractor prior to definitization;

(7) The NTE price.

(c) The DCC/CCC and Chief of Construction shall establish management controls for monitoring definitization schedules, receipt of contractor proposals, and completion of negotiations/execution of the definitization modification, when UCOs are issued.

PART 44 — SUBCONTRACTING POLICIES AND PROCEDURES – RESERVED

PART 45 – GOVERNMENT PROPERTY

SUBPART 45.1 — GENERAL

45.103-100 General.

(a) In circumstances where government furnished property (GFP) is anticipated to be provided to the contractor, the PDT shall become familiar with all FAR, DFARS and AFARS requirements concerning the management of GFP under the control of the contractor (refer to HQ DOC Policy Memorandum, 14-PM-01, Regarding Establishment of Controls and Requirements for Accountability and Administration of Government Property).

(b) The QASP and quality assurance plans should ensure that a member of the PDT is completely familiar with the approved Property Management Plan and the PWS/SOW and monitors GFP.

(c) The COR will ensure that the contractor has the proper controls in place to manage and account for government property and materials in accordance with the Property Management Plan. To achieve this, the COR, Contract Specialist, and/or Property Management Specialist will visit the project during performance of the contract/task order. For contracts other than fixed-price contracts, the COR will check the contractor's invoices to ensure that the procured items were approved as necessary prior to purchase and that all required documentation to establish and maintain accountability for this property is maintained on file. The KO shall ensure that changes to Government property made over time are reflected by modifications to the contract. A record of all open contracts that provide for Government property to be furnished to or acquired by the contractor shall be maintained by the District/Center Contracting Office.

PART 46 – QUALITY ASSURANCE

SUBPART 46.7 — WARRANTIES

46.710-100 Contract Clauses.

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.

PART 47 — TRANSPORTATION – RESERVED

PART 48 — VALUE ENGINEERING – RESERVED

PART 49 – TERMINATION OF CONTRACTS

SUBPART 49.113 — COST PRINCIPLES

49.113-100 Cost Principles - Construction Equipment Costs - Contract Clause.
The PCO shall insert the clause at 52.249-5000, Basis for Settlement of Proposals, in solicitations and contracts for construction expected to exceed the SAT.

PART 50 — EXTRAORDINARY CONTRACTUAL ACTIONS – RESERVED

PART 51 — USE OF GOVERNMENT SOURCES BY CONTRACTORS – RESERVED

PART 52 – USACE SOLICITATION PROVISIONS AND CONTRACT CLAUSES

SUBPART 52.1 — INSTRUCTIONS FOR USING PROVISIONS AND CLAUSES

52.101-100 Using Part 52.

(b)(2)(iii) The sequential numbering for provisions or clauses will be in the 5000 series.

SUBPART 52.2 — TEXTS OF PROVISIONS AND CLAUSES.

52.211-5000 Evaluation of Subdivided Items.

As prescribed at 11.703(c), 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 sub-items.

(End of provision)

52.211-5001 Variations in Estimated Quantities — Subdivided Items.

As prescribed at 11.703(c), insert the following clause in solicitations and contracts for fixed-price construction contracts when subdivided items are to be separately priced for payment purposes.

VARIATIONS IN ESTIMATED QUANTITIES — SUBDIVIDED ITEMS (MAR 1995)

This variation in estimated quantities clause is applicable only to Items 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 items 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 FAR 52.212-11, Variation in Estimated Quantities.

(c) If the actual quantity of work performed under Items 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 Items 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)

52.232-5000 Payment for Materials Delivered Off-Site.
IAW FAR 52.232-5, Payments Under Fixed Price Construction Contracts(b)(2), 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, the PCO shall insert the following contract clause:

Payment for Materials Delivered Off-Site

(a) Pursuant to 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)

52.232-5001 Continuing Contracts – Special Continuing Contract for Civil Works Project Managed by the USACE [DEVIATION] .
As prescribed in 32.705-2-100, insert the following clause:

Special Continuing Contract for Civil Works Project Managed by the United States Army Corps of Engineers [DEVIATION]

(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]. As prescribed in 32.705-2-101, 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:

(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 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)

52.236-5000 Design-Build Contract Order of Precedence.

The PCO shall insert the following clause in all design-build solicitations and contracts:

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. *(See also FAR 52.236-21, Specifications and Drawings for Construction)*

(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 with all provisions of the contract, in the order of precedence herein.

(End of clause)

52.236-5001 Personnel, Subcontractors and Outside Associates or Consultants.

The PCO shall insert the following clause in all design-build solicitations and contracts:

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)

52.236-5002 Government-Furnished Specifications, Drawings, Surveys, and Specifications in the RFP.

The PCO shall insert the following clause in design-build solicitations and contracts:

Government-Furnished Specifications, Drawings, Surveys, and Specifications in the Request for Proposal (JUL 2002)

This is to clarify 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)

52.236-5003 Government-Furnished Specifications and Drawings for Construction.

The PCO shall insert the following clause in all design-build solicitations and contracts:

Government-Furnished Specifications and Drawings for Construction (JUL 2003)

This is to clarify 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)

52.236-5004 Responsibility of the Contractor for Design.

The PCO shall insert the following clause in all design-build solicitations and contracts:

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 contact, 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)

52.236-5005 Warranty of Design.

The PCO shall insert the following clause in all design-build solicitations and contracts:

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 52.236-5004, 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, as applicable to the state that the project is located in.

(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)

52.236-5006 Deviating from the Accepted Design.

The PCO shall insert the following clause in all design-build solicitations and contracts:

Deviating from the Accepted Design (JUN 2002)

(a) The Contractor must obtain the approval of the Designer of Record and the Government's concurrence for any Contractor proposed revision to the professionally stamped and sealed and Government reviewed design, before proceeding with the 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 revision to the design, which deviates from the contract requirements (i.e., the RFP and the accepted proposal), will require a modification, pursuant to the Changes clause, in addition to Government concurrence. The Government reserves the right to disapprove such a revision.

(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)

52.236-5007 Contractor's Role During Design Process.

The PCO shall insert the following clause in all design-build solicitations and contracts:

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 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)

52.236-5008 Value Engineering after Award.

The PCO shall insert the following clause in all design-build solicitations and contracts:

Value Engineering after Award (JUN 1999)

(a) In reference to 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.

(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)

52.236-5009 Partnering.

The PCO shall insert the following clause in all design-build solicitations and contracts:

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 totally 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)

52.236-5010 Government Re-Use of Design.

The PCO shall insert the following clause in all design-build solicitations and contracts:

Government Re-Use of Design (MAY 2006)

In conjunction with the 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)

52.249-5000 Basis for Settlement of Proposals.

As prescribed in 49.113-100, the PCO shall insert the following clause in all solicitations and contracts for construction that are expected to exceed the SAT:

Basis for Settlement of Proposals

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

(1) 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.
(2) If equipment costs have been allocated to a contract using predetermined rates, those charges will be adjusted to actual costs.
(3) Recorded job costs adjusted for unallowable expenses will be used to determine equipment operating expenses.
(4) Ownership costs (depreciation) will be determined using the contractor's depreciation schedule (subject to the provisions of FAR 31.205-11).
(5) 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)

USACE ACQUISITION INSTRUCTION (UAI)

APPENDICES

USACE ACQUISITION INSTRUCTION (UAI)

APPENDIX 1-1 — PROCESS CHART FOR USACE ACQUISITION PEER REVIEW POLICY

HCA Peer Review Process ≥ $250M < $1B		
PCO Coordinate with District/Center BOB to Request Upcoming HCA Peer Review, and provide courtesy notification to Regional PARC	PCO, District/Center BOB & Regional Acquisition Support Analyst	Varies – Refer to Acquisition Milestones for Applicable Action
District/Center BOB Submit Peer Review Request to Regional Acquisition Support Analyst (or designee)	District/Center BOB & Regional Acquisition Support Analyst	*(5 Business Days) Prior to Peer Review Convening
Coordinate/Confirm Peer Review Schedule and Establish HQ peer review team IAW AFARS 5101.170(b)(1)(c), at a minimum: HQ Counsel; Regional Acquisition Support Analyst; HQ Small Business (when applicable); District/Center/HQ Cost Estimating; District/Center/HQ Technical Subject Matter Expert (or other Technical PDT/HQ Directorate Representative) & PARC/HQ DOC SCA (applicable to non-competitive actions)	Regional Acquisition Support Analyst (coordinates with DOC)	*(Event included in the 5 Business Days for coordination referenced above)
Access to Applicable Acquisition Documents Provided by District/Center BOB to the HQ peer review team (preferably by providing password access to PCF). Prepare for Peer Review Meeting by Reading/Reviewing all Applicable Acquisition Documents	District/Center BOB, Regional Acquisition Support Analyst & HQ Peer Review Team	*(Event included in the 5 Business Days for coordination referenced above)
Convene Peer Review (face-to-face, VTC, or teleconference) with the PDT Leads to include PCO; Technical Evaluation Team Lead; Price Evaluation Team Lead/Price or Cost Evaluator (as applicable); and Source Selection Evaluation Board Chair; and SSA if applicable. (Regional PARC & SSA may attend but are not required). (Regional Acquisition Support Analyst draft and coordinate for concurrence by HQ Peer Review Team and PCO a Peer Review Summary MFR)	DOC, Regional Acquisition Support Analyst & HQ Peer Review Team, PDT Members, and PCO	1-2 Business Days
Peer review findings dictated and documented during the Peer Review. Provide the Summary MFR for the Concurrences of the HQ Peer Review Team and PCO.	Regional Acquisition Support Analyst	5 Business Days
HCA Peer Review Chair Sign the Summary MFR. HCA Peer Review Chair endorse the Peer Review.	DOC, Regional Acquisition Support Analyst & PCO	1-2 Business Days
Signed Document Returned to Regional Acquisition Support Analyst; Action copied to Regional PARC, and sent to PCO and District/Center BOB. PCO can Proceed with Action once Summary MFR is signed and Peer Review is endorsed (or if a verbal is given by the Peer Review Chair). Place Peer Review Summary MFR and Peer Review Documents in Contract File.	Regional Acquisition Support Analyst & PCO	Upon Endorsement of Peer Review Chair

PARC Peer Review Process ≥ $50M < $250M		
Contracting Officer Coordinate with District/Center BOB Chief (or Peer Review POC) to Report Upcoming Need for Regional PARC Peer Review	Contracting Officer, District/Center BOB Chief & Regional Acquisition Support Analyst	Varies – Refer to Acquisition Milestones for Applicable Action
Establish Solicitation/Contract Peer Review and Coordinate/Confirm Peer Review Schedule IAW AFARS 5101.170(b)(1)(c), at a minimum: PARC Counsel; Regional Acquisition Support Analyst (s); PARC Small Business (when applicable); District/Center Cost Estimating; District/Center Technical Subject Matter Expert (or other Technical Representative) & SCA (applicable to non-competitive actions)	District/Center BOB Chief & Regional Acquisition Support Analyst	5 Business Days Prior to Solicitation/Contract Peer Review Convening
Access to Applicable Acquisition Documents Provided by Contracting Officer to the Solicitation/Contract Peer Review Team (preferably by providing password access to PCF) AND Solicitation/Contract Peer Review Team Prepare for Peer Review Meeting by Reading/Reviewing all Applicable Acquisition Documents	Contracting Officer, District/Center BOB Chief, & Regional Acquisition Support Analyst	5 Business Days Prior to Solicitation/Contract Peer Review Convening
Convene Solicitation/Contract Peer Review Meeting (face-to-face, VTC, or teleconference) with the PDT Leads IAW USACE Peer Review Policy, paragraph 6 - include PCO; Technical Evaluation Team Lead; Price Evaluation Team Lead/Price or Cost Evaluator (as applicable); and SSEB Chair (SSA if applicable) (Regional Acquisition Support Analyst draft and coordinate for concurrence by Solicitation/Contract Peer Review Team a Summary MFR on the Peer Review)	Regional Acquisition Support Analyst & Regional PARC or Regional PARC Designee	2-3 Business Days
Provide the Summary MFR with Concurrences of the Solicitation/Contract Peer Team to the Regional PARC for Endorsement	Regional Acquisition Support Analyst & Regional PARC	1 Business Day
Regional PARC Peer Review Chair endorse the Peer Review	Regional PARC & Regional Acquisition Support Analyst	1 Business Day
Provide MFR to Contracting Officer for Inclusion in the Contract File	Regional PARC & Regional Acquisition Support Analyst	3 Hours or Less
Contracting Officer Proceed with Contract Action	Contracting Officer	Upon Endorsement by Regional PARC

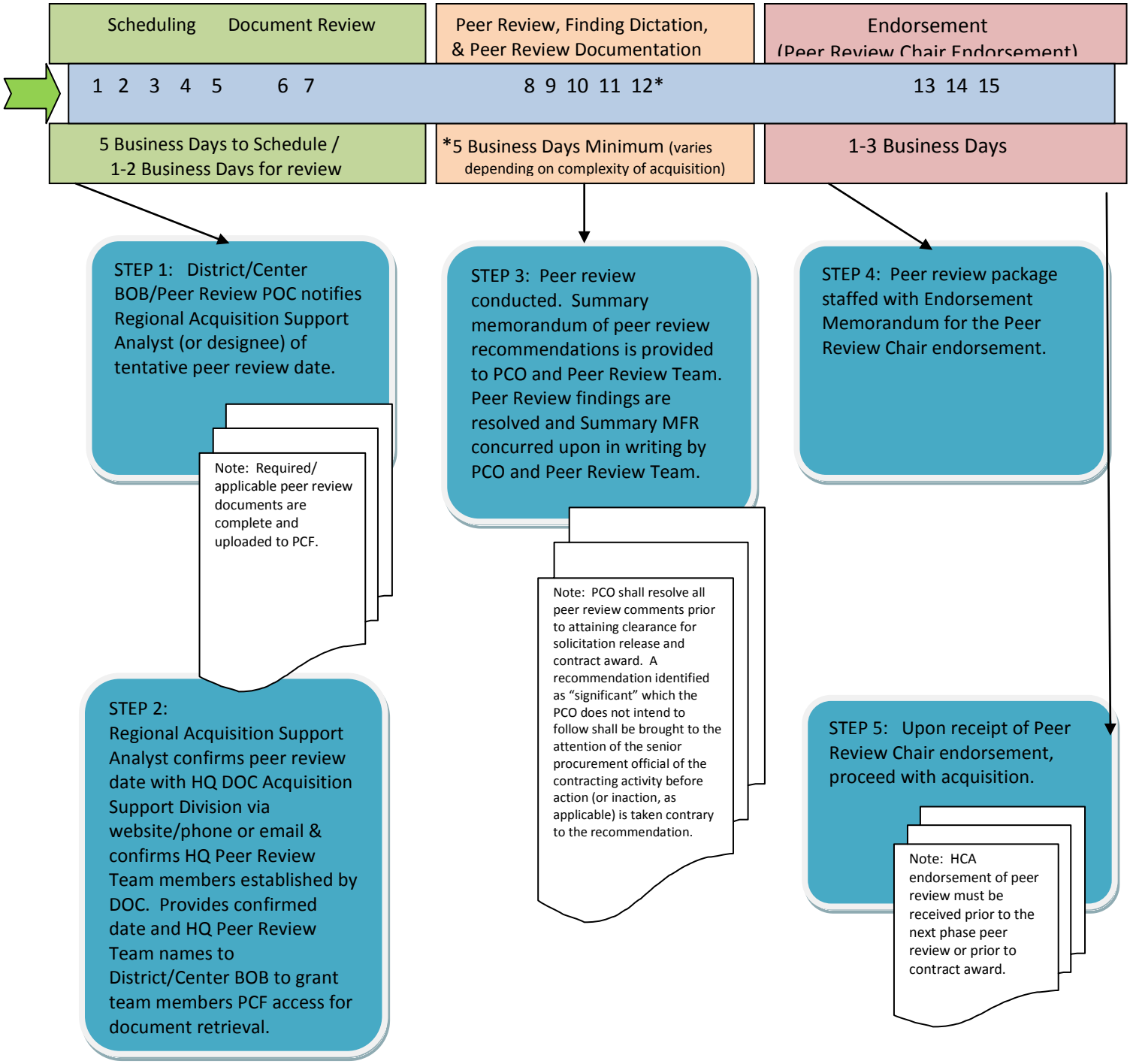
Peer Reviews (BOB Chief or DCC/CCC Chaired) – > $500K < $50M		
Establish Solicitation/Contract Peer Review* and Coordinate/Confirm Peer Review Schedule *All members shall be independent of PDT members and at a minimum: Counsel; Contracting; Small Business (where applicable); Technical Subject Matter Expert	BOB Chief/Peer Review POC	5 Business Days Prior to Solicitation/Contract Peer Review Convening
Provide Access to Applicable Acquisition Documents for the Solicitation/Contract Peer Review Members (preferably by providing password access to PCF)	Contracting Officer	5 Business Days Prior to Solicitation/Contract Peer Review Convening
Conduct Solicitation/Contract Peer Review (Solicitation/Contract Peer Review Team Complete Peer Review Toolkit and Draft the Summary MFR – Request Contracting Officer resolution to comments and concurrence on MFR)	Peer Review Team & BOB Chief Facilitator or DCC/CCC Chair	1 Business Day or Less
Peer Review Chair signs the Summary MFR and Peer Review Chair endorses Peer Review. Provide MFR to Contracting Officer for Inclusion in the Contract File.	BOB Chief/Peer Review POC & DCC/CCC Chair	1 Business Day or Less
Contracting Officer Proceed with Contract Action	Contracting Officer	Upon Endorsement by DCC/CCC

