US Army Corps of Engineers

USACE
ACQUISITION
INSTRUCTION
(UAI)

Effective: MAR 18 2013

THOMAS P. BOSTICK
Lieutenant General, USA
U.S. Army Corps of Engineers

TABLE OF CONTENTS

PART 1 – FEDERAL ACQUISITION REGULATION SYSTEM

SUBPART 1.1 – PURPOSE, AUTHORITY, ISSUANCE

1.101-100 Purpose 11
1.103-100 Authority 11
1.104-100 Applicability 11
1.105-2-100 Arrangement of Regulations 11
1.170-100 Peer Reviews 11

SUBPART 1.2 – ADMINISTRATION

1.201-100 Maintenance of the UAI 14
1.201-101 Interim Changes of the UAI 14

SUBPART 1.4 – DEVIATIONS FROM THE FAR

1.402 Policy 15

SUBPART 1.6 – CAREER DEVELOPMENT, CONTRACTING AUTHORITY AND RESPONSIBILITIES

1.601(5)-100 Principal Assistant Responsible for Contracting (PARC) Authority – Responsibilities 15
1.602-1-100 Authority – Administrative Contracting Officer (ACO) 15
1.602-2-100 Responsibilities 15
1.602-2-90-100 Appointment of Ordering Officers 16
1.604-100 Appointment of Contracting Officer's Representative (COR) 16

SUBPART 1.90 – NON-APPROPRIATED FUNDS (NAF)

5101.9002-100 – Contracting Authority 19

PART 2 – DEFINITIONS OF WORDS AND TERMS

SUBPART 2.1 – DEFINITIONS

2.101-100 Definitions 20

PART 3 — IMPROPER BUSINESS PRACTICES AND PERSONAL CONFLICTS OF INTEREST

SUBPART 3.1 – SAFEGUARDS

3.104-2-100 General 21

SUBPART 3.2 – CONTRACTOR GRATUITIES TO GOVERNMENT PERSONNEL

3.203-100 Reporting Suspected Violations of the Gratuities Clause 22

PART 4 – ADMINISTRATIVE MATTERS

SUBPART 4.8 – GOVERNMENT CONTRACT FILES

4.802-100 Contract Files 23

TABLE OF CONTENTS

PART 5 – PUBLICIZING CONTRACT ACTIONS

SUBPART 5.2 – SYNOPSES OF PROPOSED CONTRACT ACTIONS

5.203-100 Publicizing and Response Time..... 26

SUBPART 5.4 – RELEASE OF INFORMATION

5.403-100 Requests from Members of Congress..... 26

SUBPART 5.5 – PAID ADVERTISEMENTS

5.502-100 Authority 27

PART 6 – COMPETITION REQUIREMENTS

SUBPART 6.3 – OTHER THAN FULL AND OPEN COMPETITION

6.302-2-100 Unusual and Compelling Urgency – SCA Approval to Proceed with an After-the-Fact J&A..... 28

6.304-100 Approval of the Justification..... 28

SUBPART 6.4 – SEALED BIDDING AND COMPETITIVE PROPOSALS

6.401-100 Sealed Bidding and Competitive Proposals..... 28

SUBPART 6.5 – COMPETITION ADVOCATES

6.501-100 Requirement..... 29

PART 7 – ACQUISITION PLANNING

SUBPART 7.1 – ACQUISITION PLANS

7.102-100 Policy..... 30

207.170-100 Consolidation of Contract Requirements..... 31

PART 8 – REQUIRED SOURCES OF SUPPLIES AND SERVICES

SUBPART 8.4 – FEDERAL SUPPLY SCHEDULES

8.404-100 Use of Federal Supply Schedules..... 32

8.405-6-100 Limited Sources – Justification and Approval (LSJ&A)..... 33

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

8.705-100 Procedures – Mandatory Use of AbilityOne Program Contract Closeout Services..... 33

SUBPART 8.74 – ENTERPRISE SOFTWARE AGREEMENTS

8.7403-100 Acquisition Procedures 32

TABLE OF CONTENTS

PART 9 – RESERVED

PART 10 – RESERVED

PART 11 – DESCRIBING AGENCY NEEDS

SUBPART 11.7 – VARIATION IN QUANTITY

11.703 Contract Clauses 35

PART 12 – RESERVED

PART 13 – RESERVED

PART 14 – SEALED BIDDING

SUBPART 14.2 – SOLICITATION OF BIDS

14.201-100 Preparation of Invitation for Bids (IFBs) – Construction Contracts..... 37

PART 15 – CONTRACTING BY NEGOTIATION

SUBPART 15.2 – SOLICITATION AND RECEIPT OF PROPOSALS AND INFORMATION

15.203-100 Request for Proposals..... 38

15.204-100 Contract Format..... 38

SUBPART 15.3 – SOURCE SELECTION

15.300-100 Scope of Subpart - Department of Defense Source Selection Procedures..... 38

15.304-100 Evaluation Factors and Significant Subfactors..... 40

SUBPART 15.4 – CONTRACT PRICING

215.404-73-100 Alternate Structured Approaches..... 41

215.404-73-101 Alternate Structured Approaches – Construction Contracts..... 41

215.404-73-102 Alternate Structured Approaches – Architect-Engineer (A-E) Contracts..... 43

15.406-1-100 Prenegotiation Objectives (POM)..... 43

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

15.503-100 Notifications to Unsuccessful Offerors..... 44

15.504-100 Award to Successful Offeror..... 44

15.505-100 Preaward Debriefing of Offerors..... 44

TABLE OF CONTENTS

PART 16 – TYPES OF CONTRACTS

SUBPART 16.1 – SELECTING CONTRACT TYPES

16.103-100 Negotiating Contract Type..... 45

SUBPART 16.4 – INCENTIVE CONTRACTS

16.405-2-100 Cost-Plus-Award Fee (CPAF) Contracts..... 45

SUBPART 16.5 – INDEFINITE-DELIVERY CONTRACTS

16.504-100 Indefinite-Quantity Contracts..... 45

16.505-100 Ordering..... 45

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

16.603-100 – Letter Contracts..... 46

PART 17 – SPECIAL CONTRACTING METHODS

SUBPART 17.2 – OPTIONS

17.200-100 Scope of Subpart..... 47

SUBPART 17.5 – INTERAGENCY ACQUISITIONS

17.500-100 Scope of Subpart – Proper Use of Non-DoD Contracts..... 47

SUBPART 17.74 – UNDEFINITIZED CONTRACT ACTIONS

217.7404-1-100 Authorization..... 47

217.7405-100 Plans and Reports..... 48

PART 18 – RESERVED

PART 19 – SMALL BUSINESS PROGRAMS

SUBPART 19.2 – POLICIES

19.201-100 General Policy..... 49

SUBPART 19.5 – SET-ASIDES FOR SMALL BUSINESS

19.502-2-100 Total Small Business Set-Asides..... 50

19.502-4-100 Multiple-Award Contracts and Small Business Set-Asides..... 50

SUBPART 19.7 – THE SMALL BUSINESS SUBCONTRACTING PROGRAM

19.705-6-100 Postaward Responsibilities of the Contracting Officer..... 50

PART 20 – RESERVED

TABLE OF CONTENTS

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..... 52

SUBPART 22.4 – LABOR STANDARDS FOR CONTRACTS INVOLVING CONSTRUCTION

22.406-6-100 Payroll and Statements..... 52

22.407-100 Solicitation Provisions and Contract Clauses/Special Contract Requirements..... 53

SUBPART 22.5 Use of Project Labor Agreements on Federal Construction Projects.

22.503-100 Policy 54

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..... 55

PART 24 – PROTECTION OF PRIVACY AND FREEDOM OF INFORMATION

SUBPART 24.1 – PROTECTION OF INDIVIDUAL PRIVACY

24.101-100 Definitions..... 57

24.103-100 Procedures..... 57

SUBPART 24.2 – FREEDOM OF INFORMATION ACT

24.203-100 Policy..... 58

PART 25 – FOREIGN ACQUISITION

SUBPART 25.2 – BUY AMERICAN ACT – CONSTRUCTION MATERIALS

25.202-100 Exceptions..... 59

PART 26 – RESERVED

PART 27 – RESERVED

PART 28 – BONDS AND INSURANCE

SUBPART 28.3 – INSURANCE

28.305-100 Overseas Workers Compensation and War Hazard Insurance..... 60

PART 29 – RESERVED

TABLE OF CONTENTS

PART 30 – RESERVED

PART 31 – CONTRACT COST PRINCIPLES AND PROCEDURES

SUBPART 31.1 – APPLICABILITY

31.105-100 Construction and Architect-Engineer Contracts..... 61
31.105-101 Special Contract Requirements..... 61

PART 32 – CONTRACT FINANCING

SUBPART 32.1 – NON-COMMERICAL ITEM PURCHASE FINANCING

32.102-100 Description of Contracting Financing Methods..... 62

SUBPART 32.7 – CONTRACT FUNDING

32.703-2-100 Contracts Conditioned Upon Availability of Funds – Civil Works – Continuing Contracts..... 62
32.705-2-100 Contract Clauses..... 62

PART 33 – PROTESTS, DISPUTES, AND APPEALS

SUBPART 33.1 – PROTESTS

33.102-100 General..... 63
33.102-101 USACE Automated Legal System Matter Tracking System..... 63
33.103-100 Protests to the Agency..... 63
33.103-101 Disclosure of Government Estimate..... 64
33.103-90-100 Annual Agency Bid Protest Report..... 64
33.104-100 Protests to GAO..... 65
33.190-100 Contracting Officer's Reports on GAO and Agency Protests..... 66
33.190-1-100 Bid Protest Action Report..... 67

SUBPART 33.2 – DISPUTES AND APPEALS

33.203-100 Applicability - Agency Board of Contract Appeals for Civil Works Contracts..... 67

PART 34 – RESERVED

PART 35 – RESERVED

PART 36 – CONSTRUCTION AND ARCHITECT-ENGINEER CONTRACTS

SUBPART 36.1 – GENERAL

36.102-100 Definitions..... 68
36.104-100 Policy..... 68

TABLE OF CONTENTS

SUBPART 36.2 - SPECIAL ASPECTS OF CONTRACTING FOR CONSTRUCTION
36.201-100 Evaluation of Contractor Performance..... 68
36.203-100 Government Estimate of Construction Costs..... 69
36.203-101 Civil Works Contracts..... 70
36.203-102 Revision of Government Estimate..... 70
36.205-100 Statutory Cost Limitations – Civil Works Contracts..... 70
36.205-101 Cost Limitations – Military Construction Contracts..... 70

SUBPART 36.3 – TWO-PHASE DESIGN-BUILD SELECTION PROCEDURES
36.303-100 Procedures..... 71

SUBPART 36.5 – CONTRACT CLAUSES
36.516-100 Quantity Surveys - Hydrographic..... 71
36.570-100 Additional Solicitation Provision and Contract Clauses..... 71

SUBPART 36.6 – ARCHITECT-ENGINEER SERVICES
36.600-100 Scope of Subpart.....72
36.601-3-100 Applicable Contracting Procedures..... 72
36.601-3-90-100 Limitations..... 72
36.601-4-100 Implementation..... 73
36.602-2-100 Evaluation Boards..... 73
36.602-4-100 Selection Authority..... 73
36.602-5-100 Short Selection Process for Contracts Not-to-Exceed the Simplified Acquisition Threshold..... 73
36.603-100 Collecting Data on and Appraising Firms' Qualifications..... 74
36.604-100 Performance Evaluation..... 74
36.605-100 Government Cost Estimate for Architect-Engineer Work..... 74
36.606-70-100 Statutory Fee Limitation..... 74
36.609-1-100 Design Within Funding Limitations..... 74

PART 37 – SERVICE CONTRACTING
SUBPART 37.1 – SERVICE CONTRACTS – GENERAL
37.104-100 Personal Services Contracts..... 75

SUBPART 37.5 – MANAGEMENT OVERSIGHT OF SERVICE CONTRACTS
37.590-100 Army Management and Oversight of the Acquisition of Services..... 75
37.590-6-100 Army Services Strategy Panel (ASSP) Procedures..... 75

PART 38 – RESERVED

TABLE OF CONTENTS

PART 39 – RESERVED

PART 40 – RESERVED

PART 41 – RESERVED

PART 42 – CONTRACT ADMINISTRATION AND AUDIT SERVICES

SUBPART 42.1 – CONTRACT AUDIT SERVICES

5142.1-90-100 Responsibilities..... 77

SUBPART 42.2 – ASSIGNMENT OF CONTRACT ADMINISTRATION

42.202-100 Assignment of Contract Administration..... 77

SUBPART 42.3 – CONTRACT ADMINISTRATION OFFICE FUNCTIONS

42.302-100 Contract Administration Functions – Administrative Contracting Officer (ACO)... 77