Peer Reviews (PCO or BOB Chief Chaired) ≥ $3K ≤ $500K		
Coordinate with Contracting Peer(s) to Schedule Peer Review of Acquisition File	Contracting Officer	2-3 Business Days Prior to Solicitation & Prior to Award
Conduct Peer Review and Provide Comments/Recommendations to Peer (Provide signed Memorandum for File (MFR))	Contracting 1102 Peer(s)	1-3 Hours
Ensure Comments/Recommendations are Addressed and Ensure Contract File Documents Corrected, if Applicable (Ensure Contract File Review Conducted Prior to Solicitation and Prior to an Award)	Contracting Officer	1-3 Hours
Ensure the signed Peer Review Memorandum for File is Placed in the Contract File	Contracting Officer	Prior to Contract Action

USACE ACQUISITION INSTRUCTION (UAI)

APPENDIX 1-2 — TIMELINE FLOWCHART FOR USACE HCA PEER REVIEW PROCESS

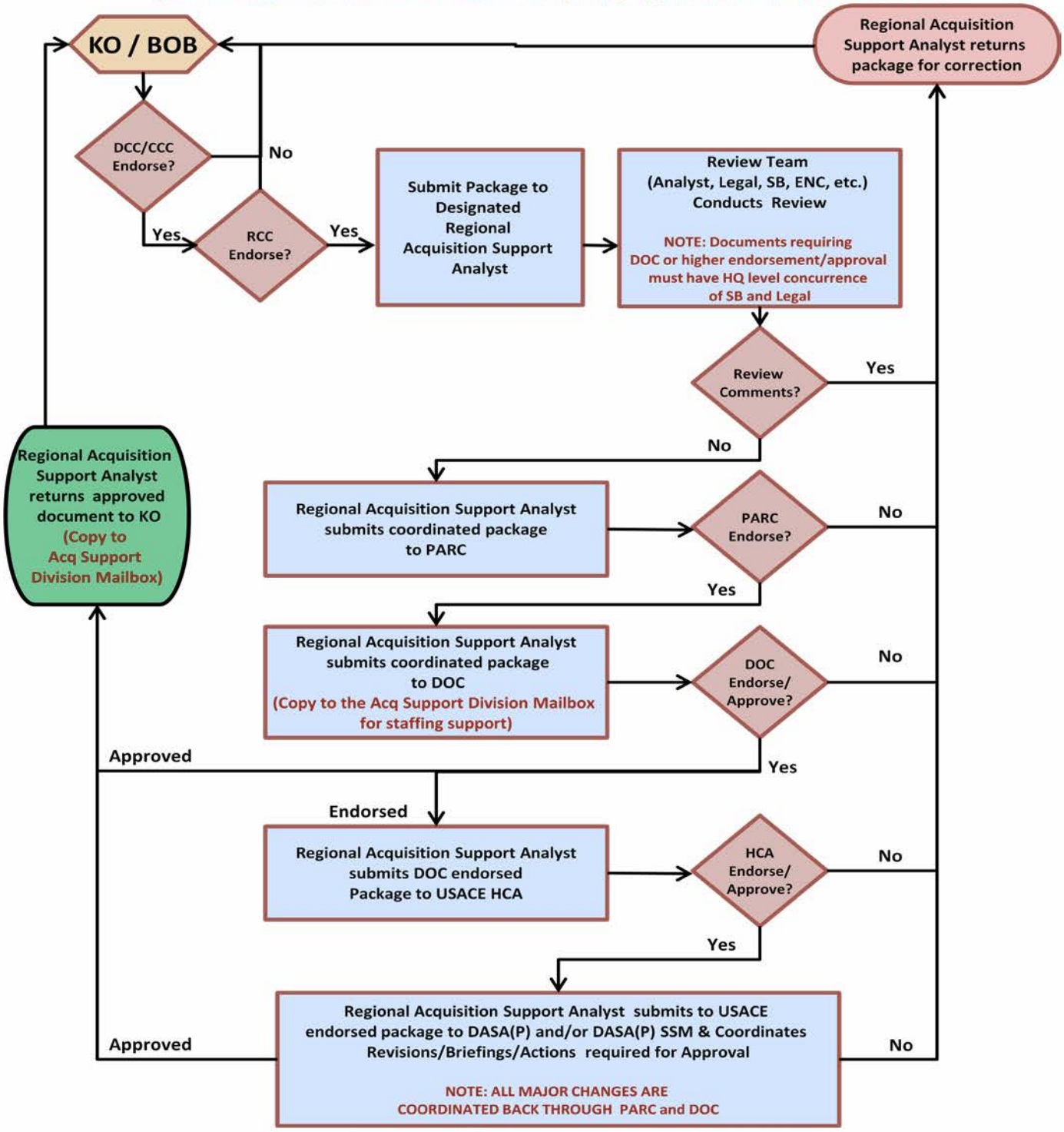
HCA Peer Review Timeline VISUAL



USACE ACQUISITION INSTRUCTION (UAI)

APPENDIX 1-3 — 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)



USACE ACQUISITION INSTRUCTION (UAI)

APPENDIX 1-4 — COMPLIANCE REVIEW TOOLKITS*

PHASE I – (SOLICITATION REVIEW)
PHASE II – (PRE-AWARD)

*Can be used for Peer Reviews under $50M conducted at the District/Center

PHASE I (SOLICITATION REVIEW)

Solicitation Number: _____ Date(s) Reviewed: _____

Project: _____ Estimated Dollar Value: _____

This toolkit is provided for use by the BOB or PCO Peer for performing independent Solicitation Review, as well as a *self-check* by the Contract Specialist. This toolkit is not to be considered an all-inclusive listing, some items do not apply to all requirements, and additions/deletions may be required by changes to regulations and/or in support of local or unique requirements.

Areas highlighted in pink are key focus items for these compliance reviews. Items highlighted in *green* are information to assist all in understanding the key areas of organizational focus.

*The complete solicitation file will be provided as part of the **local agency independent review** which is to be done **prior** to forwarding the key documents below for PARC or HCA level Peer Review.*
Key Documents for Phase I (Solicitation) Review: *Planning Documents (e.g., Acquisition Strategy, Acquisition Plan), Solicitation, PWS, IGE or 1391 (if MILCON), QASP, SSA Appointment, and SSP. These documents should be provided to reviewers in advance IAW instructions established for the Peer Review Process to expedite this process.*
Objective of Phase I (Solicitation) Review: *Review is intended to compare approved planning documents with the RFP and SSP to ensure consistency and fulfillment of intended/approved acquisition approach.*

SOLICITATION REVIEW TOOLKIT	Yes	No	N/A	Remarks
Files Review				
a. Are there any missing documents?				
b. Are documents misfiled?				
Legal Findings				
a. Has agency-level legal sufficiency been obtained for the acquisition documents for Peer Review (RFP, SSP) to this point?				
b. Have the legal comments been incorporated?				
Additional comments concerning findings:				
PRE-SOLICITATION AND PLANNING				
Evidence of Requirement				
a. Draft or Final (if available) SOW/PWS/Specifications/1391 (If MILCON) or IGE (If received)				
b. Draft QASP/PRS (if service)				
c. Request for Civilian Hire or Service Contract Approval				
Evidence of Availability of Funding				
a. Will appropriate funds be available to cover the contract requirements? *(FAR 32.703)*				
b. If funds are not available, is the subject to availability of funds (SAF) statement and clause(s) included? *(FAR 52.232-18)*				
c. MATOC/SATOC – Is there evidence the minimum guarantee is				

SOLICITATION REVIEW TOOLKIT	Yes	No	N/A	Remarks
provided for?				
Focus of Review: Does the file include evidence of the requirement and funding to proceed with efforts toward the requirement/engage industry as follows?				
Market Research (FAR 10)				
a. Is there evidence of outreach to small business (SB) (Dynamic SB search, sources sought synopsis, and/or Industry Day Conference if held)?				
b. Is there evidence/backup documentation to support Market Research Report?				
SB Coordination				
DD Form 2579 *(DFARS 219.5 and AFARS 5119)*				
Focus of Review: *- Is the market research driving the strategy fully described, documented, in compliance with AFARS 5110.002(b) and adequate to support the acquisition approach?* *- Has appropriate exploration/consideration of all known/reported Small Business capabilities for set-asides been given?*				
Acquisition Strategy (Services only)				
a. Includes Market Research Data in Memorandum to File/Report format *(AFARS 5110.002(b))*				
b. Includes Bundling Analysis *(FAR 7.105(b)(1) & FAR 7.107)*				
c. Includes strategic sourcing and spend analysis as applicable *(Section 807 of FY08 NDAA)*				
ASSP (Services >$250M)				
Briefings to Army Director of OSBP and DASA(P) (filed with approval memo of Acquisition Strategy)				
Approved Acquisition Plan (FAR 7.1, DFARS 207.1, AFARS 5107.1)				
Have acquisition milestones been established for this requirement and included in the Acquisition Plan?				
Focus of Review: *- Is the acquisition approach based on sound business principles that achieve program objectives and support appropriate cost, schedule, and performance incentives and penalties?* *- Are the milestone dates included realistic and take into consideration all actions/tasks/documentation required?*				
REQUIRED PRE-SOLICITATION DOCUMENTATION				
Approved D&F *(as applicable to requirement, list not all inclusive)*				
a. D&F • Contract Type *(Over $100M all types)* • *Additional D&F for Cost and Incentive(FAR 16.4)* • *Additional D&F for T&M & Labor Hours (FAR 16.103(d))* • Equipment Lease vs Purchase. If requirement is to be leased, lease vs purchase analysis has been performed (if 18 months or more)? *(DFARS 207.470(a) (FAR 7.4 if >$1M)* • Commercial Determination *(FAR 12, DASA(P) Policy Alert 12-66)* • Personal/Professional Services *(DFARS 237.104)*				

SOLICITATION REVIEW TOOLKIT	Yes	No	N/A	Remarks
• Undefinitized Contract Action-Certification of Urgency *(DFARS 217.74)* • Warranties *(FAR 46.7)* • Construction Warranty *(FAR 36)* • Liquidated Damages *(FAR 36.206)* • Use of Multi-Years *(DFARS 17.103-1)* • Use of Options *(FAR 17.202(a))* • Use and Evaluation of Options *(FAR 17.206)* • Buy American Act *(FAR 25)* • Consolidation of Contract Requirements *(DFARS 207.170;* DASA(P) *PARC Policy Alert 14-12 Threshold is exceeding $2M)* • Awarding a SATOC >$103M (*FAR 16.504(c)(1)(ii)(D)(i)-(iii), DFARS 216.504))* • PCO SATOC Justification Memo *(FAR 16)* • Approval for Nonperformance-Based Services Contracts *(DFARS 237.170-2)* • Business Case Analysis for Agency-Wide Contracts *(DASA(P) Policy Alert 12-09)*				
b. Justification of Procurement Method (FAR 15)				
c. Certification for Non-DOD Contract Use (FAR 17.5 & 17.78)				
Focus of Review: Are all appropriate/required documentation for this acquisition included and signed by the correct approving official?				
Use of Competitive Procedures (FAR 15)				
Synopsis *(FAR 5.101 & 5.2 or Waiver)*				
Use of Non-Competitive Procedures (FAR 6)				
a. Notice of Intent Synopsis				
b. J&A for Other Than Full and Open Competition *(FAR 6.3, AFARS 5153.9005)*				
c. Has PCO thoroughly documented determination of exception to synopsis used under *FAR 5.202?*				
d. Evidence of Public Disclosure *(FAR 6.3)*				
Focus of Review: *- Are opportunities for competitive procedures maximized? Requirements clearly defined, strategically determined, represent only the bonafide technical requirements and provide for maximum competition?* *- If this is not possible, are appropriate actions/documentation for noncompetitive procedures evident?*				
Construction Contract Requirements				
Biddability, Constructability, Operability, Environmental, and Sustainability (BCOES) Compliance Certification (Construction Only) *(ER 415-1-11)*				
Focus of Review: Has a finalized BCOES been posted to the file for this acquisition?				
SOLICITATION AND RELATED DOCUMENTS				
RFP/Solicitation				
a. CLIN Structure				

SOLICITATION REVIEW TOOLKIT	Yes	No	N/A	Remarks
Focus of Review: Is the CLIN structure logical and clearly linked to the PWS/SOW in accordance with DFARS?				
b. Wide Area Workflow (WAWF) (See DFARS - http://www.acq.osd.mil/dpap/dars/dfars/html/current/232_70.htm)				
Focus of Review: Are WAWF/invoicing instructions ***provided to the extent applicable to the acquisition?***				
c. Sections L&M (Construction #00 22 10, 00 22 20, 00 22 11)				
Focus of Review: *- Are the evaluation criteria consistent with those indicated in the SSP?* *- If a full-trade off source selection, does the evaluation identify and prioritize specific tradeoffs or performance thresholds for which the Government is willing to pay more? Is it clear from the evaluation criteria what the offeror would provide that the Government would constitute more advantageous?* *- Includes oral presentations and sample tasks when necessary?* *- If most probable cost (MPC) is being evaluated – is it only for the basic contract? Are the options being evaluated by applying escalation factors?* *- Intent to award without discussions is clearly defined? Intent to determine competitive range is clearly defined?* *Are minimum thresholds and maximum performance objectives clearly defined?* *- Is the RFP consistent between the PWS/ Statement of Objectives (SOO)/SOW, the SSP, and Sections L and M?*				
Special Requirements				
a. Government Furnished Property *(FAR 45)*				
Focus of Review: If GFP/GFE is offered, is it listed, is it justified and used appropriately (FAR 45.302) and does the RFP include the appropriate completed clauses?				
b. Security Requirements DD254 *(FAR 4.403 & AFARS 5104.403)*				
Focus of Review: Was a DD254 completed and incorporated into the RFP, if applicable?				
c. CMR				
Focus of Review: Are the CMR requirements included in the PWS?				
b. Consistency between RFP and Acquisition Strategy/Plans				
Focus of Review: *- Does the RFP accurately reflect the acquisition strategy and or acquisition plan?* *- Do the structure and provisions facilitate a meeting of the minds between Government and industry as to the process, nature and intent of the acquisition i.e., draft RFP/Industry Day with consideration and incorporation of industry comments?*				
Location-Related Performance				
a. Is the required DBA Insurance requirements contract language included in the RFP? *(If OCONUS performance is contemplated)*				
b. IAW PIL 2008-05-01, is the required Synchronized Pre-deployment Operational Tasker (SPOT) Requirements contract language included in the solicitation RFP? (If performance in Iraq or				

SOLICITATION REVIEW TOOLKIT	Yes	No	N/A	Remarks
Afghanistan (CENTCOM AOR) contemplated IAW DoD Instruction 3020.41)				
c. Is the Theater Business Clearance information incorporated in Section H of the RFP? *(If performance in Iraq or Afghanistan (CENTCOM AOR) contemplated IAW DoD Instruction 3020.41)*				
Focus of Review: Has the above been included for any RFP where OCONUS performance is contemplated?				
Service Contracts Requirements				
a. PWS				
Focus of Review: *- Is the requirement suitable for a Performance-Based Service Acquisition (PBSA). FAR 37.6, OFPP Memo dtd 7/2/2006, DoD Guidebook for Performance Based Service Acquisitions dtd 2000* *- Is the PWS or SOO written in terms of "what" rather than "how" the work is to be accomplished?* *- Is the PWS written in such a manner that would preclude a personal service-type contract?*				
b. Wage Determination SF 98/98A *(FAR 22.404-2)*				
Focus of Review: Have the appropriate Department of Labor (DOL) Wage Rates been incorporated into the RFP?				
c. PRS				
Focus of Review: *- Are the appropriate performance incentives in the solicitation to include the PRS and or award/ incentive fee arrangements, if applicable developed and in the file?* *- Are **measurable** performance standards incorporated at the contract level?*				
d. QASP				
Focus of Review: *-Is there a QASP in the file (required for all service contracts over $2500)?* *-Are surveillance plans fully described with clearly identified measures, standards, and corrective actions and sufficient given cost, schedule, and performance risks? .*				
SSP				
a. Overall SSP/Task/Delivery Order SSP				
Focus of Review: *- Is the SSP IAW the AS3?* *- Has the SSP been approved by the SSA and posted to the file? (Mandatory prior to release of solicitation? IAW FAR 15.303)*				
b. Evaluation Criteria				
Focus of Review: *- Are evaluation criteria appropriate (i.e. limited key discriminators based on risk analysis; linked to key program requirements; include price or cost, quality, past performance, and extent of SB participation) in order to select the best value contractor?* *- Are requirements stated in certain terms such that the evaluators will be able to assess whether the offeror meets or exceeds a particular*				

SOLICITATION REVIEW TOOLKIT	Yes	No	N/A	Remarks
outcome? *- Are the criteria defined so that they are finite, measurable in readily understood quantitative or qualitative terms, and prioritized?* *- Described in sufficient detail to communicate how the proposals will be evaluated and ratings determined?*				
SST				
a. SSA				
Focus of Review: SSA is appropriate given level and complexity of the acquisition and appointed by the appropriate authority IAW UAI 15.300-100? (if valued at $500M or greater – DASA(P) *PARC Policyt Alert 14-30)*				
b. SST				
Focus of Review: SSO (SSAC, Senior Procurement Advisors, SSEB Chair, Factor Chairs) are appropriate given level and complexity of the acquisition and appointed by the appropriate authority IAW UAI 15.300-100 and AS3?				

PHASE II (PRE-AWARD)

Solicitation & Contract Number: _____ Date(s) Reviewed: _____

Project: _____ Estimated Dollar Value: _____

This toolkit is provided for use by the BOB or PCO Peer for performing independent Solicitation Review, as well as a *self-check* by the Contract Specialist. This toolkit is not to be considered an all-inclusive listing, some items do not apply to all requirements, and additions/deletions may be required by changes to regulations and/or in support of local or unique requirements.

Areas highlighted in pink are key focus items for these compliance reviews. Items highlighted in *green* are information to assist all in understanding the key areas of organizational focus.

*The complete solicitation file will be provided as part of the **local agency independent review** which is to be done **prior** to forwarding the key documents below for PARC or HCA level Peer Review.*
Key Documents for Phase II (Pre-Award) Review: *Conformed Solicitation, SSEB Summary Report(s), SSAC Memoranda/resolution, SSA Briefings, Competitive Range Determination, POM, PNM, draft contract award document. These documents should be provided to reviewers in advance IAW instructions established for the Peer Review Process to expedite this process.*
Objective of Phase II (Pre-Award) Review: *Review is intended to track to soundness/completeness of documentation, process, and events leading up the competitive range determination and in support of the contract award decision (prior to award).*

PRE-AWARD TOOLKIT	Yes	No	N/A	Remarks
Files				
a. Are there any missing documents?				
b. Are documents misfiled?				
Legal Findings				
a. Has local agency legal sufficiency been obtained for proposed contract awards (throughout the source selection evaluation; e.g. competitive range/POM/PNM/unsuccessful offeror letters etc)?				
b. Have the legal comments been incorporated?				
Additional comments concerning findings:				
SOLICITATION				
Solicitation and Amendments				
- Focus of Review: *Does the contract file contain a copy of the final solicitation and amendments (conformed) and does the solicitation still track back to the approved Acquisition Plan?* *- Do amendments include documentation as to why and where changes were made to the RFP (including questions from Industry)?*				
Proposal Receipt/Screening (includes Task/Delivery Order Proposals)				
a. Was there a late proposal received and if so is the disposition of same documented? *(FAR 15.208(b)(1) & FAR 15.208(h))*				
b. If a late proposal was received, was the offeror notified promptly and proposal held unopened, unless opened for identification, until after award and then retained with other unsuccessful proposals?				

PRE-AWARD TOOLKIT	Yes	No	N/A	Remarks
c. Bid Bonds submitted with proposal – If required				
EVALUATION				
SST				
Focus of Review: *- Are appointment letters for the SSA, SSAC, SSEB and other technical members in the file?* *- Are the personnel appointed as SST members the same as those listed in the SSP and participating in the evaluation?* *- Have all participants completed a non-disclosure form/financial interest statements?*				
Proposal Evaluations				
Focus of Review: *- Was the source selection evaluation conducted IAW the UAI 15.300-100 and AS3, the SSP and the criteria in the solicitation?* *- Overall Evaluation: Is the SSEB evaluation fully documented? Were evaluation findings handled fairly/consistently across all proposals – i.e., what is identified as a "significant weakness" in one proposal is identified in that same manner in others?* *- Past Performance: Has the Government demonstrated due diligence in pursuing Past Performance Information (PPI) in the absence of CPARS data on Offerors vs assigning a rating of neutral or "unknown" and considered any information that was "close at hand" (i.e. all available information), while allowing Offerors to respond to any negative PPI as appropriate during clarifications and/or discussions?* *- Cost/Price Analysis: Is there clear evidence of adequate cost/price analysis and price reasonableness determination? Assessment of risk in determining contractor profit (weighted guidelines DD Form 1547 utilized IAW FAR 15.404).* *- Discussion of how GFP/GFE affected price?* *- Certificate of Current Cost or Pricing Data (if required) obtained and documented in file; TINA waivers under exceptional circumstances exemption granted IAW criteria at DFARS 215.403-1(c)(4)?* *- If cost and pricing data are required and PCO cannot determine price reasonableness, has field pricing support been requested IAW FAR 15.404-2?* *- For cost reimbursement, was cost realism assessment performed to determine MPC?* *- SB Participation: Does proposal support USACE SB goals? Is there rationale for proposed SB participation? What is the extent of commitment to use SB. Has the past performance in utilization of SB concerns been considered?*				
SSAC and SSA Briefings				
Focus of Review: *- Has the SSAC been briefed on the important details of the evaluation? (if applicable)* *- Are the SSAC recommendations clearly documented and resolved by the PCO/SSEB Chair prior to briefing the SSA? (if applicable)* *- Is the SSA briefing documented and concurrence on the evaluation gained?*				

PRE-AWARD TOOLKIT	Yes	No	N/A	Remarks
Award Without Discussions				
Focus of Review: ***Is there an opportunity to make award without discussions*** *and is it supported and documented? (FAR 52.215-1)*				
Business Clearance (Award Without Discussions) **Combined POM(PNO)/PNM or SSDD**				
Focus of Review: Has a combined POM/PNM or SSDD demonstrating how the Government's objectives were met without discussions been written and placed in the file?				
Competitive Range Determination and PreAward Debriefings				
Focus of Review: *- Is the competitive range determination substantiated and clearly documented by properly applying all factors stated in the solicitation?* *- Has the SSA approved the competitive range?* *- Were offerors eliminated from the competitive range notified promptly and preaward debriefings conducted for requesting offerors and same documented for the record (FAR 15.505)* *Or Has the PCO established rationale for delaying debriefings IAW FAR 15.505(b)?*				
Business Clearance (With Discussions) POM				
a. Has the POM been approved by the PCO? *(AFARS 5115.406-1)*				
b. As a minimum, does the POM contain all data required by *(AFARS 5115.406-1(B))* and in the proper format?				
c. Does the POM accurately reflect the evaluation results and Items For Negotiation (IFNs) identified as part of the evaluation?				
Focus of Review: The pre-negotiation objectives are clearly stated, approved at the appropriate level, and documented within the POM ***prior*** *to entering negotiations/discussions.*				
Exchanges, Communications and Discussions				
Focus of Review: *- Have exchanges, communications and discussions been appropriately documented? (FAR 15.306)* *- Do discussion letters accurately reflect evaluation results and at a minimum, provide significant weaknesses, deficiencies and adverse past performance information? (FAR 15.306(d))*				
Unsuccessful Offerors				
Unsuccessful Offeror Letters reflects an accurate record of rationale for non-selection? *(FAR 15.503; FAR 8, FAR 16)*				
Negotiations				
Meaningful discussions held with all offerors in competitive range?				
Request for Revised/Final Proposals				
a. Negotiations closed by PCO?				
b. Revised/Final Proposals requested?				
Revised/Final Proposal Evaluation				
Focus of Review: *- Was the source selection evaluation conducted IAW the UAI 15.300-100 and the AS3, the SSP, and the criteria in the solicitation?* *- Overall Evaluation* *Does the SSEB evaluation focus on the revised areas of the proposal in*				

PRE-AWARD TOOLKIT	Yes	No	N/A	Remarks
context and is it documented appropriately? Were evaluation findings handled fairly/consistently across all proposals – i.e., what is identified as a "significant weakness" in one proposal is identified in that same manner in others. *- Cost/Price Analysis: Have DCAA Audit Reports been received/ comments or findings been resolved?* *- Subcontracting Plans evaluated/approved IAW AFARS Appendix AA and include eSRS requirement.*				
Business Clearance (With Discussions) PNM				
a. Has the PNM been approved at the appropriate level?				
b. Has the PCO determined that the award price is fair and reasonable and been documented? (FAR 15.4)				
Focus of Review: *- Is the PNM structured in such a manner that would allow any reviewer to track cost/price elements from the negotiation objectives through the final negotiated outcome? (AFARS 5115.406-3)* *- Does the PNM address all the significant issues contained in the POM?* *- Does the PNM clearly articulate the outcome of negotiations and how the Government's objectives achieved and documented in revised/final proposals, or compromise/agreements made during the process?*				
SSAC and SSA Briefings				
Focus of Review: *- Has the SSAC been briefed on the important details of the evaluation? (if applicable)* *- Are the SSAC recommendations clearly documented and resolved by the PCO/SSEB Chair prior to briefing the SSA? (if applicable)* *- Is the SSA briefing documented and concurrence on the evaluation gained?*				
SSA Decision				
Focus of Review: *- Was the SSA decision derived from conduct of the source selection, based on a comparative assessment of proposals against all source selection criteria in the solicitation and is fully documented? (AS3, FAR 15.308)* *- Is the resulting business arrangement in the best interest of the Government?*				
CONTRACT AWARD(S) AND SUPPORTING DOCUMENTATION				
Contract Award(s)				
Focus of Review: *- Proposed contract reflects fair and proper application of source selection criteria and outcome of negotiations/sole source process?* *- Is legally supportable, and represents a meeting of the minds between the Government and the successful offeror(s)?* *- CLIN/SLIN/ELIN (DFARS 204) structure adequately describes the quantity, unity of measure, and unit cost and sets a distinct period of performance?* *- Appropriate terms and conditions incorporated?* *- Subcontracting Plans incorporated into contracts with large businesses*				

PRE-AWARD TOOLKIT	Yes	No	N/A	Remarks
at Section J?				
Responsibility Determination				
a. EEO Clearance(s)? *(FAR 22.805)*				
b. DCAA Financial Capability Audit reports received? (if applicable)				
c. Determination of Responsibility? *(FAR 9.105-2).*				
COR Requirements				
COR Nomination Letter(s), Appointment Letter & COR Training Certificate(s)? *(PIL 2012-06-R1)*				
Focus of Review: Has a COR been appointed in writing and evidence of requisite training posted to the file?				
Other Supporting Documentation				
a. Congressional Notification prepared? *(DFARS 205.303 & AFARS 5105.303)*				
b. System for Award Management (SAM) Verification Completed for Contractor Registration?				
c. Certificate of competency, if required?				
d. IGE (validation of cost/price ceiling)?				
e. For CPAF contract vehicles, has an AFDO been delegated and appointed? *(FAR 16.405-2, DFARS 216.405-2, PGI 216.405-2, PIL 2011-10-R1, AFARS 5116.405-2))*				
f. For CPAF contract vehicles has an Award Fee Plan been created and placed in the file? *(FAR 16.405-2, DFARS 216.405-2, PGI 216.405-2, AFARS 5116.405-2)*				
g. Contract Administration Plan (as applicable)? *(FAR 42)*				
h. Performance & Payment Bonds - If required (if a true seed Task Order will be issued at time of MATOC award), will the appropriate bonds be requested in the requisite amounts *for Task Order awardee prior to NTP*? *(DFARS 228.201)*				
i. Approved Subcontracting Plan posted in the file?				
Protests				
Were there any pre-award protests, and if so were they resolved? *(FAR 15.507 and FAR 33)*				

USACE ACQUISITION INSTRUCTION (UAI)

APPENDIX 1-5 — QUANTUM MERIUT DETERMINATION TEMPLATE

REQUEST FOR APPROVAL OF QUANTUM MERUIT			
IN THE AMOUNT OF:		CONTRACTOR:	
DESCRIPTION:		DATE OF OCCURRENCE:	
COMMITTING ACTIVITY:			

PART I – DESCRIPTION OF COMMITMENT AND CHIEF OF CONTRACTING OFFICE REVIEW

AUTHORITY: Army Federal Acquisition Regulation Supplement (AFARS) 5101.602.3; HQ DOC Policy Alert 14-0006

PART I – SECTION A – COMMITMENT CIRCUMSTANCES

(Completed by Contracting Officer who signed the invalid contract action.)

(Elements that **must be addressed** are **1)** the goods or services would have been a permissible procurement had correct procedures been followed; **2)** the Government (has already) received and accepted a benefit; **3)** the contractor acted in good faith; and **4)** the amount to be authorized represents the reasonable value of the benefit received)

1. EXPLAIN WHY THE GOODS OR SERVICES WOULD HAVE BEEN A PERMISSIBLE PROCUREMENT HAD NORMAL PROCUREMENT/CORRECT PROCEDURES BEEN FOLLOWED

2. DESCRIBE WHETHER THE GOVERNMENT (HAS ALREADY) RECEIVED AND ACCEPTED A BENEFIT

3. DESCRIBE WHETHER THE CONTRACTOR ACTED IN GOOD FAITH

PART I – SECTION A – COMMITMENT CIRCUMSTANCES Cont'd

4. DESCRIBE WHETHER THE AMOUNT TO BE AUTHORIZED REPRESENTS THE REASONABLE VALUE OF THE BENEFIT RECEIVED AND PROVIDE EVIDENCE OF THE AVAILABILITY OF FUNDS AT TIME OF COMMMITMENT

TYPED NAME AND TITLE OF INDIVIDUAL MAKING UNAUTHORIZED COMMITMENT	SIGNATURE	DATE

PART I – SECTION B – QUANTUM MERUIT DETERMINATION

1. CONCUR WITH QUANTUM MERUIT DETERMINATION:	☐

2. DESCRIBE ATTEMPTS TO RESOLVE PRIOR TO REQUESTING HCA APPROVAL:

3. VERIFY ACCURACY AND COMPLETENESS OF DOCUMENTATION

To the best of my knowledge, the documentation presented on this form is accurate and complete.

PART I – SECTION B – QUANTUM MERUIT DETERMINATION (Continued)

4. PROVIDE A COMPLETE PURCHASE DESCRIPTION AND FUNDING FOR ACTION

5. DESCRIBE ANY DISCIPLINARY/NON-DISCIPLINARY ACTION TAKEN
(include a description of any administrative action [to be] taken under DA PAM 27-18 for military; members or Chapter 751, Federal personnel Manual and Civilian Personnel Regulation; 700 for civilian personnel; or other applicable authority or furnish an explanation of why action was considered necessary.)

PART I – SECTION B – QUANTUM MERUIT DETERMINATION (Continued)

6. DESCRIBE ACTION TAKEN TO PREVENT RECURRENCE OF NON-RATIFIABLE/QUANTUM MERIUT ACT

7. DO NOT CONCUR WITH QUANTUM MERUIT DETERMINATION:	☐
8. EXPLAIN NONCONCURRENCE:	

TYPED NAME AND GRADE OF THE APPLICABLE OFFICE CHIEF	SIGNATURE	DATE

PART II – SECTION A – ASSIGNMENT OF CONTRACTING OFFICER
(Completed by Contracting Officer)

PROPOSED RATIFICATION ASSIGNED FOR PROCESSING TO:		
TYPED NAME AND GRADE OF CONTRACTING CHIEF:	SIGNATURE	DATE

PART II – SECTION B – CONTRACTING OFFICER'S REVIEW
(Completed by Contracting Division)

THE CHIEF OF THE CONTRACTING OFFICE OR THE CONTRACTING OFFICER DESIGNATED IN PART II(A) SHALL REVIEW THE FILE AND PROCEED AS FOLLOWS:

1. Determine adequacy of all facts, records, and documents furnished, and additional material required.

2. Prepare a summary of the facts to include a recommendation as to whether the transaction should be ratified stating the reasons therefore. Advice against the ratification should include a recommendation as to whether the matter should be processed under FAR Part 50 and DoD FAR Supplement Part 250 (Public Law 85-804), as a GAO claim, or for other appropriate disposition. (If more space is required, attach plain bond paper).