SUBPART 42.490 – FOLLOW-UP ON CONTRACT AUDIT REPORTS

5142.490-4-100 Overage Audit Review Boards..... 78

PART 43 – CONTRACT MODIFICATIONS

SUBPART 43.1 – GENERAL

43.102-100 Policy..... 79

PART 44 – RESERVED

PART 45 – GOVERNMENT PROPERTY

SUBPART 45.1 – GENERAL

45.103-100 General..... 80

PART 46 – QUALITY ASSURANCE

SUBPART 46.7 – WARRANTIES

46.710-100 Contract Clauses..... 81

PART 47 – RESERVED

PART 48 – RESERVED

TABLE OF CONTENTS

PART 49 – TERMINATION OF CONTRACTS

SUBPART 49.113 – COST PRINCIPLES

49.113-100 Cost Principles - Construction Equipment Costs - Contract Clauses..... 82

PART 50 – RESERVED

PART 51 – RESERVED

PART 52 – USACE PROVISIONS AND CONTRACT CLAUSES

SUBPART 52.1 – INSTRUCTIONS FOR USING PROVISIONS AND CLAUSES

52.101-100 Using Part 52..... 83

SUBPART 52.2 – TEXTS OF PROVISIONS AND CLAUSES

52.211-5001 Variation in Estimated Quantities – Subdivided Items..... 83
52.232-5000 Payment for Materials Delivered Off-Site..... 83
52.232-5001 Continuing Contracts – Special Continuing Contract for Civil Works Project Managed by the United States Army Corps of Engineers [DEVIATION]..... 84
52.236-5000 Design-Build Contract Order of Precedence..... 86
52.236-5001 Personnel, Subcontractors, and Outside Associates or Consultants..... 87
52.236-5002 Government-Furnished Drawings, Surveys, and Specifications in the Request for Proposal..... 87
52.236-5003 Government-Furnished Specifications and Drawings for Construction..... 87
52.236-5004 Responsibility of the Contractor for Design..... 87
52.236-5005 Warranty of Design..... 88
52.236-5006 Deviating from the Accepted Design..... 89
52.236-5007 Contractor's Role During Design Process..... 89
52.236-5008 Value Engineering after Award..... 90
52.236-5009 Partnering..... 90
52.236-5010 Government Re-Use of Design..... 91
52.249-5000 Basis for Settlement of Proposals..... 91

APPENDICES

APPENDIX 1-1 – PROCESS CHART FOR USACE ACQUISITION PEER REVIEW POLICY..... 92
APPENDIX 1-2 – TIMELINE FLOWCHART FOR USACE HCA PEER REVIEW PROCESS 96
APPENDIX 1-3 – HQ USACE CECT REVIEW & APPROVAL PROCESS (DOC/HCA & HIGHER)..... 98
APPENDIX 1-4 – PEER REVIEW TOOLKITS..... 100
APPENDIX 1-6 – COR FILE REVIEW CHECKLIST..... 112
APPENDIX 2-1 – DOC DOCUMENT REVIEW AND APPROVAL MATRIX..... 116
APPENDIX 6-1 – AFTER-THE-FACT J&A UPWARD REPORTING FORM..... 128
APPENDIX 6-2 – JUSTIFICATION OF PROCUREMENT METHOD TEMPLATE..... 129

TABLE OF CONTENTS

APPENDIX 6-3 – J&A CHECKLIST AND LINK TO DASA(P) J&A SOP..... 132
APPENDIX 8-1 – LIMITED SOURCES J&A (LSJ&A)..... 136
APPENDIX 15-1 – SAMPLE DETERMINATION & FINDINGS (D&F)..... 139
APPENDIX 15-2 – NAVFAC / USACE PAST PERFORMANCE QUESTIONAIRE (PPQ) FORM AND INSTRUCTIONS..... 145
APPENDIX 16-1 – AFDO FOR CPAF CHECKLIST..... 152
APPENDIX 17-1 – D&F FOR CERTIFICATION OF REQUIREMENTS FOR PROPER USE OF NON-DOD CONTRACTS ASSISTED ACQUISITION TEMPLATE..... 155
APPENDIX 17-2 – D&F FOR CERTIFICATION OF REQUIREMENTS FOR PROPER USE OF NON-DOD CONTRACTS DIRECTED ACQUISITION TEMPLATE..... 159
APPENDIX 24-1 – SAMPLE PERSONALLY IDENTIFIABLE INFORMATION (PII) LANGUAGE..... 163
APPENDIX 24-2 – SAMPLE PERSONALLY IDENTIFIABLE (PII) BREACH CONTRACTUAL LANGUAGE..... 165
APPENDIX 33-1 – CONTRACT REQUESTS, CLAIMS & APPEALS..... 167
APPENDIX 36-1 – DEVELOPMENT, REVIEW AND APPROVAL OF GOVERNMENT ESTIMATES MATRIX..... 187
APPENDIX 37-1 – SERVICES ACQUISITION STRATEGIES GUIDE/CHECKLIST..... 190

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, work-flow procedures, 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) is hereby rescinded and superseded by the issuance of this acquisition instruction.

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 and Centers and the Defense Microelectronics Activity (DMEA) as long as USACE serves as the HCA for DMEA. Wherever District/Center is stated, DMEA is included.

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) This guidance applies to all acquisitions (regardless of type) above the micro-purchase threshold. Peer review procedures are available at UAI Appendix 1-1. Approval thresholds by the type and dollar value are outlined in UAI Appendix 2-1.

(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: Regional 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, justification and approvals, legal sufficiency reviews, etc.) are completed prior to scheduling a peer review.

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

(1) Peer Review minimum required documents and elements to address during pre- 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- 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) Peer review toolkits are available in UAI Appendix 1-4. Toolkits are provided as a self-check for use in preparing for peer reviews.

(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, 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). To avoid any conflict of interest and maintain the integrity of the advisory nature of the peer review, the Peer Review Chair should not be in the supervisory chain of the source selection authority (SSA).

(1) *Business Oversight Branch (BOB)/Contracting Officer*: BOB's/Contracting Officers will identify and perform a random sampling of peer reviews for stand-alone contract actions, task/delivery/ Federal Supply Schedule orders and Blanket Purchase Agreement calls above the micro-purchase threshold to less than $500K. The Regional Contracting Chief (RCC) will specify in writing, with a copy furnished to the USACE Headquarters (HQ) Directorate of Contracting (DOC) Program Evaluation Division, the random sampling minimum quantity of contract actions for peer review for each District/Center within their area of responsibility (AOR). The peer review can be conducted by

Contracting 1102 peers with commensurate knowledge, skills, abilities and warrant thresholds as the Procuring Contracting Officer (PCO). (Peers should not be subordinate to the PCO).

(2) *RCC and District/Center Contracting Chief (DCC/CCC) Peer Reviews.* Peer reviews facilitated by the DCC, CCC, and RCC or designee apply to contract actions valued at $500K to $50M.

(i) The DCC or CCC will randomly identify and perform a minimum of one (1) peer review annually for each Contracting Officer in their AOR.

(ii) The RCC will randomly identify and perform a minimum of two (2) peer reviews annually for each District/Center in their AOR.

(3) *Regional PARC Peer Reviews*. Regional PARC peer reviews apply to all applicable contract actions valued at $50M to less than $250M.

(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.

(i) Notice of upcoming HCA peer reviews shall be provided by District/Center BOB to the HQ USACE DOC through the Regional Acquisition Support Analyst. The District/Center PDT shall plan, at a minimum, one week (7 calendar days) for scheduling and document review by the peer review team; two to three business days for the actual review; and five business days for HCA endorsement. The District/Center BOB and Regional Acquisition Support Analyst will coordinate and organize the peer review date and time; the HQ DOC will establish the peer review participants, the Regional 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 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 in accordance with the Acquisition Review and Approval Process flowchart available in UAI Appendix 1-3. For all HCA peer reviews, the USACE HQ DOC will conduct reviews appropriate to determine that the contractual documentation is complete and that an effective source selection is accomplished.

(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 are provided by the Regional Acquisition Support Analyst to the HQ DOC peer review members. The Regional Acquisition Support Analyst, in coordination with the HQ DOC Peer Review Lead, will draft and send the PCO a summary memorandum of the peer review recommendations. 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) After the HQ DOC Peer Review Lead signs the summary memorandum, the PCO must send a response to the Peer Review Lead addressing resolutions to peer review recommendations, prior to proceeding for HCA endorsement.

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

(6) *Peer Review Reporting Requirements*. Each quarter (via electronic method), the District/Center BOB will provide the Regional PARC a report of upcoming peer reviews for that quarter, as well as, peer reviews completed (for all thresholds). The list will include 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. The USACE HQ DOC shall ensure all peer review best practices and lessons learned from all levels have been posted to the Central Peer Review Site. USACE HQ DOC will maintain the site.

(7) *Peer Review Waivers or Cancellations*. In accordance with PARC Policy Alert #13-25, "Interim AFARS Change for Peer Review Thresholds," there are no waivers permitted to the requirement for peer reviews valued at $50M or greater. If it becomes necessary to cancel a peer review due to a withdrawal or cancellation of the project, the District/Center BOB will document the justification in a memorandum to the Regional 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 USACE HQ Directorate of Contracting. Recommendations for changes, additions, and deletions to the UAI are encouraged and should be submitted to the USACE HQ DOC Contracting Policy Division mailbox, HQ-CECT-PolicyMailbox@usace.army.mil. It is anticipated the UAI will be reviewed and updated on an annual basis.

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), which are effective until formal incorporation into the UAI, rescission, cancellation or expiration. In addition, Procurement Instruction Letters (PILs) may be issued to provide internal USACE mandatory and non-mandatory acquisition procedures. PILs are located electronically at the USACE Knowledge Management Environment (KME) Contracting Communities of Practice (CoP) Website, under Procurement Instruction Letters (PILs) – Active.

SUBPART 1.4 – DEVIATIONS FROM THE FAR

1.402 Policy

As set forth in AFARS 5101.4, individual and class deviations requiring higher headquarters approval, or publication in the *Federal Register*, will be reviewed by the Regional PARC and submitted to the USACE HQ DOC Contracting Policy Division mailbox, HQ-CECT-PolicyMailbox@usace.army.mil for coordination and staffing.

SUBPART 1.6 — CAREER DEVELOPMENT, CONTRACTING AUTHORITY AND RESPONSIBILITIES

1.601(5)-100 Principal Assistant Responsible for Contracting (PARC) – Responsibilities.

The PARC is responsible for oversight and execution of the contracting functions within their assigned mission areas. There are three Regional PARCs in USACE: PARC – Atlanta, GA, PARC – Winchester, VA and PARC - Dallas, TX.

1.602-1-100 Authority – Administrative Contracting Officer (ACO)

(a) *Appointment*. An ACO shall be appointed by Regional PARCs with specified warrant authority, not greater than $500,000.

(b) *Authority.*

(1) The ACO is authorized to obligate the government only to the limits delegated in individual contract appointment letters issued by the contracting officer. 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.

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 prior to issuance. Each contract file shall contain written documentation indicating

the date each solicitation was reviewed and the identity of the Counsel who performed the review. The contracting officer shall document the disposition of any written legal comments prior to issuance of the solicitation, contract award, and/or modification.

(b) Counsel shall also provide written concurrence on determination and findings (D&Fs), justification and approvals (J&As), decision(s) that may lead to a claim, ratification actions, competitive range determinations, substitution of sureties, alternate payment protections, non-responsiveness determinations, unacknowledged amendments, bid/proposal irregularities, bid mistakes, acceptance of late bids, rejection of all bids, reassignment issues, individual sureties, assignment of claims, novation agreements, terminations, tax/duty issues regardless of the dollar value, requests for equitable adjustment in excess of the SAT, or other legal reviews requested by the contracting officer.

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

1.602-2-90-100 Appointment of Ordering Officers.

(a) The contracting officer 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. Suggested training that may be suitable for ordering officers is the training identified for qualifications of COR Certification and Training Requirements.

(b) Ordering officer appointments should be used by exception in the execution of the contracting mission. DCC/CCCs and contracting officers 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 (except job order contract (JOC) ordering officer appointments) shall be in compliance with AFARS 5101.602-2-90 (JOC ordering officer appointments shall comply 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 201.602-1).

(b) *Nomination*. In order to be considered by the contracting officer for designation as a COR, a nomination memorandum must be submitted by the requiring activity (e.g., engineering, construction, or operations) for each contract. In accordance with OPORD 2012-53, all COR nominations,

appointments, and records shall be processed, tracked and managed within Virtual Contracting Enterprise (VCE) Contracting Officer Representatives Module (CORM). The COR nomination provides the contracting officer 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 current PIL, COR Certification and Training Requirements. The contracting officer will accept, return for additional information, or reject the nomination through VCE CORM. If the nomination is rejected, the contracting officer will note the reason(s) for the rejection and return it to the requiring activity requesting a different nominee.