3. State whether the price involved is considered fair and reasonable and indicate how that determination was made.

4. Determine that sufficient funds are available to pay for acquisition.

TYPED NAME AND GRADE OF CONTRACTING OFFICER	SIGNATURE	DATE

PART II – SECTION C – LEGAL REVIEW AND CONCURRENCE	
☐	Concur with Contracting Officer's recommendation to ratify subject action
☐	Non-concur with recommended action:

Explain:

TYPED NAME AND GRADE OF LEGAL ADVISOR	SIGNATURE	DATE

PART III – SECTION A – SECTION A (Completed by Chief of the Contracting Office)		
TO: COMMANDER The attached package is forwarded for your review and recommendation for further action.		
TYPED NAME AND GRADE OF CHIEF OF THE CONTRACTING OFFICE	SIGNATURE	DATE

PART III – SECTION B – COMMANDER'S REVIEW (Completed by District Engineer or Equivalent)	
☐	I have reviewed the circumstances, facts and action taken concerning the unauthorized procurement and **I concur** with further processing of the quantum meriut by the Chief of the Contracting Office.
☐	I have reviewed the circumstances, facts and action taken concerning the unauthorized procurement and **I do not concur** that this action should be further processed of the quantum meriut by the Chief of the Contracting Office. Action should be returned to the Office for:

☐ Further documentation of circumstances.

☐ Payment to vendor by individual making unauthorized commitment.

☐ Further documentation of corrective action(s) taken.

☐ Other (explain):

Forward to Contracting Officer		
TYPED NAME AND TITLE OF DISTRICT ENGINEER	SIGNATURE	DATE

USACE ACQUISITION INSTRUCTION (UAI)

APPENDIX 2-1 — HCA DOCUMENT REVIEW AND APPROVAL MATRIX

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 also Delegation Authorities Matrix). If the approval authority has been delegated, the column identifies who approves the action.

The term PARC refers to all USACE PARCs, however, the term Command PARC represents the Deputy Director for Contracting authorized to exercise PARC authority throughout USACE. In a PARCs absence, the Command PARC may approve actions. In the absence of the PARC and Command PARC, the HQ DOC may approve. Any action may be designated as special interest and require higher level reviews and approvals. Wherever the chart shows "HCA**", this identifies a delegable HCA authority. For acquisition milestone planning purposes, "Approximate Total Approval Days" equals "business days.")

DOCUMENT & REGULATORY CITE(S)	DOLLAR THRESHOLD	APPROVAL AUTHORITY	APPROX. TOTAL APPROVAL DAYS (business days*)
ACQUISITION PLAN/ADDENDUM TO ACQUISITION PLAN			
Programmatic Acquisition Plans/ Acquisition Plans (Exclusive of ECI Acquisition Plans) (FAR Part 7, DFARS 207.1, AFARS 5107.103)	$25M for any FY/ $50M for all years	PARC	40
Programmatic Acquisition Plans/Acquisition Plans - *Required Approvals Outside the Contracting Chain at USACE Headquarters* (Applicable to ECI - Refer to PIL 2011-06, p. 4)	≥$0	Director, MSC & Director, HQ Military Programs Integration (CEMP-I)	40
Programmatic Acquisition Plans/Acquisition Plans for Early Contractor Involvement(ECI) Actions - *Contracting Chain Approvals* - (Applicable to ECI acquisitions - Refer to PIL 2011-06 in its entirety)	≥$0	PARC	40
Programmatic Acquisition Plans/Acquisition Plans - Research and Development Acquisitions (Refer to DFARS 207.103(d)(i)(A))	≥$10M	PARC	40
Addendum to Acquisition Plan	Approval at Same Level as Acq Plan		12
ACQUISITION STRATEGY - Performance Based (Services Acquisition Strategies **$10M or greater (including base and any options)** must be accompanied by an approval of the service requirement by the USACE Command Service Executive (CSE) - which is accomplished separate from (and as early as possible in the requirements development process) the Acquisition Strategy DOC compliance review. CSE Program Manager will coordinate copy to applicable Portfolio Manager (PfM). All Acquisition Strategies $500M-$1B will be **processed by the DASA(P) SSM** to the DPAP).			
Acquisition Strategy (AFARS 5137.590-4(g) – service acquisitions)	>SAT≤$10M	DCC/CCC	10
Acquisition Strategy (AFARS 5137.590-4 (f) – service acquisitions & ASA(ALT) Interim Policy 20 Dec 2011)	>$10M<$250M	PARC	30

Acquisition Strategy (AFARS 5137.590-4(d)) – service acquisitions – **ALL TYPES OF SERVICES** (ASA(ALT) Appt Letter 19 Mar 2013 & Interim Policy 20 Dec 2011)	$250M≤$999M	DASA(P) SSM	90 (Note: SSM Requires 30 Days for SSM Review)
DOCUMENT & REGULATORY CITE(S)	**DOLLAR THRESHOLD**	**APPROVAL AUTHORITY**	**APPROX. TOTAL APPROVAL DAYS**
Acquisition Strategy (AFARS 5137.590-4(d)) – service acquisitions – **ALL TYPES OF SERVICES** (Pre-Brief to SBA Memorandum 12 Mar 2009)	$500M>$1B	Pre-Brief to Army OSBP (Req'd Prior to DASA(P) SSM ASSP; If IT Services – DoD CIO Approval Will be coordinated by DASA(P) SSM)	120
Acquisition Strategy (AFARS 5137.590-4(c)) – service acquisitions for **ALL TYPES OF SERVICES**)	≥$1B	DPAP	120
APPOINTMENTS			
Award Fee Determining Official Appointment (AFARS 5116.405-2(b)(2)(C))	≤$10M	DCC/CCC	2
Award Fee Determining Official Appointment (AFARS 5116.405-2(b)(2)(C))	>$10M	PARC	10
PCO Warrants, Grants Officer Warrants, ACO Warrants (AFARS 5101.603-1(1)(iii)(1) & PIL 2012-09)	Per PIL 2012-09	PARC	10
Use of Contractor Support (Non-Government Advisors) in Source Selection Evaluation (AFARS 5137.204; AS3 & DoD Manual p1.4.5.2)	≥$0	PARC	15
Source Selection Authority (SSA) Appointment for Acquisitions not managed IAW DoDD 5000.1 when Formal Source Selection Procedures are Used (AFARS 5115.303(a)(ii)(B) & UAI 15.300-100(d))	>$50M<$100M	One Level Above PCO or Individual Appointed By PARC	7
Source Selection Authority (SSA) Appointment for Acquisitions not managed IAW DoDD 5000.1 when Formal Source Selection Procedures are Used (AFARS 5115.303(a)(ii)(B) & UAI 15.300-100(d))	>$100M≤$250M	PARC	7
SSA Appointment for Acquisitions not managed IAW DoDD 5000.1 when Formal Source Selection Procedures are Used (AFARS 5115.303(a)(ii)(B) & UAI 15.300-100(d))	>$250M≤$500M	HCA**	7
SSA Appointment (UAI 15.300-100(d))	$500M (Construction & Supply only)	HCA**	7

SSA Appointment (AFARS 5115.303(a)(ii)(B) & UAI 15.300-100(d)) (Requirements for Nomination Package are at DASA(P) PARC Alert #14-30)	≥$500M (services only)	DASA(P)	30
DOCUMENT & REGULATORY CITE(S)	**DOLLAR THRESHOLD**	**APPROVAL AUTHORITY**	**APPROX. TOTAL APPROVAL DAYS**
BUSINESS CASE ANALYSIS FOR CERTAIN INTER-AGENCY & AGENCY-SPECIFIC ACQUISITIONS (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.			
Approval of Business Cases for Certain Inter-Agency or Agency-Specific Acquisitions - Government-Wide Acquisition Contracts (GWACS) (IAW DASA(P) PARC Alert #12-09)	Regardless of Dollar Value	SPE	120
Approval of Business Cases for Certain Inter-Agency or Agency-Specific Acquisitions - Covered Multi-Agency Contract or Multi-Agency BPA (IAW DASA(P) PARC Alert #12-09)	≥$50M (FY14)	SPE	120
Approval of Business Cases for Certain Inter-Agency or Agency-Specific Acquisitions - Covered Agency-Specific ("Enterprise-Wide") Contract or BPA (IAW DASA(P) PARC Alert #12-09)	≥$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 (IAW DASA(P) ***PARC Policy Alert 14-36***) (***not applicable to 100% Civil Works funded Services***)	≥$10M	Accompanies the Acquisition Strategy and Approval Authority Thresholds for the Strategy Apply	See Acquisition Strategy Times
CONGRESSIONAL NOTIFICATION - ALERTS TO DASA(P)			
Congressional Notification (DFARS 205.303, AFARS5105.303, DASA(P) PARC Policy Alert 13-77 Rev 1)	>$6.5M	DASA(P)	3
Urgent Congressional Notification (DFARS 205.303, AFARS5105.303, DASA(P) PARC Policy Alert 13-77 Rev 1)	>$6.5M	DASA(P)	1
Extension of Congressional Notification (DFARS 205.303, AFARS5105.303, DASA(P) PARC Policy Alert 13-77 Rev 1)	>$6.5M	DASA(P)	3
CONSOLIDATION REQUIREMENTS			

Consolidation of Contract Requirements D&F (AFARS 5107.170, DFARS207.170-3, 15 U.S.C. 657q) (Submission Concurrent with Acquisition Plan/Acquisition Strategy)	$2M≤$100M (includes options)	PARC	30
DOCUMENT & REGULATORY CITE(S)	**DOLLAR THRESHOLD**	**APPROVAL AUTHORITY**	**APPROX. TOTAL APPROVAL DAYS**
Consolidation of Contract Requirements D&F (AFARS 5107.170, DFARS207.170-3, 15 U.S.C. 657q) (Submission Concurrent with Acquisition Plan/Acquisition Strategy)	>$100M<$500M	HCA**	60
Consolidation of Contract Requirements D&F (AFARS 5107.170, DFARS207.170-3, 15 U.S.C. 657q) (Submission Concurrent with Acquisition Plan/Acquisition Strategy)	≥$500M	DASA(P)	120
DETERMINATION & FINDINGS (Miscellaneous)			
Rejection of offers suspected of being collusive - Make Determination Whether Disclosure was Made for the Purpose of or had Effect of Restricting Competition (FAR 3.103-2(b)(2))	≥$0	DCC/CCC (PARC if DCC/CCC is PCO)	30
DETERMINATION & FINDINGS FOR SERVICES ACQUISITION STRATEGY - Non-Performance Based			
Acquisition of Services - not performance based (DFARS 237.170-2 (a)(2))	>SAT≤$11.5M	DCC/CCC	10
Acquisition of Services - not performance based (DFARS 237.170-2 (a)(2))	$11.5M≤$85.5M	HCA**	60
Acquisition of Services - not performance based (DFARS 237.170-2 (a)(1))	>$85.5M	HCA Endorse SPE Approve	120
DETERMINATION & FINDINGS FOR CONTRACT TYPE			
Use of Time and Material (T&M) & Labor Hour Contract prior to execution of the base period or any option periods of less than 3 years (FAR 16.601(d)(1)(i) & DoD Class Deviation 2012-O0016)	≤$1M	***(One Level Above PCO)*** DCC/CCC or PARC when DCC/CCC is PCO	5

Use of T&M & Labor Hour Contract prior to execution of the base period or any option periods of less than 3 years (FAR 16.601(d)(1)(i) & DoD Class Deviation 2012-O0016)	>$1M	PARC (***as Senior Contracting Official of the Contracting Activity***)	30
DOCUMENT & REGULATORY CITE(S)	**DOLLAR THRESHOLD**	**APPROVAL AUTHORITY**	**APPROX. TOTAL APPROVAL DAYS**
Use of T&M 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)	>$0M	HCA (***non-delegable***)	30
Use of Cost Reimbursement Award Fee and "Hybrid" Contract Type (UAI 16.405-2-100)	≥$0	PARC	30
DETERMINATION & FINDINGS FOR FOREIGN MILITARY SALES (FMS)			
FMS Other than Full & Open Competitions for International Agreement Competitive Restriction (UAI 6.302-4-100(c))	≥$0	DCC/CCC	30
DETERMINATION & FINDINGS FOR NON-DOD CONTRACTS			
Non-DOD Contracts and Delivery Orders for Supplies and Services (DFARS 217.7802(b) & UAI 17.500)	>$150K≤$25M	DCC/CCC	5
Non-DOD Contracts and Delivery Orders for Supplies and Services (DFARS 217.7802(b) & UAI 17.500)	>$25M≤$100M	PARC	10
Non-DOD Contracts and Delivery Orders for Supplies and Services (DFARS 217.7802(b) & UAI 17.500)	>$100M≤$500M	HCA**	30
Non-DOD Contracts and Delivery Orders for Supplies and Services (DFARS 217.7802(b) & UAI 17.500)	>$500M	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) (excluding acquisitions subject to unique agency OCI statutes, see FAR 9.502(d)) ***(Also see "Waivers for OCI" Below)***	≥$0	DCC/CCC *(KO Must Communicate Information Soonest on Potential or Actual OCI with HQ USACE DOC & HCA)*	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) & DFARS216.504)	>$103M	SPE	120
DOCUMENT & REGULATORY CITE(S)	**DOLLAR THRESHOLD**	**APPROVAL AUTHORITY**	**APPROX. TOTAL APPROVAL DAYS**
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)(iv) - public interest) && DFARS216.504)) (Congress must be notified of determination within 30 days of D&F approval)	>$103M Public Interest	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 (FAR 15.403-4(a)(2)	<$700K	HCA (***non-delegable***)	30
JUSTIFICATION AND APPROVALS (FAR 6.304)/ EXCEPTIONS TO FAIR OPPORTUNITY (FAR 16.505(b)(2)/ LIMITED SOURCE JUSTIFICATIONS (FAR 8.405-6)			
Justification and Approval (FAR 6.304(a)(1)) (Submit to PARC for reporting and best practices)	≤$650K	PCO	7
Justification and Approval (FAR 6.304(a)(2)) (This does not include FMS - For FMS sole source actions see "Determination & Findings for FMS")	>$650K≤$12.5M	PARC SCA or the Command SCA, in the absence of the PARC SCA	14
Justification and Approval (FAR 6.304(a)(3)) (This does not include FMS - For FMS sole source actions see "Determination & Findings for FMS")	>$12.5M≤$85.5M	HCA**	30
Justification for Sole Source Award to 8(a) (FAR 6.204 & 15 U.S.C. 637(a))	>$20M≤$85.5M	HCA**	30
Justification and Approval (FAR 6.304(a)(4))	>$85.5M	SPE	150
MISCELLANEOUS ACTIONS			
Endorse documents related to Procurement Matters that Require Approval by HQDA (AFARS 5101.290(a))	Per Regulation	PARC < $250M Command PARC >$250M ***(As Delegated by HCA)***	Per Document Type Approval Timeline

Approve individual deviations to FAR, DFARS, and AFARS (Excluding areas set forth in DFARS 201.402(1); 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(1))	Per Regulation	PARC < $250M Command PARC >$250M	Per Document Type Approval Timeline
DOCUMENT & REGULATORY CITE(S)	**DOLLAR THRESHOLD**	**APPROVAL AUTHORITY**	**APPROX. TOTAL APPROVAL DAYS**
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 216.603-3)	≥$0	PARC	7
MISCELLANEOUS ACTIONS			
Use of Undefinitized Contract Actions (UCAs) (DFARS 217.7400, 217.7402 Exceptions, & 216.603 - USACE HCA has delegated approval of UCAs to the PARC)	≥$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
Use of Unusual Progress Payments (FAR 32.501-2(a)(3) & AFARS 5132.501-2(a)(3))	≥$0	PARC (Copy must be submitted to DASA(P))	14
Release of Long Range Acquisition Estimates (AFARS 5105.404-1(a))	≥$0	PARC	14
Violations or Possible Violations of Procurement Integrity Act (FAR 3.104-7/AFARS 5103.104-7)	≥$0	PARC	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)	≥$0	PARC	14
Award/Extension of Contracts for ≥18 Months for a Vessel, Aircraft or Vehicle Lease, Charter or Similar Agreement (DFARS 207.470(b))	≥$0	PARC	30