(c) *Architect-Engineering (A-E) Services, Other Services, and Construction.* Contracting officers 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 $25,000;

(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 contracting officer determines it appropriate.

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

(5) The contracting officer 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 contracting officer 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., architect engineer, construction, environmental, information technology, operations, etc). They advise the contracting officer, (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 contracting officer 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 contracting officer 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 contracting officer 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 contracting officer.

(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 contracting officer. Contracting officers 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 link to the 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.

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

(h) *Performance Objectives.* The COR nomination memorandum affirms that the nominee will be afforded sufficient time and resources to effectively perform the delegated COR duties. The supervisor of the COR will ensure that performance standards include an appropriate performance objective relating to the duties as a COR, as well as support the required experience and training on Individual Development Plans to effectively perform COR duties. As a minimum, the performance objective should include the following elements: comply with all technical requirements identified in the COR designation memorandum; participate in the creation and enforcement of the QASP or other quality assurance (as required); ensure surveillance or monitoring occurs as scheduled and is properly documented and reported to the contracting officer; and provide timely and adequate input on contractor performance evaluations.

(i) *Inspections*. The COR/ordering officer files are required to be reviewed annually. The DCC/CCC shall maintain electronic record of each COR/ordering officer designation in order to facilitate a representative review of each COR/ordering officer files. The DCC/CCC shall conduct the COR/ordering officer file review utilizing the checklist included as Appendix 1-6.

SUBPART 1.90 – NON-APPROPRIATED FUNDS (NAF)

5101.9002-100 Contracting Authority.

Contracting Officers are 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 an individual warranted by a Regional PARC and delegated authority, in writing, by a PCO with limited authorities to administer construction contracts, task orders, and/or modifications.

"*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" within the UAI means the Procuring Contracting Officer (PCO).

"Directorate of *Contracting (DOC)"* The 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, USACE Commanding General.

"Independent Government Estimate (IGE)" is the formal, approved estimate prepared to support a contract/task order award or modification. The IGE shall be used in conjunction with other techniques/tools identified in FAR 15.404, Proposal Analysis, to ensure the final agreed price is fair and reasonable. (Refer to the current PIL and the IGE Matrix, Requirements for Independent Estimates for further guidance.)

"Interim Policy Directive (IPD)" are interim changes to the UAI. IPDs are effective until formal incorporation into the UAI (at least annually), rescission, cancellation or expiration.

"*Procurement Instruction Letter (PIL*)" means acquisition companion resources issued by the USACE HQ DOC that will direct compliance with mandatory internal USACE acquisition procedures and guidance and supplemental information, and may contain non-mandatory procedures to be used at the discretion of the PCO. The PILs provide updates or new instructions prior to the annual update of the UAI.

"*Regional Contracting Chief (RCC*)" means the principal contracting advisor to the Division Commander, Engineer Research and Development Center (ERDC) and Army Geospatial Center (AGC) Directors, as well as, the Regional Manager for Contracting. The RCC is responsible for overseeing the District and Center contracting and leveraging contract support regionally.

"*Regional Principal Assistant Responsible for Contracting (PARC)*" means PARC-Atlanta, PARC-Dallas, and PARC-Winchester. Based on authorities delegated by the HCA, the PARC oversees acquisition and contracting matters within their assigned mission areas.

PART 3 – IMPROPER BUSINESS PRACTICES AND PERSONAL CONFLICTS OF INTEREST

SUBPART 3.1 – SAFEGUARDS

3.104-2-100 General.

(a) Public service is a public trust.

(b) Each employee has a responsibility to the United States and its citizens to place loyalty to the Constitution, laws and ethical principles above private gain.

(c) To ensure that every citizen can have complete confidence in the integrity of the Federal Government, each employee shall respect and adhere to the principles of ethical conduct set forth in the ethics regulations.

(d) All DoD personnel are required to be familiar with the Standards of Ethical Conduct (5 CFR 2365) and the DoD Joint Ethics Regulation (DoD 5500.7-R).

(e) All acquisition personnel shall complete the current DAU, Overview of Acquisition Ethics Course, a computer-based training module, within 30 days of assuming acquisition duties, and annually thereafter. Access can be obtained through the DAU website. USACE acquisition personnel include the following:

(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 .

(f) The following are types of prohibited activities:

(1) Promises, offers or gifts to a military member, civilian employee or other person having official duties, something of value with the intent of influencing an official act;

(2) Direct or indirect demands, solicitation, receipt, acceptance or agreements to receive anything of value by any government employee or other person having official duties, in return for performing any official act;

(3) Direct or indirect solicitation of a gift from a contractor or other prohibited source by a government employee or other person having official duties;

(4) Offers or gifts to a Government employee or other person having official duties from a contractor, or other prohibited source, any amount of cash or other financial interests, such as stocks, bonds or futures; or

(5) Bribery, fraud, waste and abuse at any level within the organization.

(6) Endorsement of a non-federal entity, event, product, service, or enterprise may be neither stated nor implied by the Department of Defense (DoD) or a DoD employee in their office capacity. Titles, positions, and/or organization names may not be used to suggest official endorsement or preferential treatment of any non-federal entity. Any letters of recommendation of contractors is prohibited IAW Joint Ethics Regulation, Paragraph 3-209.

(g) Report incidents of prohibited acts immediately to the local Ethics Counselor or Procurement Fraud Advisor.

SUBPART 3.2 – CONTRACTOR GRATUITIES TO GOVERNMENT PERSONNEL

3.203-100 Reporting Suspected Violations of the Gratuities Clause.

(a) All USACE personnel shall report any suspected violations of the gratuities clause to the Contracting Officer, Ethics Counselor, Procurement Fraud Advisor, Commander, or the Inspector General.

(b) The following are examples of gratuities violations and are not all inclusive. Violations, or any suspected violation, should be reported:

(1) Should a contractor or other prohibited source offer or give a Government employee or other person performing official USACE duties, any gift, except for a perishable item, that person shall immediately report the offer or gift to their immediate supervisor and to one of the individuals identified in (a) above.

(2) Should a Government employee or other person performing official duties have any questions or doubts about a gift, gratuity or bribery issue, they should contact the local Ethics Counselor or Procurement Fraud Advisor. The attorney-client privilege and the attorney-client confidentiality provisions do not apply to communications to an attorney working as an ethics counselor.

(3) Any employee, including contractor support employees regardless of their company's policies, are prohibited from accepting a gift of any value from a contractor, potential contractor, or other outside party without prior coordination with the local Ethics Counselor or Procurement Advisor. Contractor employees should elevate ethics issues and concerns to their management for coordination through their company's Government contracting officer.

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 Paperless Contract File (PCF) IAW OPORD 2012-66. The PCO shall ensure that the during the contract administration of construction contracts, the COR and/or ACO maintain contract documents electronically IAW OPORD 2012-66.

(b) At the time of contract closeout, all contractual records shall be retired IAW standards found at FAR 4.804 and DFARS 204.8.

(c) For applicable contract files not uploaded to the VCE PCF format, ACOs are required to provide to the PCO office, immediately upon execution:

(i) The original contract modification and supporting documentation;
(ii) Correspondence;
(iii) Interim unsatisfactory performance evaluations;
(iv) Any other contract administration documents requested by the PCO.

(d) *Contract File Documentation*. The official contract file shall be electronic in PCF. If the contract file is not under PCF due to exceptional circumstances, that 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. The COR and/or ACO documentation (e.g., qualifications, training, designation letters, etc.), if centrally maintained within the Contracting office, shall also be cross-referenced.

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

(1) The following guidance is provided to contracting officers 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/request for proposal (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 and Operations Security 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 Operational Security (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 Army Regulation 530-1, Operations Security (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 contracting officer 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 (FTP) 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)", 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 dated 1 September 2011.
(iv) When releasing sensitive information via the alternatives listed above, or by other means that the contracting officer 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 2008-04, 18 Jan 08, subject: Operations Security.

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 6.302: the District/Center shall not submit the Justification & Approval (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. When a full analysis of any response from the 15-day notice is incorporated into the J&A, the contracting officer shall coordinate with the SCA should circumstances dictate a need for the contracting officer to request prior coordination of a draft J&A with the SCA.

SUBPART 5.4 – RELEASE OF INFORMATION

5.403-100 Requests from Members of Congress.

Processing of congressional inquiries will follow the procedures outlined herein.

(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 Regional 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 Regional PARC, the following procedures are applicable:

(1) The congressional inquiry package will be sent by the Regional PARC office via email to the responsible DCC/CCC) (with a courtesy copy to the RCC), for preparation of the "draft" response for Regional 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 Regional 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 Regional PARC will coordinate with CECW-IF prior to signing; and a copy of the signed interim will be provided to CECT-O.

(3) Once the "draft" response is received by the Regional 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 Regional PARC signature.

(4) After the Regional 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 Regional PARC, and Commanders.

SUBPART 6.3 — OTHER THAN FULL AND OPEN COMPETITION

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

(a) A J&A for other than full and open competition is required to be approved prior to contract award. However, FAR 6.302-2(c)(1) & DFARS PGI 206.302-2 Unusual and compelling urgency, state the particular circumstances permitting the preparation and approval of a J&A after award of the contract, when contracting under the authority of 10 U.S.C. 2304(c)(2), 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 DFARS PGI 206.302-2). Concurrence by the SCA must be obtained using the following upward reporting procedures:

(1) Prior to taking any action on an acquisition using the 10 U.S.C. 2304(c)(2) authority, the DCC/CCC or the contracting officer must obtain verbal approval to proceed through their Regional PARC, who will coordinate with the respective SCA approval authority based on the estimated dollar amount of the action. Upon that coordination, the Regional PARC will provide the formal verbal approval to proceed. The requestor, when contacting the Regional PARC 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 contracting officer 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 Regional PARC who will provide the form to the respective SCA.

6.304-100 Approval of the Justification.

All justifications shall be reviewed and signed by the local Office of Counsel, Field Competition Advocate, Deputy for Small Business and other signatories required by the J&A Review Signature Page. Refer to Appendix 2-1, DOC Document Review and Approval Matrix, for J&A approval thresholds and to AFARS 5106.303-2-90 for the specific format and submission requirements for Army J&A documents.

SUBPART 6.4 — SEALED BIDDING AND COMPETITIVE PROPOSALS

6.401-100 Sealed Bidding and Competitive Proposals.

A Justification of Procurement Method (format at 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 Simplified

Acquisition Procedures, when the Contracting Officer does not incorporate FAR Part 15 evaluation procedures (under FAR 13.106-2(b)).

SUBPART 6.5 —COMPETITION ADVOCATES

6.501-100 Requirement.

(a) The HCA will designate SCAs by letter of appointment. Delegation letters may be found at Contracting CoP, Appointments and Delegations.

(b) Deputy District Commanders/Deputy Directors shall be appointed, in writing, by Commanders/Directors, as Field Competition Advocates. The DCC/CCC shall provide a copy of each appointment letter to their Regional SCA at the time the appointment is made. Field Competition Advocates will perform the duties and responsibilities listed in FAR 6.502. Field Competition Advocate responsibilities apply to FAR Part 8 and Part 16 justification actions as well.

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 $50 million or more for all years, or at $25 million or more for any fiscal year (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 $10 million 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 Regional PARC, to be of such significance so as to impact a major USACE initiative, 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 Regional 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 Regional 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 Regional PARC June 2012 Acquisition Plan Preparation Guide and Template. The template provides a format and guidelines for the contents of formal acquisition plans – the contracting officer shall ensure that all aspects required within the regulations are included in any formal acquisition plan.

207.170-100 Consolidation of Contract Requirements.

New construction requirements are not categorically exempt from the definition of "consolidation" under the applicable statute, 10 United States Code (U.S.C.) § 2382, 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.

SUBPART 8.4 – FEDERAL SUPPLY SCHEDULES

8.404-100 Use of Federal Supply Schedules.

(a) Pursuant to DFARS 216.505-70, orders under multiple award contracts (MATOCs) do not apply to orders for A-E services, which shall be placed IAW the procedures in FAR Subpart 36.6.

(b) *Proper Use of Non-DoD Contracts.*

(1) This guidance applies to the use of Non-DoD contract vehicles for all procurements of supplies or services, including construction, and orders under the Federal Supply Schedules (FSS), except for:

(i) Printing, binding or blank-book work, to which 44 U.S.C. 502 applies; and

(ii) Services available under programs pursuant to 2 U.S.C. 182c (Section 103 of the Library of Congress Fiscal Operations Improvement Act of 2000 (Public Law 106-481)).

(2) For Non-Economy Act contract actions, this guidance applies to amounts greater than the Simplified Acquisition Threshold (SAT).

(3) For Non-Economy Act contract actions utilizing Non-DoD contracts, the requirement(s) shall be certified by the District/Center Commander. This certification should be attached or made a part of the Determination & Findings (D&F) that will be approved at the appropriate Contracting level.