Use of Fixed-Ceiling-Price Contract with Retroactive Price Determination (applicable to R&D only, refer to FAR 16.206-3(d))	≤$150K	PARC	14
Use of Alternate Structured Approach in Determining Profit or Fee Objectives (DFARS 215.404-4(c)(2)(C)(2))	≥$0	PARC	14
DOCUMENT & REGULATORY CITE(S)	**DOLLAR THRESHOLD**	**APPROVAL AUTHORITY**	**APPROX. TOTAL APPROVAL DAYS**
MISCELLANEOUS ACTIONS cont'd			
Deny contractor request for relief under Public Law 85-804 (AFARS 5150.102-1-70(a)(i), FAR50.103, DFARS 250.102(b), DFARSPGI 250.103-5)	Per Regulation	PARC	30
Approve substitution of a surety bond (FAR 28.106-2)	≥$0	PARC	14
Issuance of a Personal Services Contract (D&F Reqd IAW DFARS237.104(b)(iii)(A))	≥$0	HCA (***non-delegable***)	30
Exceptions to Policy at FAR 3.601 & 3.602 Contracts with Government Employees or Organizations Owned by Government Employees	≥$0	HCA (***non-delegable***)	30
Receive notice of suspected violations of Gratuities clause received from military commander over the contract (exempt report, AR 335-15, para 5-2) (AFARS 5103.203(a)(i)) (Army Debarring Official is deciding authority)	≥$0	HCA (***non-delegable***)	30
Buy American Act--Construction Materials Impracticable Exception (AFARS 5125.202(a)(1) & UAI 25.202-100(i))	≤ SAT	Level Above the PCO	10
Buy American Act--Construction Materials Impracticable Exception (AFARS 5125.202(a)(1) & UAI 25.202-100(ii))	SAT<$1.5M	DCC/CCC	30
Buy American Act--Construction Materials Impracticable Exception (AFARS 5125.202(a)(1) & UAI 25.202-100(ii))	≥$1.5M	PARC	30
Buy American Act--Construction Materials Non-Availability (not mined, produced, or manufactured in USA in sufficient and reasonably available (non-availability) Exception	≥$0	HCA (***non-delegable***)	30

(AFARS 5125.202(a)(2))			
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 5101.602-2(a)(ii)(D))	≥$0	PARC	30
DOCUMENT & REGULATORY CITE(S)	**DOLLAR THRESHOLD**	**APPROVAL AUTHORITY**	**APPROX. TOTAL APPROVAL DAYS**
COMBINED COMPLIANCE & PEER REVIEWS			
Competitive and Non-Competitive Acquisitions – Prior to Solicitation Issuance & Prior to Contract Award	>Micro-Purchase to <$500K	BOB or "Peer" Designated by DCC/CCC	5
	≥$500K<$50M	DCC/CCC	10
(Delegable to DCC/CCC, DASA(P) PARC Alert 14-24 - Written Delegation Must be in Contract File if PARC delegates Chair of Peer Review)	≥$50M<$250M	PARC	15
COMPLIANCE REVIEW			
Non-Competitive Acquisitions – Prior to Entering Negotiations & Prior to Contract Award ***OR*** Competitive Acquisitions – Prior to Solicitation Issuance; Prior to Requesting Final Proposal Revisions; & Prior to Contract Award *(Note: PARC Approval Required **PRIOR** to Scheduling HQ DOC or HCA Document Reviews)*	≥$250M	PARC	15
PEER REVIEWS **(AT HCA LEVEL AND ABOVE - Separate from Compliance Reviews)**			
Non-Competitive Acquisitions – Prior to Entering Negotiations & Prior to Contract Award *(Note: PARC Approval Required **PRIOR** to Scheduling HCA or Higher Peer Review)*	≥$250M<$500M	HCA**	15
(DASA(P) PARC Alert 14-24 and Per authority under HCA delegation, HQ DOC is **Chair** for HCA-level Peer Reviews)	≥$500M	DPAP (thru HCA & DASA(P))	45-60

Competitive Acquisitions – Prior to Solicitation Issuance; Prior to Requesting Final Proposal Revisions; & Prior to Contract Award *(Note: PARC Approval Required **PRIOR** to Scheduling HCA or Higher Peer Review)* (DASA(P) PARC Alert 14-24 and Per authority under HCA delegation, HQ DOC is **Chair** for HCA-level Peer Reviews and may delegate to no lower than PARC)	≥$250M<$1B ≥$1B	HCA** DPAP (thru HCA & DASA(P))	15 45-60
DOCUMENT & REGULATORY CITE(S)	**DOLLAR THRESHOLD**	**APPROVAL AUTHORITY**	**APPROX. TOTAL APPROVAL DAYS**
Post Award Review of **Service** Acquisitions (with ASSP Approval by HQDA)	≥$500M<$1B	DASA(P) (thru HCA**)	30-45
Post Award Review of **Service** Acquisitions	≥$1B	DPAP (thru HCA & DASA(P))	45-60
UNAUTHORIZED COMMITMENTS			
Ratify Unauthorized Commitment (AFARS5101.602-3) (*Submit to PARC for reporting purposes*)	≤$10K	DCC/CCC	7
Ratify Unauthorized Commitments (AFARS5101.602-3)	>$10K≤$100K	PARC	14
Ratify Unauthorized Commitment (AFARS 5101.602-3)	>$100K	HCA**	30
Approval of Quantum Meruit Nonratifiable Commitments under CDA (UAI 1.602-3 & HQ DOC Policy Alert #14-0006)	≤$10K	DCC/CCC	7
Approval of Quantum Meruit Nonratifiable Commitments under CDA (UAI 1.602-3 & HQ DOC Policy Alert #14-0006)	>$10K≤$100K	PARC	14
Approval of Quantum Meruit Nonratifiable Commitments under CDA (UAI 1.602-3 & HQ DOC Policy Alert #14-0006)	>$100K	HCA**	30
Monitor Compliance (UCs) and Take All Necessary Corrective Action (AFARS 5101.602-3-90)	Per Regulation	HCA** (PARC Annually Provide Consolidated AOR Report to HCA thru HQ DOC)	Annually
WAIVERS			

Use of Forward Pricing Rate Agreements Waiver (DFARS 215.407-3(b)(i))	≥$700K	PARC	14
Procedures or General Rule within FAR Part 9.5 Waiver Regarding OCIs (FAR 9.503; AFARS 5109.503)	≥$0	HCA (***non-delegable***)	30
DOCUMENT & REGULATORY CITE(S)	**DOLLAR THRESHOLD**	**APPROVAL AUTHORITY**	**APPROX. TOTAL APPROVAL DAYS**
Use of Required Sealed Bid Clause "Price Reduction for Defective Certified Cost or Pricing Data -- Modifications -- Sealed Bidding" OR "Subcontractor Certified Cost or Pricing Data -- Modifications -- Sealed Bidding" in Exceptional Cases for Contracts with Foreign Governments or Agency of that Govt Waiver (FAR14.201-7(b)(2), 52.214-27 & FAR14.201-7(c)(2), 52.214-28)	≥$0	PARC	14
Use of "Insurance--Liability to Third Persons" Clause - Applicable to Cost Reimbursement Contracts Waiver (DFARS 228.311-1)	≥$0	PARC	30
Waiver of Certified Cost and Pricing Data in Exceptional Cases (FAR 15.403-1(c)(4) Applies only to Prime Contract Action, may not apply to Subcontracts)	≥$700K	HCA (***non-delegable***)	14
CONTINGENCY CONTRACTING DOCUMENT REVIEWS & APPROVAL (Applicable Only to Contingency Contracting) NOTE: Refer to DFARS Joint Contingency Contracting Guide - Table 1 Contingency Approval Authorities			
Contingency Contracting Micropurchase Threshold (awarded/performed /purchased OCONUS (FAR 13.201(g)(1)(ii))	$30K		
Contingency Contracting Simplified Acquisition Threshold (awarded /performed/purchased OCONUS) (FAR 2.101(b) & FAR 13.201(g)(1)(ii))	$1M		
Authority to acquire products and services produced in Iraq and Afghanistan (Refer to DFARS 225.77, Public Law 110-181 Section 886, and PIL 2013-01):			

For the acquisition of products and services for an ***Individual Acquisition*** (including construction) **not** limited to use by the military forces, police or other security personnel of Iraq or Afghanistan (DFARS 225.7703-2(b)(2)(b)(1)(i)) & PIL 2013-01	≤$85.5M	HCA**	60
DOCUMENT & REGULATORY CITE(S)	**DOLLAR THRESHOLD**	**APPROVAL AUTHORITY**	**APPROX. TOTAL APPROVAL DAYS**
For the acquisition of products and services for an ***Individual Acquisition*** (including construction) **not** limited to use by the military forces, police or other security personnel of Iraq or Afghanistan (DFARS 225.7703-2(b)(2)(b)(1)(ii)) & PIL 2013-01	>$85.5M	DPAP or AAE	120
For the acquisition of products and services or for a ***class of acquisitions*** (including construction) **not** limited to use by the military forces, police or other security personnel of Iraq or Afghanistan (DFARS 225.7703-2(b)(2)(b)(1)(ii)) & PIL 2013-01	≥$0	DPAP or AAE	120
For Individual Acquisition of products and services (including construction) to be **used only** by the military forces, police or other security personnel of Iraq or Afghanistan (PIL 2013-01) *(Submit to PARC for reporting and best practices)*	SAT≤$7.864M* *Thresholds Subject to Change – Refer to FAR 25.402(b)	CCC/DCC	10
For Individual Acquisition of products and services (including construction) to be **used only** by the military forces, police or other security personnel of Iraq or Afghanistan (PIL 2013-01)	>$7.864M* *Thresholds Subject to Change – Refer to FAR 25.402(b)	PARC	30

USACE ACQUISITION INSTRUCTION (UAI)

APPENDIX 6-1 — AFTER-THE-FACT J&A UPWARD REPORTING FORM

(FAR 6.302-2(c))

After-The-Fact J&A Upward Reporting Form (FAR 6.302-2(c))

1. Contracting Officer: _____

   E-Mail: _____

   Telephone No.: _____

2. District/Center Chief of Contracting: _____

   E-Mail: _____

   Telephone No.: _____

3. Technical Point of Contact: _____

   E-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 notification provided to SCA(PARC):_____

6. Date verbal approval received by SCA:_____

7. Date J&A will be submitted to the SCA(PARC):_____

Notes:
1) Actions over $650K up to $12.5M, the J&A document must be submitted within 10 calendar days after verbal notification to the SCA.
2) Actions over $12.5M, the J&A document must be submitted within 5 calendar days after verbal notification given by the SCA, for timely submission and processing thru the USACE Command SCA for final approval by the HQ DOC(J&A approval authority for $12.5M to $85.5M).

USACE ACQUISITION INSTRUCTION

APPENDIX 6-2 — JUSTIFICATION OF PROCUREMENT METHOD TEMPLATE

MEMORANDUM FOR RECORD DATE

SUBJECT: Justification of Procurement Method, *Firm-Fixed-Price, Cost- Reimbursable, Indefinite Delivery, Indefinite Quantity (IDIQ), Single Award Task Order Contract (SATOC) for Title of Project*

1. Reference U.S. Army Corps of Engineers Acquisition Instruction (UAI), Section 6.401-100 Sealed Bidding and Competitive Proposals

2. The subject contract will be procured as a negotiated contract pursuant to FAR 6.401(a) criteria as outlined in the table and discussed below:

FAR 6.401(a) Criteria	**Applicable to this Question**
Time permits the solicitation, submission, and evaluation of sealed bids;	Yes ☐ No ☐
The award will be made on the basis of price and other price-related factors;	Yes ☐ No ☐
It is not necessary to conduct discussions with the responding offerors about their bids; and	Yes ☐ No ☐
There is a reasonable expectation of receiving more than one sealed bid.	Yes ☐ No ☐

a. "Time permits the solicitation, submission, and evaluation of sealed bids." This is applicable to this acquisition. Though on an accelerated schedule, there is ample time for the Government to solicit, Bidders to submit, and the Government to evaluate sealed bids.

b. "The award will be made on the basis of price and other price-related factors." This is not applicable to this acquisition. This solicitation will require the evaluation of management and technical factors as well as cost. There is a need to insure that offerors have the capability to perform environmental consulting services projects. This can only be insured through the use of non-price evaluation factors using Request for Proposal techniques under FAR Part 15 whereby experience and past performance on same / similar work can be evaluated.

c. "It is not necessary to conduct discussions with the responding offerors about their bids." This is not applicable to this acquisition. Should the Government find that offerors do not understand the terms and conditions of the solicitation, or there are discrepancies in the evaluation of criteria, the Government must have the right to

discuss those weaknesses and/or deficiencies with offerors to obtain the best value to the Government.

d. "There is a reasonable expectation of receiving more than one sealed bid." This is applicable to this programmatic acquisition. There is a reasonable expectation under any contract issued out of the Tulsa District Office that more than one sealed bid will be received.

3. Risk. There is little risk associated with this procurement as a negotiated action. Using the trade-off method, Tulsa District will have the tools and criteria necessary for selection of a contractor that will provide the best value to the Government for this requirement.

4. Detailed Analysis.

a. The use of sealed bidding is not appropriate in this instance as all four conditions specified by FAR 6.401(a) are not present. Due to the wide range and technical complexities required in this procurement, it may be necessary to conduct discussions with the responding offerors to discuss demonstrated ability in areas such as management, experience, administrative procedures, and technical understanding of the work. As evidenced above, the award decisions must be made on other than price or price-related factors to assure the Government receives the best combination of technical quality and costs. FAR Part 15 procedures will be utilized so the Government may consider non-price factors in the award decision.

b. Tulsa District currently receives numerous proposals for each Request for Proposal (RFP) issued. Responding offerors typically have weaknesses or deficiencies that must be addressed through discussions in order to clarify the Government's requirements and receive adequate information to determine the best value to the Government under a tradeoff method of selection. Without the ability to negotiate with firms for large projects such as the subject requirement, the Government would not receive the best-value.

5. In accordance with FAR Part 6.401(b), and the reference above, the use of competitive proposals is justified.

_____
XXXXX X. XXXXX
Contracting Officer

USACE ACQUISITION INSTRUCTION (UAI)

APPENDIX 6-3 — J&A CHECKLIST & LINK TO DASA(P) J&A SOP

Justification and Approval (J&A) Contents Checklist
FAR 6.303-2; AFARS 5106.303-2 & 5153.9005.

For Processing of J&As Greater than $85.5M – Refer to DASA(P) SOP

Format. AFARS 5153.9005.

(___) Per FAR 6.303-2(a), each J&A must contain sufficient information to justify the use of the cited authority. The J&A needs to be a well-composed document that fully justifies the agency's action. It is often the critical document subjected to judicial scrutiny in litigation opposing the agency action.

At a minimum, the justification must include:

(___) Contracting Activity: Specify the contracting activity responsible for this action.

(___) Description of Action: State whether approval is being requested for a new contract, a class of contracts, or a modification. Include the type of contract, appropriation to be used (RDTE, OPA, OMA), the estimated cost or price, and when applicable, the estimated share ratios and ceiling price, and fee or profit. [The format specified in AFARS 5153.9005 is mandatory for contract actions greater than $85,500,000.]

(___) Description of Supplies/Services:
Describe in detail the supplies/services being sought. Include the estimated total value, including options, if any.

(___) Authority Cited: Identify the statutory authority permitting other than full and open competition, followed by the FAR citation down to the lowest level, and FAR citation title.

(___) Reason for Authority Cited: Describe how this action requires the use of the authority cited. If applicable, identify the proposed or potential contractor(s), and include a discussion of the proposed contractor's unique qualifications for fulfilling the contract requirements.

When citing FAR 6.302-1(a)(2)(ii) or (iii) for a follow-on acquisition as the basis for the J&A, clearly articulate (1) the substantial duplication of costs to the U.S. that are not expected to be recovered through competition and how the estimate was derived or (2) the unacceptable delays in filling agency needs.

If the authority cited is FAR 6.302-2, include the required delivery schedule and lead-time involved as well as a discussion of the serious injury to the Government, which would result if award of a contract is delayed. J&A's citing 6.302-2 as their authority may be submitted after the fact.

J&As citing FAR 6.302-2 and 6 must request proposals from as many potential sources as practicable under circumstances.

(___) Efforts to Obtain Competition: Describe efforts to ensure that offers are solicited from as many potential sources as is practicable. Also, describe the extent of effective competition anticipated for this acquisition.

(___) Actions to Increase Competition: When it is impracticable to compete the current acquisition, and competition may be a viable option for subsequent acquisitions, include a statement of the actions taken, or to be taken, to increase competition (e.g., breakout) before any subsequent acquisition of the supplies or services. Provide the approximate date the technical data package will be available.