(4) Contracting officers making direct acquisitions using FSS for amounts greater than the SAT are reminded to:

(i) Determine whether the use of Non-DoD contracts is in the best interest of the Government and verify that the required goods cannot be obtained as conveniently or economically by using a DoD contract.

(ii) Request discounts when placing orders from the FSS.

(iii) Document requests for discounts. If discounts were received, document how the discounts were determined to be fair; if discounts were not received, explain why the vendor was chosen.

(iv) Fully document decisions not to consider all potential sources when awarding orders using the FSS.

(5) A D&F supporting the acquisition is required when utilizing non-DoD contracts above the SAT. This acquisition approval is independent of, and in addition to, the requirement for certification of requirements. Refer to Appendix 2-1, Document Review and Approval Matrix, for Approval Thresholds.

(6) In order to streamline the approval process, a District/Center may request Regional PARC

approval for a series of purchases utilizing Non-DoD contract actions for a specific type of product or service covering a limited period of time. An example would be purchasing furniture for a specific program over a six month time period.

8.405-6-100 Limited Sources

Justification and Approvals (J&As) for Limited Sources shall follow the format provided at Appendix 8-1.

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

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.

(a) Contracting officers shall comply with the Army requirement to use the Computer Hardware, Enterprise Solutions (CHESS) for purchases of commercial off-the-shelf software, desktops, notebook computers and video teleconferencing equipment, regardless of dollar value. The requirement to use CHESS contract vehicles also applies to the purchase of other commercial information technology (IT) equipment (e.g., routers, servers, printers, etc.) regardless of dollar value. When procuring IT equipment go to the CHESS website to locate the appropriate contract vehicle: https://chess.army.mil.

(b) Contracting officers shall abide by this requirement or request a waiver through the CHESS website. If a CHESS vehicle is not utilized, a waiver from CHESS must be documented in the 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 not available through CHESS contracts.

PART 9 — RESERVED

PART 10 — RESERVED

PART 11 — DESCRIBING AGENCY NEEDS

SUBPART 11.7 — VARIATION IN QUANTITY

11.703 Contract clauses.

(c) The contracting officer 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 — RESERVED

PART 13 — RESERVED

SUBPART 14.2 — SOLICITATION OF BIDS

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

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

SUBPART 15.2 – SOLICITATION AND RECEIPT OF PROPOSALS AND INFORMATION

15.203-100 Request for Proposals.

Refer to Part 3 for guidance on the distribution of contract materials that are sensitive.

15.204-100 Contract Format.

(a) For construction contracts, contracting officers shall use the current CSI MasterFormat in lieu of the UCF.

(b) The CSI MasterFormat, and shall be used in lieu of the UCF. 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.

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

(d) The general relationship between the UCF format and the CSI MasterFormat are 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). The AS3 and the DoD Source Selection Procedures can be found on the Contracting CoP Portal.

(b) *Source Selection*.

(1) *Informal or Streamlined Source Selection*. Informal or streamlined source selection is the process used when the PCO is the Source Selection Authority (SSA) and may or may not use an evaluation board to reach final selection and award decision.

(2) *Formal or Complex Source Selection*. Formal source selection means the source selection process used where someone other than the PCO is the SSA, normally for high dollar value or complex acquisitions. 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 Source Selection Evaluation Board (SSEB). The SST shall be established prior to issuance of the solicitation. An action with a value exceeding $100M requires a SSAC. The SSAC

shall provide the SSA with a written comparative analysis of proposal and award recommendation for the SSA's consideration.

(c) *Training, Ethics and Non-Disclosure Statements*. It is strongly encouraged that SST participants without DAWIA certification complete the DAU Continuous Learning Module, CLC 007, Contract Source Selection. This training is available at http://www.dau.mil in the Continuous Learning Section. In addition, participants are also 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) *Source Selection Authority Hierarchy*. The appointment of the SSA can be outside the contracting chain when it is determined to be in the best interest of the Government. 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 $50 million	PCO
Over $50 million to $100 million	One level above PCO or an Individual Appointed by the PARC
Over $100 million to $250 million	Appointed by PARC
Over $250 million to $500 million	Appointed by Director of Contracting/Deputy Director
Construction & Supply Greater than $500 million	Appointed by Director of Contracting/Deputy Director
Services Greater than $500 million	Appointed by DASA(P)

(e) *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, 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 SSA is strongly discouraged from releasing any source selection information to anyone outside of the appointed source selection organization. The SSA is authorized to approve release of source selection information 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 SSA 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).

(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 nongovernment 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 Project Delivery Team 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 as much as possible. Use of non-Government advisors, other than Federally Funded Research and Development Centers (FFRDCs), shall be supported by a written determination based on FAR 37.203 and 37.204. A sample D&F is located in UAI Appendix 15-1. (Any questions regarding use of non-Government advisors or for a particular individual should be referred to the supporting legal office).

(1) All non-Government advisors shall sign the non-disclosure agreement required to be signed by all Government employees who are participating in the source selection. They shall also submit documentation to the PCO indicating their personal stock holdings prior to being allowed access to source selection sensitive information. In addition, the PCO must ensure that before the non-Government advisor is given access to proprietary information, that the Government has received the consent of the submitting contractor(s) to provide access to the contractor who is to assist in the source selection.

(2) Non-Government advisors may assist in and provide input regarding the evaluation, but they may not determine ratings or rankings of offerors' proposals. Disclosure of past performance information to non-Government personnel is strictly prohibited (reference DoD Contractor Performance Assessment Report System (CPARS) Policy Guide, A-E Contract Administration Support System (ACASS) Policy Guide, and Construction Contractor Appraisal Support System (CCASS) Policy Guide). Accordingly, non-Government advisors shall not participate in the review and evaluation of past performance information. (See FAR 42.1503).

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 15-2. This form applies to all types of procurements for which the submission of PPQs are sought/permitted within the solicitation.

(1) The FAR requires that contractor performance information be collected (FAR Part 42) and used in source selection evaluations (FAR Part 15). CPARS is a required system and the preferred source of past performance information, when available. The current PIL, Contractor Performance Assessments, establishes current USACE policy and guidance on using CPARS. 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 contracting officers in source selections.

(b) *Small Business Participation* shall be evaluated in all unrestricted acquisitions expected to exceed $650,000 ($1.5 million for construction), except those based on the lowest priced technically acceptable (LPTA) source selection process. Small Business Participation may be evaluated as a stand-alone evaluation factor, a subfactor under the technical factor, or within the evaluation of one of the technical subfactors. However, the Army and USACE Office of Small Business Program's preferred method is to evaluate small business participation as a stand-alone factor, using adjectival rating method of evaluation. There are two rating options for consideration:

(1) Adjectival (depending on the treatment of risk); or

(2) Acceptable/Unacceptable (i.e., pass/fail).

Note: Do not confuse the Small Business Participation 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

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, Engineering Pamphlet (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)

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 Prenegotiation Objectives Memorandum (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 PCO or ACO, within the limits of their warrants and designation letters.

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.

(a) All award letters issued by USACE contracting officers 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 Preaward Debriefing of Offerors.

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

SUBPART 16.1 – SELECTING CONTRACT TYPES

16.103-100 Negotiating Contract Type.

The contracting officer must prepare a D&F justifying the contract type IAW ASA(AL&T) Memorandum dated 20 December 2011. The HCA has been delegated the authority to approve the D&F for all actions greater than $250 million. The Regional PARCs have been delegated the authority to approve the D&F for all actions greater than $100 million but not exceeding $250 million.

SUBPART 16.4 – INCENTIVE CONTRACTS

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

(a) Regional PARCs are delegated authority, without power of redelegation, to appoint the Award Fee Determining Official (AFDO) on cost-plus award-fee contracts.
(b) D&F for CPAF: All CPAF contract type actions, including actions with both fixed price and CPAF elements ("hybrid" contracts), require a D&F approved by the Regional PARC (as delegated by HCA) prior to issuance of the solicitation.
(c) A Checklist for Appointment of Award Fee Determining Official (AFDO) for CPAF Contracts may be found at UAI Appendix 16-1 and CPAF PIL 2011-10-R1.

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 contracting officer 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.

16.505-100 Ordering.

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

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

(6) *Task-order and Delivery-order ombudsman.* The HCA has delegated task/delivery order ombudsman authority to each Regional PARC and Deputy PARC for their area of responsibility. All Districts/Centers shall identify their Regional PARC and Deputy PARC as the primary and secondary ombudsmen, respectively, for all multiple award and task/delivery order contracts. The ombudsman shall have the responsibilities and authorities stated at AFARS 5116.505.

(c) *Special Solicitation and Contract Requirement.* The following requirement shall be included in all MATOC solicitations and resultant contracts:

> In accordance with FAR 16.505(b)(6), contracting officers shall identify in MATOC solicitations and contracts the individual(s) that have been appointed as primary ombudsman and secondary ombudsman respectively for USACE:
>
> Primary:
> (Insert name of Regional PARC and mailing address, phone number, e-mail address)
>
> Secondary:
> (Insert name of Deputy PARC and mailing address, phone number, e-mail address)

(1) 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.

(2) The contractor is encouraged to first try to resolve the issue with the task order contracting officer 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.

(3) 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 contracting officer take corrective action regarding the complaint;

(4) The ombudsman will communicate their determination on the matter to the contractor and the contracting officer.

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; architect-engineer services; and research and development services. When it is determined necessary to include an option(s) under those contract solicitations, the contracting officer 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).

SUBPART 17.5 – INTERAGENCY ACQUISITIONS

17.500-100 Scope of Subpart – Proper Use of Non-DoD Contracts.

Districts/Centers and the contracting officer shall follow the FAR, DFARS, and AFARS when conducting acquisitions using Non-DoD contracts. Decisions regarding this type of contract action should involve the entire Project Delivery Team including Resource Management, Office of Counsel, and Project Management. Note: an "*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, it is an "*economy act order."* An economy act order does not extend 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) In accordance with the delegation of authority from the HCA, Regional 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 Regional 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 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 Regional 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 Regional PARC, reporting the use of a UCA:

(b) Actions submitted to the Regional PARC shall be forwarded by the DCC/CCC. In the event of any UCA that will not be definitized as scheduled, the contracting officer shall submit written notification to the Regional 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 contracting officer will take to ensure the revised definitization schedule will be met.

PART 18 — 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:

(1) All acquisitions over $10,000, 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 MATOCs prior to solicitation, when:

(i) The dollar value is below the SAT (comply with FAR 19.502-2); or

(ii) There are both restricted and unrestricted MATOC pools available and the acquisition strategy proposes use of the unrestricted MATOC pool. Exception: No DD Form 2579 is required when following MATOC 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.

(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 DODD 4205.01).

(e) The Secretary of the Army, Director of Small Business Programs is authorized to waive the DODD 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). 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.

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.

SUBPART 19.7 — THE SMALL BUSINESS SUBCONTRACTING PROGRAM

19.705-6-100 Postaward Responsibilities of the Contracting Officer.

(a) The contracting officer shall monitor contractor's compliance for the submission of the required Individual and Summary Subcontracting Reports (ISR and SSR) using the Electronic Subcontracting Reporting System (eSRS) for reporting periods ending 31 March and 30 September. Contracting officers will accept or reject submitted eSRS reports within one week of notification that a report is awaiting acceptance in the system.

(b) Solicitations shall include point of contact information for the contracting officer and an alternate for acceptance or rejection of the submitted reports. At a minimum, the information shall include: names, phone numbers, contracting office address, and email addresses.

(c) The contracting officer is responsible for oversight of contractor compliance in meeting the limitation on subcontracting requirements.

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. 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://www.rmssupport.com/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 $5 Million, 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

USACE implementing guidance is at PIL 2011-01-R1.

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 IAW FAR Part 23 and the Army Green Procurement Guide. The project delivery team (PDT) shall coordinate with the contracting officer to ensure that 95 percent of new contract actions for supplies and services (including construction) require that products within the requirement are as listed at FAR Part 23.103(a).

The PDT shall review each work requirement to determine if the contract action involves any of the products listed at the Sustainable Facilities Tool's (SFT) Federal Green Products Compilation (http://www.sftool.gov/greenprocurement) (e.g. floor cleaners).

(a) If the work requirement contain items listed:

(1) The PDT may utilize the Federal Green Products Compilation specification in the performance work statement (PWS) (e.g. floor cleaners must have a minimum of 77% bio-based content). Alternatively, the PWS can simply refer the contractor to the Federal Green Products Compilation for the most current specifications; and

(2) The Federal Green Products Compilation will indicate the applicable FAR reference for each product (e.g. for floor clearers see FAR Subpart 23.4 Use of Recovered Materials and Bio-based Products). The contracting officer shall ensure that the appropriate FAR clauses are included in all applicable contract actions.