(___) Market Research: Describe the extent and the results of the market research (FAR Part 10) conducted to identify all qualified sources. Research must have been meaningful and conducted within the previous 12 months.

(___) Interested Sources: Include a listing of the sources that have written to express interest in the acquisition. If applicable, clearly state that "To date, no other sources have written to express an interest." If FAR 6.302-1 is the authority being cited for a J&A, explain why other sources were rejected. Also, state that the notices required by FAR 5.201 shall be or have been published, and that any proposals received shall be considered. If a FedBizOpps notice is not posted, state which exception in FAR 5.202 applies.

(___) Other Facts: Discuss any other facts supporting the use of other than full and open competition, such as the following:

[ ] *Procurement history*. List the following items, below, or describe the efforts made to retrieve the items from computer records, contract files competition advocate office files, or other sources as expected:

(1) Contract numbers and dates of the last several awards.

(2) Competitive status of these actions.

(3) Authority previously used for less than full and open competition.

(4) If a J&A was prepared to support the procurement made before this one, include a summary of the contents of paragraph seven of the justification for that procurement and an explanation of the results.

(5) If any award for a similar type item was accomplished using full and open competition, include a detailed explanation of the changed circumstances preventing use of full and open competition with this procurement.

(6) An explanation of unusual patterns which may be revealed by the history, e.g., several consecutive urgent buys.

(7) If a justification was prepared to support the procurement made before this one, briefly describe the circumstances justifying the buy and whether there have been any significant changes.

b. *Acquisition data availability*. Explain why technical data packages, specifications, engineering descriptions, statements of work or purchase descriptions suitable for full and open competition have not been developed or are not available. Describe the actions taken or planned to remedy this situation.

c. *Unusual and compelling urgency.* When FAR 6.302-2 is cited, provide data, estimated cost or other rationale to explain the nature and extent of the injury to the Government. If the delay is associated with the requirement for first article testing, does the principal reason for not awarding the contract on a full and open basis clearly describe the reasons that first article testing is required in this procurement and why other means of assuring quality are not being used.

d. *Subcontracting competition.* In single source situations, address efforts that will be taken by the Government to assure that the prime contractor obtains as much competition as possible in its subcontracting.

(___) Technical Certification: Include the following statement:

I certify that the supporting data under my cognizance which are included in the justification are accurate and complete to the best of my knowledge and belief.
Typed Names:_____ Date: _____
Title: _____Signature: _____

(___) Requirements Certification: Include the following statement:

I certify that the supporting data under my cognizance which are included in the justification are accurate and complete to the best of my knowledge and belief.
Typed Name: _____ Date: _____
Title:_____ Signature: _____

(___) Fair and Reasonable Cost Determination: Include the following determination:

I hereby determine that the anticipated cost or price to the Government for this contract action will be fair and reasonable. Provide the basis for this determination (e.g., describe techniques to be used to determine fair and reasonable price, such as cost analysis, price analysis, audit, should cost, independent Government estimate, etc.). As part of this basis, indicate whether certified cost or pricing data will be required or if one of the exceptions in FAR 15.403 will apply.
Typed Name: _____ Date: _____
Title: _____ Signature: _____

(___) Contracting Officer Certification: This certification shall be made by the contracting officer who will sign the contract resulting from this justification and approval. Include the following statement:

I certify that this justification is accurate and complete to the best of my knowledge and belief:
Typed Name: _____ Date: _____
Title: _____ Signature: _____

(___) Approval

Based on the foregoing justification, I hereby approve the procurement of (state equipment/services being procured) on an other than full and open competition basis pursuant to the authority of 10 U.S.C.2304(c) (insert authority), subject to availability of funds, and provided that the services and property herein described have otherwise been authorized for acquisition.
Date: _____
Signature: _____

Approval Authority – FAR 6.304(a); DFARS 206.304; AFARS 5106.304

≤$650K: Contacting officer.
>$650K to $12.5 Million: SCA.
>$12.5 Million to $85.5 Million: HCA (OR DELEGEE).
>$85.5 Million: Army SPE.

USACE ACQUISITION INSTRUCTION (UAI)

APPENDIX 15-1 — NAVFAC/USACE PAST PERFORMANCE QUESTIONNNAIRE (PPQ) INSTRUCTIONS AND FORMS

INSTRUCTIONS FOR IMPLEMENTATION OF
NAVFAC/USACE PAST PERFORMANCE QUESIONNAIRE (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. "

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 (FAPIIS), 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 (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: ☐ Prime Contractor ☐ Sub Contractor ☐ Joint Venture ☐ 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: ☐ Firm Fixed Price ☐ Cost Reimbursement ☐ 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 ☐ High ☐ Med ☐ 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.

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.

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. *(If liquidated damages were assessed or the schedule was not met, please address below)*	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

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? *If no, please explain in Remarks section.*	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? *Indicate if show cause or cure notices were issued, or any default action in comment section below.*	Yes No
f) Have there been any indications that the contractor has had any financial problems? *If yes, please explain below.*	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 *(explain if specific issues)*	E VG S M U N
c) Would you hire or work with this firm again? *(If no, please explain below)*	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)*:

USACE ACQUISITION INSTRUCTION (UAI)

APPENDIX 16-1 — APPOINTMENT OF AWARD FEE DETERMINING OFFICIAL (AFDO FOR COST-PLUS AWARD-FEE CONTRACTS (CPAF) CHECKLIST

Checklist for Appointment of Award Fee Determining Official (AFDO) for Cost-Plus Award-Fee Contracts (CPAF)

The PARC must appoint, in writing, the Award-Fee Determining Official (AFDO) (unless the PARC acts as the AFDO).

Required Documents:
The following are required for PARC action on any AFDO Appointment Request:

- AFDO appointment request memorandum must contain:
    - Contract Number and, if applicable, Task Order (TO) Number
    - Award date of the Contract and, if applicable, TO.
    - Dollar value of the Contract and, if applicable, TO.
    - Date of the Notice to Proceed (NTP), if applicable.
    - Award Fee Board Schedule Information
    - Background:
        - List any previous CPAF task order numbers
        - Award date of the Contract and each previous TO.
        - Dollar value of the Contract and each previous TO.
        - Status of each previous TO (open or closed).
        - Discuss individually all prior Award Fee Boards results, timing, and schedules, include the names of the AFDOs and the Award Fee Evaluation Board (AFEB) members.
- Conformed Copy of the Contract and, if applicable, copy of TO
- Performance Work Statement / Scope of Work of the current Contract and, if applicable, of the TO (if this is a request for AFDO on a specific TO)
- Award Fee Plan (AFP) of the current Contract Number and, if applicable, of the current TO.
    - Ensure that Timely submission of Invoices is not an evaluated factor (per DoD IG).
    - Examples of areas where fees could be earned include but are not limited to, quality, timeliness, technical ingenuity, or cost saving.
    - Ensure that the AFP does not include non-specific criteria, such as, "how well the contractor is managing the program" or "improved contractor performance" (GAO-06-66)
- Construction Quality Control Plan (QCP) / Quality Assurance Surveillance Plan (QASP) of the Contract and, if applicable the TO.
    - This item cannot be checked as "Not Applicable." If there is no QCP or QASP, an explanation of the remedial action(s) to be taken must be stated.
- AFDO nominee's credentials, resume (indicating prior experience with at least one (1) CPAF type contract, and completion certificates to indicate dedicated Contracting personnel have successfully completed at least two (2) formal CPAF training courses.

Cost Benefit Analysis Example

Before selecting a cost-plus award-fee (CPAF) type contract, and after determining that administrative resources would be available, the Contracting Officer shall perform a cost benefit analysis of the expected benefits versus the added administrative costs for a CPAF type contract. The value added to the program by using a CPAF type contract must be greater than the costs to administer it. A typical way of calculating administrative costs is to use grade levels and hours required to monitor, evaluate, brief and implement the award fee process in its entirety from pre-award to contract closeout. Major cost drivers are the number of award fee evaluation periods, performance monitors, and Award Fee Evaluation Board (AFEB) members.

For example, assume four (4) three-month evaluation periods; five (5) performance monitors who spend an average of eight (8) hours per week on their duties; six (6) AFEB members who meet once for three (3) hours during the period and spend one (1) additional hour briefing the Award Fee Determining Official (AFDO); a Recorder who spends an average of eight (8) hours per week on award fee duties; and a contracting officer who spends five (5) hours per period. The administrative cost for one evaluation period, assuming a fully burdened labor hour rate of $60, would be as follows:

5 monitors x 8 hrs x 13 wks x $60	= $	31,200
6 AFEB members x 4 hrs x $60	= $	1,440
1 Recorder x 8 hrs x 13 wks x $60	= $	6,240
1 CO x 5 hrs x $60	= $	300
Government Administrative Cost (quarterly)	$	39,180

a. The $39,180 must then be multiplied by the number of evaluation periods to calculate the total administrative cost for the award fee contract, i.e., $39.180 x 4 = $156,720. This amount is for a 12-month period only; the cost for additional contract periods should also be considered. If there is a high risk that this contract will not be performed on schedule, the calculation of administrative costs can account for the extra monitoring periods that may be necessary. This is a conservative estimate and does not represent all associated administrative costs that may arise (e.g., the AFDO's time).

b. To complete the cost benefit analysis, the contracting officer compares the quantitative administrative burden to routine contract administration and monitoring costs experienced on a non-cost type contract arrangement and the other identifiable, but intangible benefits the Government receives through the award fee arrangement.

c. The benefits might be measured in terms of the result(s) expected from the areas of motivated performance, e.g., dollars saved by tighter cost control or enhanced technical capability.

USACE ACQUISITION INSTRUCTION (UAI)

APPENDIX 22-1 — PROJECT LABOR AGREEMENT 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 do 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, at this point, we don't believe any USACE activities have sufficient experience 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,* 83 F.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.

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.

USACE ACQUISITION INSTRUCTION (UAI)

APPENDIX 22-2 — PROJECT LABOR AGREEMENT DETERMINATION TOOL

Project Labor Agreement (PLA) Determination Tool

PURPOSE: 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:

1) **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.

2) **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.

BACKGROUND: A project labor agreement 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) Project Labor Agreements 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--

(1) Advance the Federal Governments 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

(2) 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).

MARKET RESEARCH: 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):

(1) The project will require multiple construction contractors and/or subcontractors employing workers in multiple crafts or trades.

(2) There is a shortage of skilled labor in the region in which the construction project will be sited.

(3) Completion of the project will require an extended period of time.

(4) Project labor agreements have been used on comparable projects undertaken by Federal, State, municipal, or private entities in the geographic area of the project.

(5) 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.

(6) Any other factors that the agency decides are appropriate.

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.

For contracting officers who choose to conduct their own research, the following information may be helpful in making an informed decision:

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.

(1) 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.

(2) 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.

(3) Construction community, in accordance with FAR 22.504(c), to include:

a. Local Building and Construction Trades Councils The Building and Construction Trades Department, AFL-CIO, (BCTD) provides essential coordination and support to the work of its affiliated national and international unions - http://www.bctd.org/Official-Directory/Local-Councils.aspx

b. Associated Builders and Contractors – A national trade association with numerous local offices representing merit shop contractors, subcontractors, material suppliers and related firms in the United Statershttp://www.abc.org/chapterlocator.aspx

c. Associated General Contractors – A national trade association with a nationwide network of local chapters, AGC represents 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

d. Construction consulting and management firms and academic experts – 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.

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. Market research sources sought notices shall include, at a minimum, the following seven (7) 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 impact 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. Please identify any additional information you believe should be considered on the use of a PLA on the referenced project.
7. Please identify any additional information you believe should be considered on the non-use of a PLA on the referenced project.

The information gathered in this exercise should include the following information on projects completed in the last 2-5 years:

Project Name / Location	Detailed Project Description	Initial Cost Est. / Actual final cost	Was the project completed on-time?	Number of craft trades present on the project	PLA (Y/N)	Were there any challenges experienced during project? (delays, investigations, health and safety issues, labor shortages, management/ organizational issues, etc)

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:

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? o 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? o 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? (local building trades and contractors can provide information)	
How do open shop and union wage rates influence prevailing wage rates in the local market and compare to Davis Bacon rates? o What impact does unionization in the local market have on wages?	
Could a PLA contribute to cost savings in any of the following ways? o Harmonization of shifts and holidays between the trades to cut labor costs? o Minimizing disruptions that may arise due expiration of CBA? o Availability of trained, registered apprentices, efficient for highly skilled workforce?	

o 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? Other?	
Could a PLA minimize risk and contribute to greater efficiency in any of the following ways? o Mechanisms to avoid delays o Complying with Davis Bacon and other labor standards, safety rules and EEO and OFCCP laws. o 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 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 and was not merely a function of the number of boxes checked.

☐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.

☐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. _____
_____

☐A PLA would not contribute to the economy or efficiency for the project under consideration.

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_____

USACE ACQUISITION INSTRUCTION (UAI)

APPENDIX 24-1 — SAMPLE PERSONALLY IDENTIFIABLE INFORMATION (PII) LANGUAGE

Personally Identifiable Information (PII) Language Sample

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, "Department of Defense 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 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.

USACE ACQUISITION INSTRUCTION (UAI)

APPENDIX 24-2 — SAMPLE PERSONALLY IDENTIFIABLE INFORMATION (PII) BREACH CONTRACTUAL LANGUAGE

Data Breach Response and Notification:

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 whose 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.

USACE ACQUISITION INSTRUCTION (UAI)

APPENDIX 25-1 —TEMPLATE SYNCHRONIZED PRE-DEPLOYMENT AND OPERATIONAL TRACKER (SPOT) NON-COMPLIANCE LANGUAGE

[Official Letterhead]

[Date]

Mr. [Name]
[Firm Name]
[Street Address]
[City, State, Zip Code]

Dear Mr. [Name],

This letter is in reference to your firm's Contract [contract number and title].

IAW Defense Federal Acquisition Regulation Supplement (DFARS) your contract Clause 252.225-7040, Contractor Personnel Authorized to Accompany U.S. Armed Forces Deployed Outside the United States, Subsection (g)(1)[*See Note to Contracting Professionals], requires your firm, as prime contractor, to enter, maintain and update information into the Synchronized Predeployment and Operational Tracker (SPOT) web-based system. You are required to maintain accountability of your employees in support of Operation Enduring Freedom in the U.S. Central Command (USCENTCOM).

Results of a recent SPOT audit indicates your pertinent SPOT contractor information (contracting 1102 personnel should select the alternates that apply) [Alternate 1: is not fully entered into SPOT] [Alternate 2: is not maintained and updated in SPOT] [Alternate 3: is not fully entered or maintained and updated in SPOT].

Specifically, as of [date], an audit of your SPOT records indicates that the In-Theater Arrival Date (ITAD) and Current Duty Station information Contract, [number] for your employees holding Letters of Authorization (LOAs) is not entered into the SPOT database. Information also exists in the SPOT database for employees with denied LOAs. IAW SPOT DoD Business Rules guide dated January 21, 2014, the ITAD information must be entered into SPOT within 24 to 72 hours of your employees' arrival in country. You are required to validate and correct contractor employee information in SPOT that identifies employees with an "Active" deployment status, ITAD and Current Duty Station against a "denied" LOA. The SPOT DoD Business Rules guide is available in the SPOT Resource Center/SPOT Library tab at https://spot.dmdc.mil/ResourceSPOT.spot.

Your firm is non-compliant with DFARS Clause 252.225-7040 under Contract [number]. As compliance is a serious issue, the Government requires your full compliance with SPOT in order to maintain accountability over all U.S. Government contractor personnel in Afghanistan.

Within five (5) calendar days from the date of receipt of this letter, your firm must provide the Contracting Officer of your written corrective action plan and timeline to bring Contract [number] into compliance with DFARS Clause 252.225-7040. Your corrective action, IAW your written plan and timeline, must be completed no later than 10 (ten) calendar days from the date of receipt of this letter. Your written plan must also address your risk mitigation strategy to ensure compliance with DFARS Clause 252.225-7040, and assurance that SPOT deficiencies do not reoccur during the remainder of the term of your contract. Upon completion of your firm's actions, provide written confirmation to the Contracting Officer that your firm has completed all corrective actions to bring the contract into compliance with the aforementioned DFARS Clause. You must provide substantiating evidence, not later than 10 (ten) calendar days from the date of receipt of this letter, if you believe you are in compliance with the SPOT requirements.

Your firm's failure to comply with this notice, the terms of the contract, or maintain compliance with DFARS Clause 252.225-7040 may result in: (1) payment withholdings of an amount the Contracting Officer considers necessary to protect the interest of the Government; (2) negative performance assessment rating for contract non-compliance; and (3) termination of contract.

Please address your questions regarding this notice to the undersigned at telephone [number], or via e-mail at [address].

Sincerely,

[NAME]
Contracting Officer

CONTRACTOR'S ACKNOWLEDGEMENT OF RECEIPT OF THIS NOTICE

_____ _____
Printed Name Signature

_____ _____
Title Date

[*Note to Contracting Professionals: If the contract was awarded after 14 July 2014 and incorporates Class Deviation 2014-O0018, replace clause 252.225-7040 throughout this letter with clause 225.252-7995. If the contract incorporates the Class Deviation, the first paragraph of this letter should be revised to read . . .

In accordance with Defense Federal Acquisition Regulation Supplement (DFARS) your contract Clause 252.225-7995, Contractor Personnel Performing in the United States Central Command Area of Responsibility (Deviation 2014-O0018)(Jun 2014), Subsection (g)(1) and (2), requires your firm, as prime contractor, to enter, maintain and update information into the Synchronized Pre-deployment and Operational Tracker (SPOT) web-based system. You are required to maintain accountability of your employees in support of Operation Enduring Freedom in the U.S. Central Command (USCENTCOM).]

USACE ACQUISITION INSTRUCTION (UAI)

APPENDIX 33-1 — CONTRACT REQUESTS, CLAIMS, AND APPEALS (A, PART 3)

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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. AFARS 5133.212-90(a)(3). The Engineer Chief Trial Attorney 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 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 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 Engineer Chief Trial Attorney. Copies of all other significant correspondence will be sent to 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 $100K; for claims over $100K 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 $100K, 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.

(a) 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.

(b) 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.

(1) 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.

(2) 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.

(3) 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.

(4) The fourth part of the decision should be 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.

(5) 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.

A3-207 Claims Management and Case Tracking.
Each Office of Counsel is required to enter all its claims more than 90 days old, including affirmative Government claims, into the USACE Legal Services' Matter Tracking System. The following information must be entered for every claim: the name of the contractor, the contract number, the project and location, the date relief was requested or the certification date, the relief requested, the attorney assigned to the claim and a brief narrative description of the facts and issues. The database should be updated as significant events occur. When the contracting officer renders a final decision or a claim is settled, the claim should be closed on the database and the following information entered within 5 working days: the disposition of the claim (whether it was decided, settled, or withdrawn); the date of disposition, the nature of the disposition (whether relief was denied or granted in whole or in part); and a summary of any relief granted.

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 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, the signature block shall read "Engineer Chief Trial Attorney."

(b) Appeals under $3M. The Engineer Chief Trial Attorney 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 $3M. AFARS 5133.212-90(a)(2).

(c) Appeals of $3M 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. 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 Engineer Chief Trial Attorney a memorandum describing the nature of the claim and recommending whether the Engineer Chief Trial Attorney 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 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 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. Minimum Number of Copies. Unless otherwise directed by the Board, one copy of the complete appeal file shall be forwarded to the Board.

3. 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) The Trial Attorney Qualification Program.

1. Establishment. On 9 May 1997, the Chief Counsel established the Trial Attorney Qualification Program. The effective date of the Program was 1 July 1997.

2. Policy. In order to represent the Corps of Engineers as lead counsel in Type II and Type III contract appeals, a trial attorney must be designated as qualified under the Program. The Engineer Chief Trial Attorney is authorized to designate a trial attorney as qualified.

3. Criteria. The standards for qualification as a Type II and Type III lead counsel include litigation experience, training courses, and special skills for Type III cases.

4. Procedures. A request for qualification designation will be initiated by the trial attorney. Details of the USACE Trial Attorney Qualification Program, including the procedures for submission of the request to the Engineer Chief Trial Attorney are available on the USACE Legal Services Intranet (CorpsLaw).

(b) Appointment. The local counsel shall assign the Government Trial Attorney. Only Type III qualified trial attorneys may be assigned as lead counsel on appeals of Type III cases. For every appeal, the Engineer Chief Trial Attorney and the Chief Counsel reserve the authority to disapprove the assignment of a particular trial attorney or to remove the trial attorney once assigned.

(c) 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 are forwarded to 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 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 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 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 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 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 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 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 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. 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 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 Engineer Chief Trial Attorney.

A3-311 Decisions.
(a) Notice. The trial attorney is responsible for notifying 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 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 29 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 Engineer Chief Trial Attorney. The motion and its supporting memorandum shall be prepared in accordance with Board Rule 29 and A3-306.

(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 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 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 projects 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 Engineer Chief Trial Attorney. A request to use the Judgment Fund will be submitted with supporting documentation to the Engineer Chief Trial Attorney. Resort to the Judgment Fund requires a certification from Resource Management that project funds are unavailable.

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.

A3-313 Appeals Management and Case Tracking.
The Office of Counsel is required to enter and update all its appeals in the USACE Legal Services' Matter Tracking System (MTS). The trial attorney is responsible for ensuring that MTS has current and accurate information in all assigned cases.

a. New Appeals. In most instances, the basic information concerning the claim which is the subject of the appeal is already in the database. In such cases, the trial attorney shall update the information by changing the category of the entry from (claim) to (appeal) and adding the ASBCA as the forum and the docket number. A new, separate case should not be entered. If the claim was not entered into the database during the claim stage, the following information must be entered for each appeal: the name of the appellant/contractor, the forum and docket number, the contract number, the project and location, the relief requested, the date of the contracting officer's final decision, the trial attorney assigned to the appeal and a brief narrative description of the facts and issues.

b. Updating Appeal Information. The database should be updated as significant events occur, including the filing of pleadings, dispositive motions and briefs, and the scheduling of hearings, and ADR procedures. When the ASBCA renders a decision or a case is settled and dismissed by the Board, the appeal should be closed on the database and the following information should be entered within 5 working days: the disposition of the appeal (whether it was

decided, settled or withdrawn), the date of disposition, the nature of the disposition (whether relief was denied or granted in whole or in part) and a summary of any relief granted.

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 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, 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 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.

(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 fully informed of all significant events that occur as the case progresses. This requirement includes furnishing 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 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. 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 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. 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 Engineer Chief Trial Attorney within 5 days of the entry of judgment. The Engineer Chief Trial Attorney 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 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. The Engineer Chief Trial Attorney 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, payment will be made in accordance with Judgment Fund procedures.

A3-408 Case Management and Tracking.
The Office of Counsel is required to enter and update all cases in the USACE Legal Services' Matter Tracking System. The trial attorney is responsible for ensuring that MTS has current and accurate information in all assigned cases.

(a) New Cases. In most instances, the basic information concerning the case is already in the database. In such cases, the trial attorney shall update the information by changing the category of the entry from "claim" to "appeal" and adding the U.S. Court of Federal Claims as the forum and the court's docket number. A new, separate case should not be entered. If the claim was not entered into the database during the claim stage, the following information must be entered for each case: the name of the plaintiff/contractor, the forum and docket number, the contract number, the project and location, the relief requested, the date of the contracting officer's final decision, the trial attorney assigned to the case and a brief narrative description of the facts and issues.

(b) Updating Case Information. The database should be updated as significant events occur, including the filing of pleadings, dispositive motions and briefs and the scheduling of hearings, trials and ADR. When the court renders a decision or a case is settled and dismissed by the court, the case should be closed on the database and the following information entered within 5 working days: the disposition of the case (whether it was decided, settled or withdrawn), the date of disposition, the nature of the disposition (whether relief was denied or granted in whole or in part) and a summary of any relief granted.

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 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 Engineer Chief Trial Attorney 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 of significant events in the case as defined below.

A3-503 Significant Events.
The assigned trial attorney is responsible for keeping the Engineer Chief Trial Attorney fully informed of all significant events that occur as the case progresses. This requirement includes furnishing 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 Engineer Chief Trial Attorney of the date and indicate who will be attending.

A3-505 Decision.
The assigned trial attorney is responsible for notifying 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.

A3-506 Appeals Management and Tracking.
The Office of Counsel is required to enter and update all appeals at the U.S. Court of Appeals for the Federal Circuit in the USACE Legal Services' Matter Tracking System. The trial attorney is responsible for ensuring that MTS has current and accurate information in all assigned cases.

a. New Appeals. The basic information concerning the appeal is already in the database. The trial attorney shall update the information by changing the forum to the U.S. Court of Appeals for the Federal Circuit and adding the appellate docket number. A new, separate case should not be entered.

b. Updating Appeal Information. The database should be updated as significant events occur including the filing of motions and briefs and the scheduling of oral arguments. If the appeals court renders a decision remanding the case to a Board or the U.S. Court of Federal Claims, the decision should be recorded in MTS, and the forum and docket number in the case file should be changed to show where the case is now pending. When the appellate court renders a final decision or a case is settled, the appeal should be closed and the following information should be entered within 5 working days: the disposition of the appeal (whether it was decided, settled or withdrawn), the date of disposition, the nature of the disposition (whether relief was denied or granted in whole or in part) and a summary of any relief granted.

USACE ACQUISITION INSTRUCTION (UAI)

APPENDIX 35-1 — MANDATORY CAP CHECKLIST FOR RESEARCH & DEVELOPMENT ACQUISITIONS

USACE Acquisition Review Program – Corrective Action Plan (CAP) Questionnaire for Research & Development Contracts

Note : Choose a response accordingly (YES, NO or N/A).

Provide corresponding comments for each question that is answered No or N/A response.

Question	Reference	YES	NO	N/A	Comments	PCF Contract File Folder Name
1. Is the basic contract filed in Paperless Contract File (PCF)?	OPORD 2012-66					entory of Contract Actions By Division
2. Is there a properly approved Project Management Plan (PMP) signed by each Project Delivery Team (PDT) member to include the Procuring Contracting Officer (PCO)? If no PMP is present then the file should contain a Memorandum for Record (MFR) signed by the PCO providing the rationale why there was no PMP.	UAI 7.102-100(b)(2)					Pre-Award A Solicitation Documents Requirements Package Or Determination if there was no PMP
3. If a non-DoD contract is being used, does the contract file include the non-DoD written determination?	DFARS 217.7802, AFARS 5117.7802, UAI 8.404 and 17.500					Pre-Award A Solicitation Documents Determination
4. Is there a properly approved Acquisition Strategy Document (ASD)?	AFARS 5137.590-5, AFARS 5137.590-7 and UAI Part 37					Pre-Award A Solicitation Documents Requirements Package
5. Has an Acquisition Plan been approved?	FAR 7, DFARS 207, UAI Appendix 2-1					Pre-Award A Solicitation Documents Requirements Package
6. Has a detailed Independent Government Estimate (IGE) been approved and documented?	PIL 2012-03-R-1; Not applicable for Broad Agency Announcements (BAAs)					Pre-Award A Solicitation Documents Requirements Package
7. Is there sufficient and supportive documented market research?	FAR 10.001 and 10.002					Pre-Award A Solicitation Documents Requirements Package

8. Has a Services Contract Approval form been obtained?	(AR 70-13 2-2d, & USACE CSE Memorandum: Service Contract Approval Certification Regarding Inherently Governmental, dated 21 August 2013).					Pre-Award A Solicitation Documents Requirements Package (SCAR)
9. Is there evidence of availability of funds? (certified, proper amount, proper appropriation).	FAR 32.702					Pre-Award A Solicitation Documents Requirements Package
10. Is there evidence that the Assistant Secretary of the Army (Acquisition, Logistics and Technology) (ASA) (ALT) approval was received prior to contract award, development, or test facilities and equipment.if the contract provides for the acquisition or construction by, or furnishing to, the contractor of research,	AFARS 5135.014-90					Pre-Award A Solicitation Documents Requirements Package Determinations
11. Is there proper documentation of the negotiation and award decision? (Price Negotiation Memorandum or Source Selection Decision Documentation)	FAR 8.405-1(g), FAR 8.405-2(f), FAR 13.106-3, FAR 15.406-3, FAR 15.308, and AFARS 5116.505-90(b)					Pre-Award, Section B Bid/Proposal Review Source Selection Documentation Pre-Award, Section C Contract Review and Award Reviews / Approvals - Contract
12. Is there a properly documented Contracting Officer's determination, made prior to contract award, that the contract price is fair and reasonable?	FAR 8.404(d), FAR 8.405-2(d), FAR 8.405-2(f), FAR 12.209, FAR 13.106-3, FAR 14.408-2, and FAR 15.4					Pre-Award Section A Solicitation Documents Determination
13. Is there a properly appointed Contracting Officer Representative (COR) in the Virtual Contracting Enterprise (VCE) for the Contracting Officers Representative Module (CORM)?	DFARS 201.602-2, DFARS PGI 201.602-2, AFARS 5101.602-2(i)(A), UAI 1.604-100, PIL 2012-06-RI, OPORD 2012-53					Pre-Award A Solicitation Documents Contracting Officer's Representative (COR)
14. Is there a properly documented Quality Assurance Surveillance Plan (QASP)?	FAR 46.401, FAR 46.404, DFAR 246.401, SAAL-PP memorandum Post Award Oversight and Surveillance of Contracts; dated October 2010 and UAI 1.604-100 , UAI Subpart 37.5					Pre-Award A Solicitation Documents Requirements Package

15. If applicable, does the solicitation and/or contract includes requirements for contractors to complete Army's Contractor Manpower Reporting	AFARS 5137.9601 & AR 70-13 2-2d, & USACE CSE Memorandum: Service Contract Approval Certification Regarding Inherently Governmental, dated 21 August 2013).					Contract Administration Section G General Contract Administration
16. Is there evidence that the Contracting Officer held periodic status/progress meetings with the COR and contractor (at least quarterly), to discuss contract progress and issues?	AR 70-13 Management and Oversight of Service Acquisitions, AFARS 5137.5					Contract Administration Section G General Contract Administration
17. Has the Contracting Officer reviewed the COR's official files and any documents related to the Annual Review Checklist in CORM?	AR 70-13 Management and Oversight of Service Acquisition).					Contract Administration Section F Service Contract Administration
18. Is the COR submitting Monthly Reports to the Contracting Officer in CORM and the Contracting Officer is reviewing the reports and taking appropriate action as needed?	COR Designation Letter					Contract Administration Section F Service Contract Administration
19. If the contract is for a major defense acquisition program, is there evidence that Under Secretary of Defense (Acquisition, Technology, and Logistics) (USD) (ALT)) approval was obtained prior to the release of the solicitation?	AFARS 5135.006 (b)(i)(C)(1)					Pre-Award A Solicitation Reviews/Approvals/ Justifications-Solicitation
20. If indemnification is included in the contract award, is there evidence that the Secretary of the Army's approval was obtained?	DFARS clauses 252.235-7000 or 252.235-7001, AFARS 5135.070-1					Pre-Award A Solicitation Reviews/Approvals/ Justifications-Solicitation
21. If a Broad Agency Announcement (BAA) is contemplated, is the acquisition for basic and applied research and not related to development of a specific system or hardware?						Pre-Award A Solicitation Document Requirements Package
22. Is the BAA requirement for scientific study and experimentation directed towards advancing state-of-the-art or increasing knowledge and understanding?	FAR Part 35.016					Pre-Award C Contract Review and Award Reviews/ Approvals - Contract
23. Is the BAA funded with RDT&E funds?	DFAS-IN Manual 37-100-13, The Army Management Structure Codes, RDT&E-A Chapter A0-2040, E, 3(a)(1), (2), (3)					Pre-Award A Solicitation Documents Requirements

24. If the contract was awarded under a BAA, is there evidence that the proposal(s) were properly evaluated through a peer scientific review process?	FAR 35.016 (d)					Pre-Award B Bid/Proposal Review Evaluations Bid/ Proposal Review Administrative Documentation
25. If the contract was awarded under a BAA, is there evidence that it is for the acquisition of basic research, applied research, or development not related to the development of a specific system or hardware procurement?						Pre-Award B Bid/Proposal Review Evaluations & Pre-Award C Contract Review and Award Reviews/Approvals - Contract
26. If the contract is over $500,000, is there evidence that Office of Counsel review was obtained?	FAR 1.602-2(c)(ii) EFARS 1.602-2(c)(ii)					Pre-Award C Contract Review and Award Reviews/Approvals – Contract
27. If the contract was awarded under a BAA or competitive proposals were not received and the award is over the TINA threshold, Is there evidence that certified cost and pricing data was obtained?	FAR 15.403					Pre-Award B Bid/ Proposal Review Administrative Documentation

CERTIFICATION

I hereby certify that the contract file has been reviewed and contains all applicable documentation lAW the Federal Acquisition Regulation (FAR), the Defense FAR Supplement, the Army FAR Supplement, and other Army policies, and is true and accurate.