(b) The contracting officer shall choose the appropriate clause and data element (in FPDS) that reflect the requirements of sustainability incorporated into the contract or order. (Note: If there is a combination of the attributes on the contract that does not exist in the list below, choose one from the list that most closely reflects the situation on the contract).

The complete list of green FAR clauses includes:

(i) 52.204-4 - Printed and Copied Double-Sided on Postconsumer Fiber Content Paper
(ii) 52.223-1 – Biobased Product Certification
(iii) 52.223-2 - Affirmative Procurement of Biobased Products Under Service and Construction Contracts
(iv) 52.223-4 - Recovered Material Certification
(v) 52.223-9 - Estimate of Percentage of Recovered Material Content for EPA-Designated Items (or 52.223-9 - Alternate I)
(vi) 52.223-10 - Waste Reduction Program
(vii) 52.223-11 - Ozone Depleting Substances
(viii) 52.223-15 - Energy Efficiency in Energy-Consuming Products
(ix) 52.223-16 - IEEE 1680 Standard for the Environmental Assessment of Personal Computer Products (or 52.223-16 - Alternate I)

(x) 52.223-17 - Affirmative Procurement of EPA-designated Items in Service and Construction Contracts

(xi) 52.223-19 - Compliance with Environmental Management Systems (applies to GOCOs)

(c) *Reporting Sustainable Acquisition*. The contracting officer shall ensure that each contract action report in the Federal Procurement Data System (FPDS-NG) includes the appropriate data element for "recovered materials/sustainability" according to the DoD guidance (see DPAP Memorandum, dated 04 October 2011 at the hyperlink).

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 and 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

(a) Contracting Officers must ensure that applicable solicitations and contracts reference the appropriate DoD procedures, DoD Directive 5400.11 and 5400.11-R (DoD Privacy Program) and other DoD implementation issuances. Many of these documents can be found on the DoD Privacy and Civil Liberties Office website at: http://dpclo.defense.gov/privacy/About_The_Office/policy_guidance.html.

(b) Protected Health Information (PHI) and other community-specific protected information will be handled as PII and will conform to any additional measures set forth by such community of interest. Solicitations and contracts that require the participation, performance, or assistance in the performance of a function or activity involving the use or disclosure of PHI, will reference DoD 6025.18-R (DoD Health Information Privacy Regulation) and DoD 8580.02-R (DoD Health Information Security Regulation). More information on PHI can be found at: http://www.tricare.mil/tma/privacy/hipaa.aspx. The PHI breach notification can be found at:
http://www.hhs.gov/ocr/privacy/hipaa/administrative/breachnotificationrule/index.html.

(c) Program Managers (PMs) and other requiring activity personnel will examine their work statements for new contracts and orders to identify instances in which the contractor will be required to design, develop or operate a system of records. The PMs will ensure that the work statement explicitly identifies any such system, along with the design, development, or operation work to be performed, so that contractors will be fully aware of and accountable for their responsibilities under the Privacy Act and agency-level regulations. UAI Appendix 24-1 contains sample PII Requirements language. This language is advisory only; requiring activities are encouraged to tailor the language as necessary to fit each unique requirement.

(d) The PMs and other requiring activity personnel will ensure that the work statements for new contracts and orders that call for the design, development or operation of a system of records include procedures to follow when a PII breach or incident occurs. 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.

(e) Government surveillance plans for contracts that call for the design, development or operation of a system of records should include monitoring of the contractor's adherence to Privacy Act/PII regulations. Also Government monitors should document contractor-caused breaches of/or incidents related to PII, and other instances in when the contractor did not adhere to Privacy Act/PII contractual requirements, in past performance reports.

SUBPART 24.2 – FREEDOM OF INFORMATION ACT

24.203-100 Procedures

Contracting officers must ensure that all freedom of information act 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.

SUBPART 25.2 — BUY AMERICAN ACT – CONSTRUCTION MATERIALS

25.202-100 Exceptions.

(a) In accordance with AFARS 5125.202(a)(1), the HCA has redelegated authority to make the determination that the use of a particular domestic construction material is not available for use in particular contracts as follows:

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

(ii) At the chief of the contracting office for acquisitions with a value greater than the SAT but less than $1,500,000; or

(iii) At the Regional PARC for acquisitions valued at $1,500,000 or more.

PART 26 — RESERVED

PART 27 — RESERVED

SUBPART 28.3 — INSURANCE

28.305-100 Overseas Workers Compensation and War Hazard Insurance.

See current PIL 2012-12 for instruction regarding the Defense Base Act.

PART 29 — RESERVED

PART 30 — RESERVED

SUBPART 31.1 — APPLICABILITY

31.105-100 Construction and A-E Contracts.

In accordance with 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 contracting officer 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)

SUBPART 32.1 – NON-COMMERCIAL ITEM PURCHASE FINANCING

32.102-100 Description of Contract Financing Methods.

In accordance with FAR 32.102, DFARS 232.102(e)(2) – Non-Commercial Item Purchase Financing, and FAR Clause 52.232-5, when the contracting officer 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 contracting officer 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 contracting officer, 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 fiscal year 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 contracting officer 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 fiscal year to reflect the amount reserved. This clause is currently required through 30 September 2010 IAW Section 103 of the Energy and Water Development Appropriations Act, 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 fiscal year 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 contracting officer 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 fiscal year to reflect the amount reserved. Section 103 of the Energy and Water Development Appropriations Act, 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 contracting officer shall insert the clause at 52.232-5001, Special Continuing Contract for Civil Works Project Managed by the USACE [DEVIATION].

SUBPART 33.1 — PROTESTS

33.102-100 General.

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

(1) All communication to the Office of the Chief Counsel shall be addressed to HQUSACE, (Attn: CECC-C).

(b) In the event an agency protest is sustained, the protester shall be advised of its right to file a claim for costs to the contracting officer 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 contracting officer 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.

33.102-101 USACE Automated Legal System Matter Tracking System.

The field office attorney assigned to each agency or GAO bid protest shall ensure that the protest data is entered into the Matter Tracking System (MTS) Procurement Bid Protest Notebook, as soon as practicable. The attorney is further responsible for promptly updating and ultimately closing the protest's MTS file, as appropriate.

33.103-100 Protests to the Agency.

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

(b) The USACE agency protest process provides an independent review at a level above the contracting officer. Procedures for processing an agency protest are set out below. In response to each agency protest, the appropriate contracting officer 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, provided, however, that if a decision will not be issued within 35 days, the deciding official shall notify the protester, within that period, of the date when a decision will be issued.

(i) The Chief Counsel is authorized to decide all agency protests, with power of delegation; and the Chief Counsel has delegated the authority to decide agency-level protests to the following Division or Center Counsels: Lakes and Rivers Division, Mississippi Valley Division, North Atlantic Division, Northwestern Division, Pacific Ocean Division, South Atlantic Division, Southwestern Division, South Pacific Division, Transatlantic Division, and the Huntsville Engineering and Support Center. Such authority is without the power of redelegation.

(ii) 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 Assistant Chief Counsel for Procurement Law and Contract Disputes.

(iii) Divisions and 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.

(iv) 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 and Center Counsel may consult with the Office of the Chief Counsel in any protest as deemed necessary.

(v) In those cases in which the Chief Counsel has retained the authority to decide the agency bid protest, the District shall submit the contracting officer'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 (Attn: CECC-C) for final decision. Center Counsels shall submit the contracting officer's report directly to CECC-C for final decision. CECC-C requires two copies of the contracting officer'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 justification shall be approved by the HCA on a non-delegable basis, with all D&F documents approved by the DASA(P) in accordance with 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 contracting officer 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 justification shall be signed by the HCA on a non-delegable basis, with all D&F documents approved by the DASA(P) in accordance with 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 contracting officer 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 yearend 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 or Center Counsels: Lakes and Rivers Division, North Atlantic Division, Northwestern Division, Pacific Ocean Division (for Alaska District only), South Atlantic Division, South Pacific Division, Southwestern Division, Transatlantic Division, Engineer Research and Development Center, and Huntsville Engineering and Support Center. 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 Mississippi Valley Division, Humphreys Engineer Center Support Activity and Pacific Ocean Division (for all Districts except Alaska). Counsel at such offices shall forward the contracting officer'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 contracting officer's report submitted shall include the analysis and documentation set forth in 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) *Protests before award.*

(1) All requests to the Office of the DASA(P) for approval to award a contract or issue a notice to proceed, notwithstanding a protest, shall be forwarded through the appropriate Regional PARC to the USACE HQ Director of Contracting for processing and transmittal to DASA(P). Generally such request shall be submitted to the USACE HQ Director of Contracting 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 contracting officer'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.

(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 contracting officer'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 contracting officer's position.

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

(b) The contracting officer'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 contracting officer'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 contracting officer'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 MTS Bid Protest Notebook, described in 33.102-101, USACE Automated Legal System Matter Tracking System, 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 contracting officer on USACE contracts. The procedures for handling contract appeals are set forth in Appendix 33-1 – Contract Requests, Claims, and Appeals.

PART 34 — RESERVED

PART 35 — RESERVED

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.* Engineering Research and Development Centers (ERDC) and associated laboratories are not authorized to procure construction or A-E services and shall obtain contracting support from another District or Center.

SUBPART 36.2 — SPECIAL ASPECTS OF CONTRACTING FOR CONSTRUCTION

36.201-100 Evaluation of Contractor Performance.

(a) *Preparation of Performance Evaluation Reports.*

(1) The ACO or PCO shall notify the contractor at the pre-construction 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 in the current PIL, Contractor Performance Assessments, Engineer Regulation (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 contracting officer shall promptly assess the circumstances to determine whether pursuit of a suspension or debarment action under FAR Subpart 9.4 is appropriate. The contracting officer's rationale for or against such an action shall be documented in writing and maintained in the contract file.

(7) The PCO will assure contract assessments are objective, fair, and timely. The PCO, in addition to ensuring a fair and impartial process is followed, shall be assigned by Focal Points as an additional Assessing Official (AO) for the purposes of receiving electronic notifications during the assessment process. These notifications then allow the PCO to monitor the performance assessment process and determine the need for and level of their involvement in assessment input. For A-E (ACASS) and Construction (CCASS) contracts, the evaluating AO (separate from the PCO) and the Reviewing Official (RO) shall be assigned from within the technical division (e.g., Operations, Engineering, Construction, Planning) responsible for managing the contract. The roles and responsibilities of the Focal Point, Contracting Officer, AOs, ROs, and Senior ROs are further defined under FAR Subpart 42. When the contractor non-concurs with a final performance assessment, the PCO and the RO shall be apprised prior to final electronic signature of the performance by the AO. The PCO becomes the RO signatory authority for final unsatisfactory assessments.

(8) Design- build contracts are recorded as construction contracts in CCASS and the design services of these contracts are not given a separate A-E performance assessment in ACASS. However, it is USACE policy that the A-E's performance be summarized in the 'Remarks' (Block 20, DD Form 2626). The DUNS number and name of the A-E subcontractor(s) are to be included in 'Description and location of work' (Block 7), so that it can be found when source selection boards search for the firm in the Past Performance Information Retrieval System (PPIRS). This responsibility lies with the AO.

36.203-100 Government Estimate of Construction Costs.

Refer to the current PIL, Requirements for Independent Estimates, and Appendix 36-1, Development, Review and Approval of Government Estimates 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 source selection decision document (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 percent. IAW 36.203-101(c), the estimate shall not include an allowance for contractor profit.

36.205-101 Statutory Cost Limitations – Military Construction Contracts.

(a) Award of a contract for military construction (MILCON) shall be approved by the District/Center Commander when the lowest qualifying bid/proposal exceeds the Government's estimate by more than 15 percent. 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 percent, 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 MILCON projects or unspecified minor MILCON. The single-phase approach can only be used where authorized, the contracting officer 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 contracting officer'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 contracting officer 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 contracting officer 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. 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) In accordance with 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 contracting officer 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.
(A) 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

36.600-100 Scope of Subpart.

(a) See Subpart 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 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 Subpart 7.1.

(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 $700,000, not specifically identified in an approved acquisition strategy and/or plan, the District/Center Chief of Engineering shall provide a memo to the contracting officer 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.

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 contracting officer 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 District/Center contracting officer 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 (ref: UAI Appendix 15-1, Sample D&F) requires approval by the Regional 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, contracting officers, 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 Subpart 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, Requirements for Independent Estimates, and UAI Appendix 36-1, Development, Review and Approval of Government Estimates Matrix.)

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 percent 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, paragraphs 5 and 6.

36.609-1-100 Design Within Funding Limitations.

(a) The contracting shall insert FAR clause 52.236-22, Design Within Funding Limitations, in A-E indefinite-delivery contracts, 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 equivalent of the rate for grade GS-18.

SUBPART 37.5 — MANAGEMENT OVERSIGHT OF SERVICE CONTRACTS

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

Refer to and comply with the interim policy set forth by the Assistant Secretary of the Army (Acquisition, Logistics, & Technology) ASA(ALT) Memorandum dated 20 December 2011, and the USACE Operations Order (OPORD) 2012-81 (with all applicable Annexes A-F), 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 Deputy Assistant Secretary of the Army (Procurement) (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) Office of the Senior Services Manager (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) (ASA(ALT) Interim Policy excludes R&D except Advisory and Assistance acquisitions in support of R&D are included).

37.590-6-100 Army Service Strategy Panel Procedures

(c) Supporting documentation. Documentation that supports the acquisition strategy may vary with the approach anticipated, but at a minimum should contain the following, when applicable:

(1) Acquisition Plan (Approved)
(2) DD Form 2579 – Small Business Coordination Record
(3) IGE (Draft)
(4) Market Research Report
(5) Performance Work Statement
(6) QASP
(7) Requirements Validation Document/Service Contract Approval Request Form (SCAR)
(8) Services Acquisition Workshop, Memorandum of Record, when applicable (or waiver)
(9) SSP (without any names of Members or the SSA)
(10) D&F(s) as appropriate for the specific acquisition
    a. D&F bundled or consolidated requirements
    b. Cost Benefit Analysis for bundled or consolidated requirements
    c. D&F for single award IDIQ type contract
(11) J&A(s) (for actions competed on other than full and open basis)
(12) Award Fee Plan, when applicable

(13) Section L (Instructions, Conditions and Notices to Offerors)
(14) Section M (Evaluation Factors for Award)
(15) If a hybrid contract, a percentage break-out of orders issued for each contract type
(16) ASSP Briefing slides

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

PART 38 — RESERVED

PART 39 — RESERVED

PART 40 — RESERVED

PART 41 — RESERVED

SUBPART 42.1 – CONTRACT AUDIT SERVICES

5142.1-90-1-100 Responsibilities.

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

Director/DCC/CCC shall –

(1) Demonstrate personal interest in all contract audit reports, tracking and assisting contracting officers (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 Regional PARC.

(5) Assure participation by contracting officers in overage audit review boards when requested by the Regional 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 (ACO).

(a) The contracting officer 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 contracting officer shall have access to RMS in order to remotely monitor contract performance.

(b) All contracting officers (PCO and ACO) are 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 contracting office 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 through successively higher headquarters to HQ, USACE, ATTN: CECT-E 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).

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 not-to-exceed (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 — RESERVED

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 PIL 2012-11 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 Performance Work Statement/Statement of Work 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. Contracting officers 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.

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 — RESERVED

PART 48 — RESERVED

SUBPART 49.113 – COST PRINCIPLES

49.113-100 Cost Principles - Construction Equipment Costs - Contract Clause

The contracting officer 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 — RESERVED

PART 51 — RESERVED

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

52.211-5001 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.

In accordance with FAR 52.232-5, Payments Under Fixed Price Construction Contracts(b)(2), when the contracting officer 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 contracting officer 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 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 fiscal year. The Contracting Officer shall modify that amount to reflect any funds added to or subtracted from the contract during a current fiscal year]* has been reserved for this contract and is available for payment to the Contractor during the current fiscal year. It is expected that Congress will make appropriations for future fiscal years 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 fiscal year, 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 fiscal year. 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 fiscal year 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 fiscal year, 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 fiscal year 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 fiscal year, 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 fiscal year 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 fiscal year. The Contracting Officer shall modify that amount to reflect any funds added to or subtracted from the contract during a current fiscal year]* has been reserved for this contract and is available for payment to the Contractor during the current fiscal year. It is expected that Congress will make appropriations for future fiscal years 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 fiscal year 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 fiscal year, 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 contracting officer 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 contracting officer 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 Request for Proposal.

The contracting officer 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 contracting officer 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 contracting officer 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 contracting officer 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 Statue 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 contracting officer 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 contracting officer 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 contracting officer 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 contracting officer 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 contracting officer 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 contracting officer 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)

APPENDIX 1-1

PROCESS CHART FOR USACE PEER REVIEW POLICY

HCA Peer Review Process (Facilitated by the DOC) ≥ $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	*1 Week (7 Calendar 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; District/Center/HQ Cost Estimating; District/Center/HQ Technical Subject Matter Expert & PARC/HQ DOC Special Competition Advocate (applicable to non-competitive actions)	Regional Acquisition Support Analyst (coordinates with DOC)	*(Event included in coordination of 1 week 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 coordination of 1 week 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	2-3 Business Days
Provide the Summary MFR with Concurrences of the HQ Peer Review Team and PCO to the Peer Review Facilitator for Endorsement	Regional Acquisition Support Analyst	1 Business Day (included in coordination of 2-3 Business Days above)
HCA Peer Review Facilitator Sign MFR and Release Staff Action Summary (SAS) to Process through Secretary of General Staff (SGS) to HCA for endorsement	Regional Acquisition Support Analyst & SGS for HCA	5 Business Days
HCA Endorses Peer Review Package; Signed Document Returned to Regional Acquisition Support Analyst; Action copied to Regional PARC, and sent to PCO and District/Center BOB.	Regional Acquisition Support Analyst & PCO	1 Business Day
PCO can Proceed. Place Peer Review Summary MFR and Peer Review Documents in Contract File.	PCO	Upon Endorsement by HCA

Regional PARC Chaired ≥ $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; District/Center Cost Estimating; District/Center Technical Subject Matter Expert & Special Competition Advocate (applicable to non-competitive actions)	District/Center BOB Chief & Regional Acquisition Support Analyst	1 Week 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	1 Week 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 Source Selection Evaluation Board 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 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
RCC Endorse MFR; 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

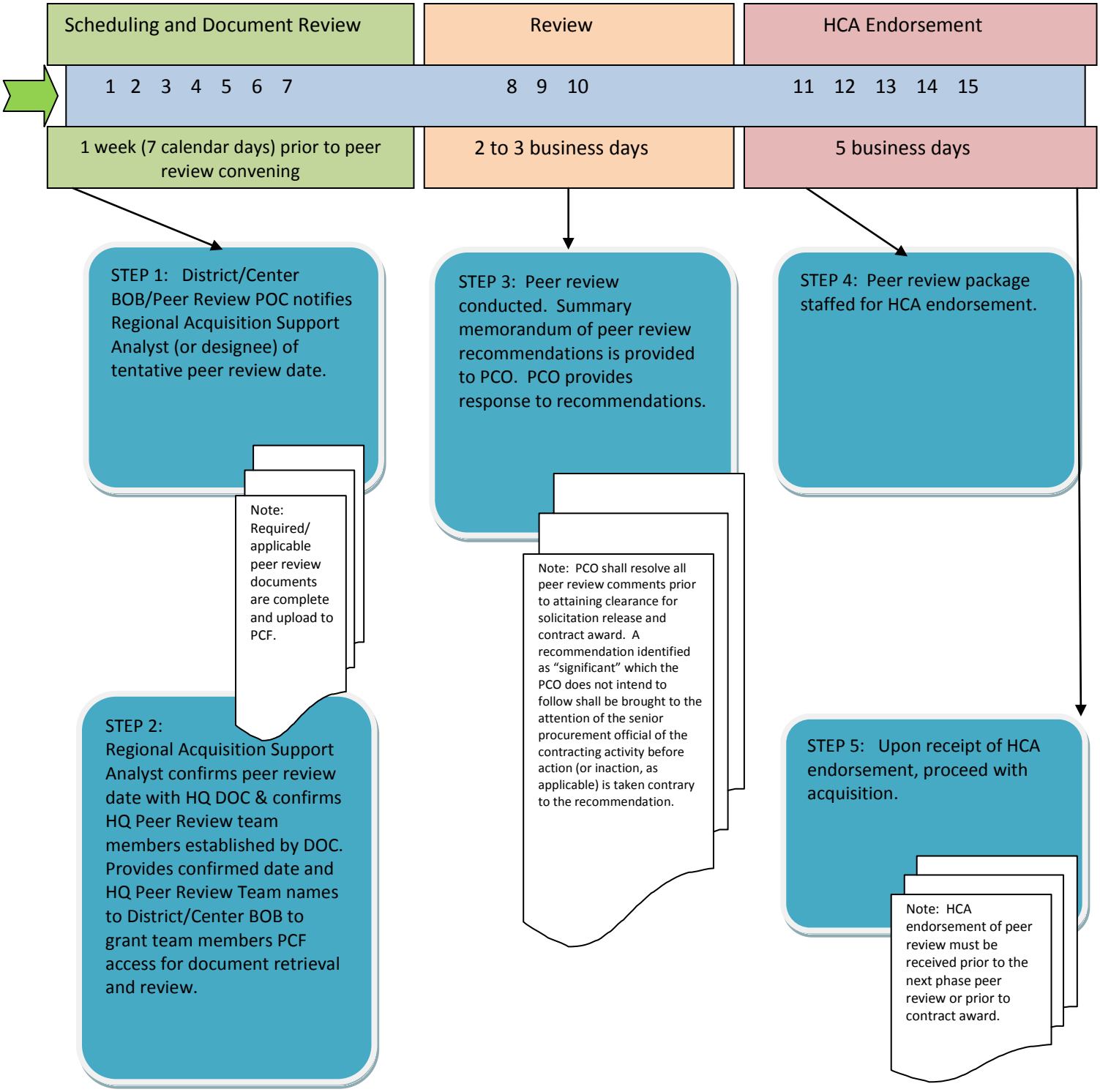
RCC Chaired – > $500K ≤ $50M		
Establish Solicitation/Contract Peer Review* and Coordinate/Confirm Peer Review Schedule *All members shall be independent of PDT members and at a minimum: Counsel; Contracting; Small Business; Technical Subject Matter Expert	BOB Chief / Peer Review POC	1Week Prior to Solicitation/Contract 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	1 Week 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))	RCC or RCC Designee Contracting Officer	1 Business Day or Less
Provide the Summary MFR with Concurrences of the Solicitation/Contract Peer Review Team to the RCC for Endorsement	BOB Chief & Solicitation/Contract Peer Review Team	1 Business Day or Less
RCC Endorse MFR; Provide MFR to Contracting Officer for Inclusion in the Contract File	RCC & BOB Chief	1 Business Day or Less
Contracting Officer Proceed with Contract Action	Contracting Officer	Upon Endorsement by RCC
PCO, DCC, CCC, RCC 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 POLICY

HCA PEER REVIEW TIMELINE VISUAL



USACE ACQUISITION INSTRUCTION (UAI)

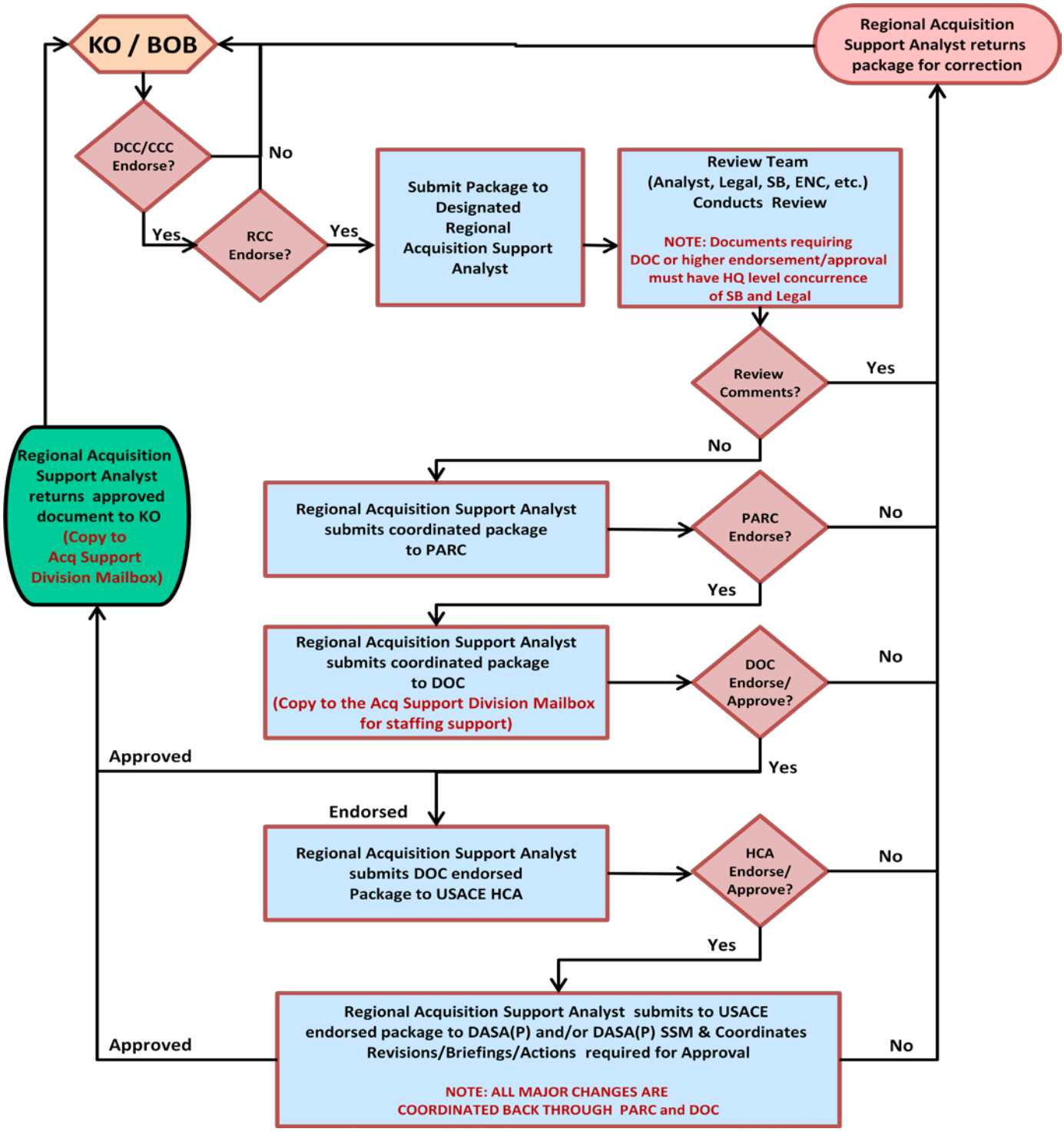
APPENDIX 1-3

HQ USACE CECT ACQUISITION REVIEW AND APPROVAL PROCESS

ACTIONS ABOVE $250M & FOR **ALL** ACTIONS REQUIRING DOC/HCA OR HIGHER LEVEL APPROVAL

HQ USACE CECT
Acquisition Review & Approval Process

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



APPENDIX 1-4

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

PHASE I (SOLICITATION REVIEW)