Contracting Officer Date

USACE ACQUISITION INSTRUCTION (UAI)

APPENDIX 36-1 — DEVELOPMENT, REVIEW, AND APPROVAL OF GOVERNMENT ESTIMATES MATRIX

MATRIX-DEVELOPMENT, REVIEW AND APPROVAL OF GOVERNMENT ESTIMATES (14 AUG 2012)			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 unilaterial contract actions regardless of size)	IGE Required	Cost Engineering Organization[5]	Chief, Cost Engineering Organization[5] or their Delegated Authority	District Commander/Director 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 /Director 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 /Director 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 /Director 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 /Director Or their Delegated Authority [5b]
Architect Engineer	Less than Simplified Acquisition Threshold	Price Reasonableness Method[5]	per PCO's discretion	per PCO's discretion	Section Chief or 1st Line Supervisor

A-E Contract	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	esign 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/Director 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 not 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 PCO 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 ACQUISITION INSTRUCTION (UAI)

APPENDIX 37-1 — ACQUISITION STRATEGY CONTENT CHECKLIST

Acquisition Strategy Content Checklist

Title of Requirement: _____ Date:_____

1. REQUIREMENT

a. Are the requirement(s) clear and well defined with identified outcomes to be satisfied (performance, schedule and cost)?

b. Does the strategy demonstrate implementation of performance-based methods and outcomes? (If not performance-based – Army SPE approval required for requirements greater than $85.5M IAW DFARS 237.170-2(a)(2))

c. If this is not a new acquisition, were measures of success met previously? If yes, identify how the requirement was previously satisfied.

d. Discuss the procurement history (dollar value, contract term, contract type, business size, number of offerors, and source selection method). If a multiple award IDIQ contract was used, include a break-out of task and delivery orders by contractor, contract type and dollar value.

e. List challenges that drive the mission or acquisition approach (e.g., BRAC, mobilization, cost growth, changes from a previous contract if a follow-on).

f. If significant potential organizational conflicts of interest (OCI) are involved, has appropriate approval been obtained?

g. Is there any congressional interest? Summarize.

h. Are there opportunities for strategic sourcing?

i. Has approval to initiate a contract for services been obtained from an appropriate GO/SES (the SCAR or similar required approval document as it applies to Non-Army funded services acquisitions)? Are accompanying worksheets completed? Will the requirement to report Contracting Manpower to the CMRA database be included in the contract? If not, make written note of the exception to CMRA requirement.

j. If this involves performance in Iraq or Afghanistan, have theater business clearances been obtained?

2. RISKS

a. Current and potential costs (e.g., competitive environment, contract type, funding short falls).

b. Schedule risks (e.g., transition period, surge requirements).

c. Performance risks (e.g., technical complexity, availability of qualified personnel).

d. Level of risk and risk mitigation plan (See Risk Management Guide for DoD Acquisition).

e. Link risk mitigation efforts to past performance evaluation, contract management, contract type, special provisions, metrics and award or incentive fees.

3. COMPETITION

a. Will full and open competition be provided? If not, provide an explanation why and the respective citation that allows less than full and open competition. Address plans for competition for any follow-on requirements. Include a

discussion of the J&A status. If a multiple award IDIQ is proposed does it address the intent to compete Task Orders pursuant to Fair Opportunity provisions.

b. Is the nature and extent of market research included (e.g., results from industry day, DRFP, sources sought, RFI, internet search, lesson learned from similar efforts, standard industry practices)?

4. SOCIO ECONOMIC CONSIDERATIONS

a. How will the acquisition support small business goals?

b. Has the **ABILITY ONE** program been considered to satisfy any of the requirements?

c. How will this acquisition support any other socio-economic programs?

d. Has subcontracting potential and goals and use of eSRS been include?

e. Is this a consolidated requirement? (If yes, DASA(P) approval is required for action $500M or more IAW AFARS 5107.170-3(a))

f. If this is a bundled requirement, include the analysis. Is it CICA bundling?* Does it follow the DoD Benefits Analysis Guide book (whether bundled or consolidated)?

g. Has the SBA PCR concurred on the DD Form 2579, Small Business Coordination Record?

h. Has the PCO briefed the Director, OSBP on the proposed strategy? The pre-brief must be conducted prior to the formal DASA(P) SSM ASSP.

5. BUSINESS ARRANGEMENTS

a. How will the acquisition be funded?

i. Estimate dollar value and the basis for estimate, including the method of calculating escalation.

ii. Address whether funding is available and the type of funds that will be used.

b. What is the proposed business arrangement (e.g., single or multiple awards; IDIQ type arrangements) and duration?

i. If an IDIQ type arrangement, have multiple awards been considered? If not has approval been obtained? The ASA(ALT) is approval authority for single contract awards of $103M or more (with congressional notification required for actions with the cited exception (iv) (public interest).

ii. If multiple awards are planned, does the strategy reflect a “minimum” number with a reservation to award more or none (rather than an arbitrary ceiling)?

iii. If an IDIQ, is the guaranteed minimum specified?

iv. Is the use of a non-DoD contract proposed? If yes, has approval been obtained IAW AFARS 5117.7802? If yes, does the interagency agreement for an assisted acquisition contain all the specific elements outlined in OFPP Memorandum, dated June 6, 2008, “Improving Management and Use of Interagency Acquisitions”?

c. What is the length of the contract? (DoD Better Buying Power Initiative preference is 3 years and no more than 5 years). Is it appropriate? A strong business case must be presented for services contracts exceeding 5 years. If the

strategy proposes a contract term greater than 3-5 years, are opportunities for refreshment of competition (decision points, on and off ramps) included?

d. Address contract type (see UAI PART 16 regarding requirement for D&F to Justify Contract Type, and D&F Required for T&M) with a rationale for selection.

i. T&M contract types are discouraged. If the strategy calls for a T &M contract:

(a) Is the appropriate rationale included to justify its use? T&M and Labor Hour can only be used when it is not possible to estimate accurately extent or duration work or to anticipate costs at time of contract award.

(b) Do circumstances warrant its use? Explain. If T&M was used on the previous effort, include a breakout of the dollar value/task orders that were awarded using T&M provisions.

(c) Are there plans for monitoring to ensure consistent and adequate oversight? Has a goal or target to reduce use of T&M been considered?

(d) Has the appropriate D&F been executed, including a ceiling price and HCA approval if it exceeds 3 years? (FAR 16.601(d)(i))

(e) If a commercial services IDIQ contract and only T&M and labor hours allowed, has the appropriate D&F been executed? (FAR 12.207 (c)(2))

ii. If the strategy calls for an award/ incentive fee contract:

(a) Are arrangements set up to reward effective outcomes?

(b) Are objective criteria used to the maximum extent?

(c) If criteria are subjective, has the HCA or PARC (if delegated) approved the use?

(d) Are award fee ratings, definitions and rollover IAW DPAP 4/24/07 memo?

(e) Is a history of award fee attainment on the prior procurements included? Is the plan to measure award fee for this acquisition discussed?

e. If a cost-type contract is planned, is EVMS appropriate? (EVMS required at $20M or more). If so are the appropriate solicitation and contract provisions pursuant to DFARS 234.203 included? (See USD AT&L website: http://www.acq.osd.mil/at/initiatives/factsheets)

f. Is this a commercial service as defined in FAR 2.101(b)?

i. If over $1 M, has the contracting officer documented in writing the determination that the commercial item definition has been met for this acquisition? Does the determination adequately document the market research and rationale supporting the conclusion?

ii. Identify the award procedures from FAR 12.207 that will be used for the selection (full and open, other than full and open competition, fair opportunity)

iii. Per FAR 12.207(b)(2) does the D&F for this commercial service establish that the requirement has been structured to maximize the use of firm fixed contracts in the future, for the same or similar procurements?

g. Address any waivers/deviation that will be required.

h. Source selection process:

i. Does the strategy include the basis for award and major factors/sub-factors as well as, a discussion of the price/cost evaluation process? Are the factors/subfactors stated in relative order of importance? Are the factors/subfactors described in sufficient detail to communicate the measures of merit that will be used to determine how the proposal will be evaluated and ratings determined?

ii. Is past performance a major evaluation factor? If so, will CPARS be used? If past performance is not evaluated, is rationale provided? (See FAR15.304 (c (3)(iii))

iii. Are adjectival ratings consistent with the DoD Source Selection Procedures Manual?

iv. Discuss appointment of the source selection authority (SSA). (Do **NOT** provide the Name of the SSA)!

v. Formal appointment?

vi. If SSA is not within the acquisition chain has HCA/PARC approval been obtained? (AFARS 5115.303(S-90)(b)

vii. Name of the SSA should not be disclosed in the strategy.

viii. Is contractor support being utilized? If so, has the appropriate determination and approval been obtained? See FAR 37.204, AFARS 5137.204.

ix. If the acquisition is greater than $1B, Sections L&M and the source selection plan should be submitted with the strategy for subsequent review by OSD.

(a) Are appropriate program oversight mechanisms included? Does the strategy discuss the existing or planned contract management approach following award; appointment of COR; quality assurance surveillance or written oversight plans and responsibilities, involvement of DCMA in surveillance and tracking procedures or processes used to monitor contract performance?

(b) What is the method of insuring oversight? DPAP memorandum, dated July 14, 2008, requires that all contracts for services (including T&M and LH), must include QASP to facilitate assessment of contractor performance.

xi. If the acquisition is over $2.5K, will a COR be appointed in accordance with USACE PIL 2012-06-R1. Discuss COR training requirements.

j. Is a milestone timeline to award included? If the estimated value of the acquisition exceeds $1B include time for OSD Review of the Acquisition Strategy and Pre-Award Peer Reviews of the solicitation, Final Proposal Revisions and Prior to Award Decision.

6. MULTI-YEAR CONTRACTS

a. If this is a multi-year service contract, does it address plans for budgeting for termination liability

b. OMB Circular A-11 requires multi-year service contracts to be scored as operating leases. Does the strategy address budget scorekeeping that will result from the use of the proposed contract?

7. LEASES Is a lease-purchase strategy required by OMB Circular A-94?

8. METRICS

a. Are cost, schedule, performance, small business and customer satisfaction metrics linked to the acquisition outcome(s)?

b. Are performance measures meaningful? i.e., tied to key performance parameters in the Performance Requirements Summary (PRS) and award fee plan (as appropriate).

*Under the CICA bundling concept, the General Accountability Office (GAO) reviews bundling challenges to determine whether the Agency has a reasonable basis for its decision to combine requirements. When requirements are consolidated, the Government can proceed to procure the consolidated requirements without violating CICA if it has adequate justification. GAO has found that "administrative convenience" by itself does not justify bundling requirements. Rather, economic savings as a result of the consolidation should be demonstrated as well.

USACE ACQUISITION INSTRUCTION (UAI)

APPENDIX 37-2 — MANDATORY CAP CHECKLIST FOR SERVICE ACQUISITIONS

1 **Mandatory Corrective Action Plan (CAP) Checklist for Services Acquisitions**

2

USACE Acquisition Review Program – Corrective Action Plan (CAP) Questionnaire for Service Contracts Note : Choose a response accordingly (YES, NO or N/A). Provide corresponding comments for each question that is answered No or N/A response.						
Question	**Reference**	**YES**	**NO**	**N/A**	**Comments**	**PCF Contract File Folder Name**
1. Is the basic contract filed in Paperless Contract File (PCF)?	OPORD 2012-66					Inventory of Contract Actions By Division
2. Is there a properly approved Project Management Plan (PMP) signed by each Project Delivery Team (PDT) member to include the Procuring Contracting Officer (PCO)? If no PMP is present then the file should contain a Memorandum for Record (MFR) signed by the PCO providing the rationale for why there was no PMP.	UAI 7.102-100(b)(2)					Pre-Award A Solicitation Documents Requirements Package
3. If a non-DoD contract is being used, does the contract file include the non-DoD written determination?	DFARS 217.7802, AFARS 5117.7802, UAI 8.404 and UAI 17.500					Pre-Award A Solicitation Documents Determinations
4. Is there a Determination and Findings when the proposed service is for a personal services contract?	FAR 37.104 and DFAR 237.104 (cannot award personal services unless specifically authorized by statute (e.g. 5 U.S.C. 3109)).					Pre-Award A Solicitation Determination and Findings
5. Is there a properly approved Acquisition Strategy Document (ASD)?	AFARS 5137.590-7 and UAI Part 37					Pre-Award A Solicitation Documents Requirement Package

6. Is there a properly approved Acquisition Plan?	FAR 7, DFARS 207, UAI Appendix 2-1					Pre-Award A Solicitation Documents Requirements Package
7. Is there a properly approved and well detailed Independent Government Estimate?	PIL 2012-03-R1.					Pre-Award A Solicitation Documents Requirements Package
8. Is there an approved Request for Services Contract Approval (SCAR) form in the file?	AR 70-13 2-2d, & USACE CSE Memorandum: Service Contract Approval Certification Regarding Inherently Governmental, dated 21 August 2013).					Pre-Award A Solicitation Documents Requirements Package
9. Is there evidence of properly documented and sufficient market research?	FAR 10.001, FAR 10.002, FAR 11.002, and FAR 12-101(a))					Pre-Award A Solicitation Documents Requirements Package
10. Is there a Performance-Based Work Statement with measurable performance standards (i.e., in terms of quality, timeliness, quantity, etc.), and the method of assessing contractor performance against performance standards, and performance incentives where appropriate?	FAR 37.601 (b))					Pre-Award A Solicitation Documents Requirements Package
11. Is there evidence of availability of funds (certified, proper amount, and proper appropriation)?	FAR 32.702					Pre-Award A Solicitation Documents

12. Is there a properly appointed Contracting Officers Representative in the Virtual Contracting Enterprise (VCE) Contracting Officer's Representative Module (CORM)?	DFARS 201.602-2, DFARS PGI 201.602-2, AFARS 5101.602-2(i)(A), PIL 2011-02, PIL 2012-06-R1, OPORD 2012-53					Pre-Award A Solicitation Documents Contracting Officer Representative (COR)
13. Is there a properly approved Quality Assurance Surveillance Plan (QASP)?	FAR 46.401, FAR 46.404, DFARS 246.401, SAAL-PP memorandum Post Award Oversight and Surveillance of Contracts', dated 21 October 2010, and UAI 1.604					Pre-Award A Solicitation Documents Requirements Package
14. Is there proper documentation of negotiations and the award decision (e.g. Price Negotiation Memorandum or Source Selection Decision Document)?	FAR 8.405-1(g), FAR 8.405-2(f), FAR 13.106-3, FAR 15.406-3, FAR 15.308, and AFARS 5116.505-90(b)					Pre-Award C Contract Review and Award Review/Approval-Contract Pre-Award B Bid/ Proposal Review Source Selection
15. Is there evidence of a properly documented Contracting Officer's determination, made prior to contract award, that the contract price is fair and reasonable?	FAR 8.404(d), FAR 8.405-2(d), FAR 8.405-2(f), FAR 12.209, FAR 13.106-3, FAR 14.408-2, and FAR 15.4					Pre-Award A Solicitation Determinations
16. Does the solicitation/contract include a requirement for contractors to complete the Army's Contractor Manpower Reporting?	AFARS 5137.9601 & USACE CSE Memorandum: Service Contract Approval Certification Regarding Inherently Governmental, dated 21 August 2013).					Pre-Award A Solicitation Document Requirements Package Post Award Section G General Contract Administration

17. 17. Is there documentation that the Contracting Officer held periodic status/progress meeting with the COR and contractor (at least quarterly) to discuss problems, progress of contract, and contractor performance?	AR 70-13, AFARS 5137.5					Contract Administration Section F Services Contract Administration Documentation
18. 18. Is there evidence the Contracting Officer reviewed the COR official file and documented the review on the Annual Review Checklist in CORM?	AR 70-13					Contract Administration Section F Services Contract Administration Documentation
19. 19. Is there evidence that the COR is submitting Monthly Reports to the Contracting Officer in CORM and the Contracting Officer is reviewing the reports and taking appropriate action?	COR Designation Letter					Contract Administration Section F Services Contract Administration Documentation
20. 19. Is there evidence that the COR is submitting Monthly Reports to the Contracting Officer in CORM and the Contracting Officer is reviewing the reports and taking appropriate action?	COR Designation Letter					Contract Administration Section F Services Contract Administration Documentation
21. 20. If the contract is over $500K, is there evidence the office of counsel review was obtained?	UAI 1.602-2-100(a)					Pre-Award C Contract Review and Award Reviews / Approvals - Contract

CERTIFICATION

I hereby certify that the contract file has been reviewed and contains all applicable documentation IAW the Federal Acquisition Regulation (FAR), the Defense FAR Supplement, the Army FAR Supplement, and other Army policies, and is true and accurate.

Contracting Officer Date