Solicitation Number: _____ Date(s) Reviewed: _____

Project: _____ Estimated Dollar Value: _____

This toolkit is provided for use by Solicitation Review Boards in performing Independent Peer Reviews, as well as a *self-check* by Contract Specialists and Contracting Officers. Areas highlighted in pink are key focus items for Independent Peer Reviews. 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.

Items highlighted in *green* are information to assist all in understanding the key areas of organizational focus for the Peer Review Process. Items highlighted in pink are key areas of focus for Peer Reviewers.

*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, Performance Work Statement, IGE or 1391 (if MILCON), QASP, SSA Appointment, and Source Selection Plan. 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) Statement of Work (SOW)/Performance Work Statement (PWS)/Specifications/1391 (If MILCON) or IGE (If received)				
b. Draft Quality Assurance Surveillance Plan (QASP) / Performance Requirements Summary (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				

SOLICITATION REVIEW TOOLKIT	Yes	No	N/A	Remarks
(SAF) statement and clause(s) included? *(FAR 52.232-18)*				
c. MATOC/SATOC – Is there evidence the minimum guarantee is 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 (dynamic SB search, sources sought synopsis, and/or Industry Day Conference if held?				
b. Is there evidence/backup documentation to support Market Research Report?				
Small Business Coordination				
a. 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)*				
Acquisition Service Strategy Panel (Services >$500M)				
Briefings to Army Director of SB and DASA-P filed with approval memo of Acquisition Strategy				
Approved Acquisition Plan (FAR 7.1, DFARS 207.1, AFARS 5107.1)				
a. 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 Determinations and Findings *(as applicable to requirement, list not all inclusive)*				
a. Determinations and Findings • Contract Type *(Over $100M all types, Incentive: FAR 16.4, T&M: 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, see Policy Alert 07-04)*				

SOLICITATION REVIEW TOOLKIT	Yes	No	N/A	Remarks
• Commercial Determination *(FAR 12, DASA(P) Policy Alert 12-66)* • Use of Options *(FAR 17.202(a))* • Personal/Professional Services *(DFARS 237.104)* • 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 and Evaluation of Options *(FAR 17.206)* • Buy American Act *(FAR 25)* • Determination Approving Consolidation of Contract Requirements *(DFARS 207.170)* • Awarding a Task/Delivery Order Contract Vehicle exceeding $103M to a single source (SATOC) (*FAR 16.504(c)(1)(ii)(D)(i)-(iii), DFARS 216.504))* • Contracting Officer SATOC Justification Memo *(FAR Part 16)* • Approval for Nonperformance-Based Services Contracts *(DFARS 237.170-2)* • Business Case Analysis for Enterprise-Wide or Agency-Wide Contracts and GWACS *(DASA(P) Policy Alert 12-09)*				
b. Justification of Procurement Method (if using FAR Part 15)				
c. Certification for non-DOD Contract Use (only if using non DoD contract vehicle – PIL 2009-02)				
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. Justification and Authorization for Other Than Full and Open Competition Properly Approved (J&A) *(FAR 6.3, AFARS Part 5153.9005)*				
c. Has KO thoroughly documented determination of exception to synopsis used under *FAR 5.202?*				
d. Evidence of Public Disclosure *(PIL 2009-08)*				
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 (BCOE) Compliance Certification (Construction Only) *(ER 415-1-11)*				

SOLICITATION REVIEW TOOLKIT	Yes	No	N/A	Remarks
Focus of Review: Has a finalized BCOE been posted to the file for this acquisition?				
SOLICITATION AND RELATED DOCUMENTS				
Request for Proposal/Solicitation				
a. CLIN Structure				
Focus of Review: Is the CLIN structure logical and clearly linked to the PWS/SOW in accordance with DFARS?				
b. Wide Area Workflow (See DFARS - http://www.acq.osd.mil/dpap/dars/dfars/html/current/232_70.htm)				
Focus of Review: Are Wide Area Workflow/invoicing instructions ***provided to the extent applicable to the acquisition?***				
c. Sections L&M (Construction Numbers 00 22 10, 00 22 20, 00 22 11)				
Focus of Review: *- Are the evaluation criteria consistent with those indicated in the Source Selection Plan?* *- 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/SOO/SOW, the Source Selection Plan, 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. Contractor Manpower Reporting CMR)				
Focus of Review: Are the Contractor Manpower Reporting 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*				

SOLICITATION REVIEW TOOLKIT	Yes	No	N/A	Remarks
incorporation of industry comments?				
Location-Related Performance				
a. Is the required Defense Base Act (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 Afghanistan (CENTCOM AOR) contemplated IAW DoD Instruction 3020.41)				
b. Is the Theater Business Clearance information incorporated into the RFP 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. Performance Work Statement				
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 Performance Work Statement (PWS) or Statement of Objectives (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 DOL Wage Rates been incorporated into the RFP?				
c. Performance Requirements Summary (PRS)				
Focus of Review: *- Are the appropriate performance incentives in the solicitation to include the performance requirement summary (PRS) and or award/ incentive fee arrangements, if applicable developed and in the file?* *- Are **measurable** performance standards incorporated at the contract level?*				
d. Quality Assurance Surveillance Plan (QASP)				
Focus of Review: *-Is there a Quality Assurance Surveillance Plan (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? .*				
Source Selection Plan (SSP)				
a. Overall SSP/Task/Delivery Order SSP				
Focus of Review: *- Is the Source Selection Plan and procedures IAW the AFARS and the Army Source Selection Manual?* *- Has the Source Selection Plan been approved by the SSA and posted to*				

SOLICITATION REVIEW TOOLKIT	Yes	No	N/A	Remarks
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 small business 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 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?*				
Source Selection Organization				
a. Source Selection Authority				
Focus of Review: SSA is appropriate given level and complexity of the acquisition and appointed by the appropriate authority IAW DOD Source Selection Procedures and PIL 2012-07, USACE Contract Source Selection Guidance?				
b. Source Selection Team				
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 DOD Source Selection Procedures?				

PHASE II (PRE-AWARD)

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

Project: _____ Estimated Dollar Value: _____

This toolkit is provided for use by Pre-Award Contract Review Boards in performing Independent Peer Reviews, as well as a *self-check* by Contract Specialists and Contracting Officers. Areas highlighted in pink are key focus items for Independent Peer Review Boards. However, 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 requirements.

Items highlighted in *green* are information to assist all in understanding the key areas of organizational focus for the Peer Review Process. Items highlighted in pink are key areas of focus for Peer Reviewers.

*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 process evaluation; e.g. competitive range/POM/PNM/sorry 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				
Source Selection Team				
Focus of Review: *- Are appointment letters for the SSA, SSAC, SSEB and other technical members in the file?* *- Are the personnel appointed as SSO members the same as those listed in the SSP and participating in the evaluation?* *- Have all participants completed a Source Selection Participation Agreement (including non-disclosure/financial interest statements)?*				
Proposal Evaluations				
Focus of Review: *- Was the source selection evaluation conducted in accordance with the DOD Source Selection Procedures, the Source Selection Plan (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 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 DD1547 utilized IAW FAR 15.404 policies/procedures)).* *- Discussion of how GFP/GFE GFP affected price?* *- Certificate of Current Cost or Pricing Data (if required) obtained and documented in file; TINA waivers under exceptional circumstances exemption granted in accordance with criteria at DFARS 215.403-1(c)(4)* *- If cost and pricing data are required and KO 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 most probable cost (MPC)?* *- Small Business Participation: Does proposal support USACE SB goal? Is there rationale for proposed SB participation? What is the extent of commitment to use SB/HBCU, MI. Has the past performance in utilization of SB concerns been considered?*				
Source Selection Advisory Council (SSAC) and Source Selection Authority (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 Contracting Officer/SSEB Chair prior to briefing the SSA? (if applicable)*				

PRE-AWARD TOOLKIT	Yes	No	N/A	Remarks
- Is the SSA briefing documented and concurrence on the evaluation gained?				
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 Source Selection Decision Document (SSDD)**				
Focus of Review: Has a combined Prenegotiation Objective Memorandum (POM)/Price Negotiation Memorandum (PNM) or Source Selection Decision Document 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 Contracting Officer established rationale for delaying debriefings IAW FAR 15.505(b)?*				
Business Clearance (With Discussions) **Prenegotiation Objective Memorandum (POM)**				
a. Has the POM been approved by the Contracting Officer? *(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 Contracting Officer				

PRE-AWARD TOOLKIT	Yes	No	N/A	Remarks
b. Revised/Final Proposals requested				
Revised/Final Proposal Evaluation				
Focus of Review: *- Was the source selection evaluation conducted in accordance with the DOD Source Selection Procedures, the Source Selection Plan, and the criteria in the solicitation?* *- Overall Evaluation* *Does the SSEB evaluation focus on the revised areas of the proposal in 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) **Price Negotiation Memorandum (PNM)**				
a. Has the PNM been approved at the appropriate level?				
b. Has the Contracting Officer's 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?*				
Source Selection Advisory Council (SSAC) and Source Selection Authority (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 Contracting Officer/SSEB Chair prior to briefing the SSA? (if applicable)* *- Is the SSA briefing documented and concurrence on the evaluation gained?*				
Source Selection Authority Decision (SSAD)				
Focus of Review: *- Was the SSD 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? (ASSM, 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:				

PRE-AWARD TOOLKIT	Yes	No	N/A	Remarks
- 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 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 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).*				
Contracting Officer's Representative (COR) Requirements				
Contracting Officer Representative (COR) Nomination Letter(s), Appointment Letter & COR Training Certificate(s) *(PIL 2011-02 & 2012-06)*				
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. Central Contractor Registration (CCR) and EPLS verification				
c. Are all ARRA requirements properly documented?				
d. Certificate of competency, if required				
e. IGE (validation of cost/price ceiling)				
f. For Cost Plus Award Fee (CPAF) contract vehicles, has an Award Fee Determination Official (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))*				
g. For Cost Plus Award Fee (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, PIL 2011-10-R1, AFARS 5116.405-2))*				
h. Contract Administration Plan (as applicable) *(FAR 42)*				
i. 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 TO awardee prior to NTP*? *(DFARS 228.201)*				
j. 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 1-6

COR FILE REVIEW CHECKLIST

On _____ a review was conducted on the operations and records maintained by the Contracting Officer's Representative (COR) located within the following office _____

Reviewer's name: _____
Name of COR: _____
COR's office symbol and position title: _____
COR's telephone: (____) _____

Contract/Delivery/Task/Purchase Order Number Reviewed: _____

1. <u>ADMINISTRATIVE ISSUES</u>: (information should be gathered at the District/Center)
a. Is there a COR nomination memo from the requiring activity on electronic file?
☐ YES ☐ NO

b. Has the COR been designated in writing IAW DFARS 201.602-2(2)(v) and is a copy of the designation in the electronic PCF file? ☐ YES ☐ NO

c. Is the COR's training complete and current IAW PIL 2012-06-R1?
☐ YES (date refresher training is due) _____ ☐ NO (attach corrective action plan)

2. <u>INTERVIEW</u>:
a. Is the COR aware of their responsibility to advise their supervisor and the Contracting Officer of any conflict, if they have reason at any time to believe that they may have a direct or indirect financial interest, which would place them as COR in a position where there is a conflict between their private interests and the public interests of the United States? ☐ YES ☐ NO

b. If they are to be reassigned or separated from Government service, is the COR aware of their responsibility to notify the Contracting Officer in advance of reassignment or separation to permit timely selection and designation of a successor COR? ☐ YES ☐ NO

c. Does the COR rely on input provided by technical specialists? ☐ YES ☐ NO ☐ N/A

d. On service contracts does the COR routinely verify appropriateness of categories of labor used in comparison to the work described in the Performance Work Statement (PWS) or Statement of Work (SOW) and the approach specified in the offeror's technical proposal? ☐ YES ☐ NO ☐ N/A

3. <u>CONTRACT SURVEILLANCE</u>:
a. Is the COR signing written communications with the contractor and other documents about the contract as "Contracting Officer's Representative"? ☐ YES ☐ NO

b. Does the COR file contain surveillance/inspection and/or site visit reports? ☐ YES ☐ NO
Are they completed timely and are they well documented?_____

c. Does the file contain evidence of the COR's notification to the contractor of deficiencies observed during surveillance and of appropriate action being taken in accordance with the terms of the contract and their COR designation letter to effect correction? ☐ YES ☐ NO ☐ N/A

d. Does the COR file contain reports to the PCO/ACO regarding incidents of faulty or nonconforming work, delays, deficiencies or problems? ☐ YES ☐ NO ☐ N/A

e. Does the COR produce memoranda for record (MFR) or minutes of all meetings and/or discussions with the contractor or others pertaining to the contract or contract performance and provide such data to all applicable parties? ☐ YES ☐ NO ☐ N/A Are they recorded timely, clear, concise, and complete?
_____

4. <u>INVOICES / RECEIVING REPORTS</u>:

a. Are invoices annotated to reflect timely and proper processing? (Acceptable evidence is the Payment Form ENG 93/CEFMS documentation, Wide Area Workflow Inspector/Acceptor or Acceptor/LPO combination, DD250, or MFR (for paper process) signed and dated by the Reviewing Official.) ☐ YES ☐ NO ☐ N/A

b. Does the COR routinely determine the reasonableness of the number of hours worked (for Cost, Labor Hour or T&M contracts) and materials used (for T&M contracts)? ☐ YES ☐ NO ☐ N/A

c. Does the COR appropriately apply the provisions of the Prompt Payment Act? ☐ YES ☐ NO

5. <u>CONTRACTOR PERFORMANCE ASSESSMENT</u>:

a. Does the dollar value of this action indicate a performance assessment is required?
☐ YES ☐ NO (*If no contracts require a performance assessment, skip the remaining questions in Section 4.)*

b. How is the COR documenting contractor performance IAW FAR 42.1502?
☐ CPARS (CCASS/ACASS) ☐ Interim paper copy ☐ Not Documenting Performance

c. Are assessments treated as Source Selection Sensitive Information IAW FAR 3.104? ☐ YES ☐ NO

d. Are assessments completed within 120 days of the end of the assessment period and included in the file?
☐ YES ☐ NO ☐ N/A

e. Are contractors given the opportunity to comment before assessment report is finalized IAW with PIL 2011-04? ☐ YES ☐ NO

6. <u>PROCEDURES</u>:

a. Does the COR receive and review periodic progress reports when required by the contract/order?
☐ YES ☐ NO ☐ N/A

b. Is the COR submitting the periodic performance reports on the contractor to the Contracting Officer as specified in their designation memo? ☐ Yes ☐ No Comments_____

7. <u>RECORDS - Do the COR files contain the following?</u>

a. Copy of contract/task/delivery/purchase order; modifications; property records (if applicable) and designation memo. ☐ YES ☐ NO

b. Copies of all letters to/from Contractor and all contract deliverables. ☐ YES ☐ NO

c. Copies of all Contractor invoices and/or receiving reports (CEFMS or WAWF records are acceptable).
☐ YES ☐ NO ☐ N/A

d. For services a copy of the applicable QASP or for A-E or construction a copy of the quality assurance plan or quality management plan. ☐ YES ☐ NO ☐ N/A

e. If a QASP, quality assurance plan, or quality management plan is applicable, evidence of oversight and enforcement. ☐ YES ☐ NO ☐ N/A

f. For services, to include A-E, copies of contractor's periodic (time frame specified in designation memo) performance reports or for construction copies of the contractor's daily quality control and quality assurance reports provided to PCO/ACO. ☐ YES ☐ NO ☐ N/A

g. A record of inspections performed and the results. ☐ YES ☐ NO ☐ N/A

h. Memoranda for record or minutes of any meetings and discussions with the contractor or others pertaining to the contract or contract performance ☐ YES ☐ NO ☐ N/A

i. Records relating to the contractor's quality control system and plan and the results of the quality control effort. ☐ YES ☐ NO ☐ N/A

General Comments / Recommendations_____

_____

_____

_____

Reviewer: _____ Date: _____

Title: _____

USACE ACQUISITION INSTRUCTION (UAI)

APPENDIX 2-1

DIRECTORATE OF CONTRACTING (DOC) 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. If the approval authority has been delegated, the column identifies who approves the action. (Where HQ DOC or PARC are listed, the Deputy DOC or Deputy PARC have these authorities to act on behalf of the HQ DOC or PARC when the HQ DOC or PARC is absent). For acquisition milestone planning purposes, "Approximate Total Approval Days" equals "workdays.")

DOCUMENT & REGULATORY CITE(S)	DOLLAR THRESHOLD	APPROVAL AUTHORITY	APPROX. TOTAL APPROVAL DAYS
ACQUISITION PLAN/ADDENDUM TO ACQUISITION PLAN			
Programmatic Acquisition Plans/ Acquisition Plans (Exclusive of ECI Acquisition Plans) (FAR Part 7, DFARS 207.1, AFARS 5107.103)	$25M for any fiscal year/ $50M for all years	PARC	40
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 - *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 over $10M (including base and any options) must be accompanied by an approval of the service requirement by the Command Service Executive (CSE) - which is accomplished separate from (and as early as possible in the requirements development process) the Acq Strategy 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 DASA(P)).			
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 dtd 20 Dec 2011)	>$10M<$250M	PARC	50
Acquisition Strategy (AFARS 5137.590-4(d)) – service acquisitions – **ALL TYPES OF SERVICES** & ASA(ALT) Interim Policy dtd 20 Dec 2011)	$250M≤$500M	DASA(P) SSM	90

DOCUMENT & REGULATORY CITE(S)	DOLLAR THRESHOLD	APPROVAL AUTHORITY	APPROX. TOTAL APPROVAL DAYS
Acquisition Strategy (AFARS 5137.590-4(d)) – service acquisitions – **Non-IT** & ASA(ALT) Interim Policy dtd 20 Dec 2011)	$500M>$1B	Pre-Brief to OSBP, DASA(P) SSM Chaired ASSP & DASA(P) SSM Approval	114
Acquisition Strategy (AFARS 5137.590-4(b) & (c)) – service acquisitions for **IT**)	$500M>$1B	Pre-Brief to OSBP, DASA(P) Chaired ASSP & ASD(NII)/DoD CIO or DASA(P) SSM	219
Acquisition Strategy (AFARS 5137.590-4(c)) – service acquisitions for **ALL TYPES OF SERVICES**)	≥$1B	DPAP	219
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	12
PCO Warrants, Grants Officer Warrants, ACO Warrants (AFARS 5101.603-1(1)(iii)(1)) & USACE Contracting Officer Warrant Program PIL 2012-09	Per regulation	PARC	12
Use of Contractor Support (Non-Government Advisors) in Source Selection Evaluation (FAR37.203 and 204; AFARS 5137.204; AS3 & DoD Manual p1.4.5.2)	≥$0	PARC	19
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) & PIL 2012-07)	>$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) & PIL 2012-07)	>$250M≤$500M	HQ DOC	7
SSA Appointment (PIL 2012-07)	>$500M (Construction & Supply only)	HQ DOC	7

DOCUMENT & REGULATORY CITE(S)	DOLLAR THRESHOLD	APPROVAL AUTHORITY	APPROX. TOTAL APPROVAL DAYS
SSA Appointment (AFARS 5115.303(a)(iv) & PIL 2012-07) (Requires Ethics Briefing Certification & Bio on Nominee)	≥$500M (services only)	DASA(P)	45
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).			
Approval of Business Cases for Certain Inter-Agency or Agency-Specific Acquisitions - Government-Wide Acquisition Contracts (GWACS) (IAW Army Policy Alert 12-09 issued 20 December 2011)	Regardless of Dollar Value	SPE	114
Approval of Business Cases for Certain Inter-Agency or Agency-Specific Acquisitions - Covered Multi-Agency Contract or Multi-Agency BPA (IAW Army Policy Alert 12-09 issued 20 December 2011)	≥$100M (FY13) ≥$50M (FY14)	SPE	114
Approval of Business Cases for Certain Inter-Agency or Agency-Specific Acquisitions - Covered Agency-Specific ("Enterprise-Wide") Contract or BPA (IAW Army Policy Alert 12-09 issued 20 December 2011)	≥$100M (FY13) ≥$50M (FY14)	SPE	114
CONGRESSIONAL NOTIFICATION - ALERTS TO DASA(P)			
Congressional Notification (DFARS 205.303, AFARS5105.303, PARC Policy Alert 10-14)	>$6.5M	DASA(P)	3
Urgent Congressional Notification (DFARS 205.303, AFARS5105.303, PARC Policy Alert 10-14)	>$6.5M	DASA(P)	1
Extension of Congressional Notification (DFARS 205.303, AFARS5105.303, PARC Policy Alert 10-14)	>$6.5M	DASA(P)	3
CONSOLIDATION REQUIREMENTS			
Consolidation of Contract Requirements D&F (AFARS 5107.170, DFARS207.170-3, 10 U.S.C. 2382) (Submission Concurrent with Acquisition Plan or Acquisition Strategy)	$5.5M≤$100M	PARC	40

DOCUMENT & REGULATORY CITE(S)	DOLLAR THRESHOLD	APPROVAL AUTHORITY	APPROX. TOTAL APPROVAL DAYS
Consolidation of Contract Requirements D&F (AFARS 5107.170, DFARS207.170-3, 10 U.S.C. 2382) (Submission Concurrent with Acquisition Plan or Acquisition Strategy)	>$100M<$500M	HCA	54
Consolidation of Contract Requirements D&F (AFARS 5107.170, DFARS207.170-3, 10 U.S.C. 2382) (Submission Concurrent with Acquisition Plan or Acquisition Strategy)	≥$500M	DASA(P)	114
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	54
Acquisition of Services - not performance based (DFARS 237.170-2 (a)(1))	>$85.5M	HCA Endorse SPE Approve	114
DETERMINATION & FINDINGS FOR CONTRACT TYPE			
Determination and Findings for Justification of Contract Type (FAR 16.401(d) & PARC Policy Alert 12-12, dtd 11 January 2012)	>$100M≥$250M	PARC	33
Determination and Findings for Justification of Contract Type (FAR 16.401(d) & PARC Policy Alert 12-12, dtd 11 January 2012)	>$250M	HQ DOC	33
Use of Time and Material (T&M) 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, 11 Oct 2012, Approval Threshold for T&M and LH Contracts and Preference for CPFF)	≤$1M	DCC/CCC (One Level Above KO)	2
Use of T&M Contract Type 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, 11 Oct 2012, Approval Threshold for T&M and LH Contracts and Preference for CPFF)	>$1M	SPE ***Approval Authority Being Reviewed and Possible Change to be Issued via USACE Policy Alert by HQ CECT-P**	54

DOCUMENT & REGULATORY CITE(S)	DOLLAR THRESHOLD	APPROVAL AUTHORITY	APPROX. TOTAL APPROVAL DAYS
Use of T&M 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, 11 Oct 2012, Approval Threshold for T&M and LH Contracts and Preference for CPFF)	>$0M	HCA	54
Use of Cost Reimbursement Award Fee and "Hybrid" Contract Type (PIL 2011-10-R1)	≥$0	PARC (Must have Specific Delegation from HCA)	40
DETERMINATION & FINDINGS FOR FOREIGN MILITARY SALES (FMS)			
FMS Sole Source Actions (DFARS 206.302-4(c) and 10 U.S.C. 2304(f)(2)(E))	≥$0	HCA	33
DETERMINATION & FINDINGS FOR NON-DOD CONTRACTS			
Non-DOD Contracts and Delivery Orders for Supplies and Services (DFARS 217.7802(b) – required when >SAT - PIL 2009-02)	>$150K≤$25M	DCC/CCC	3
Non-DOD Contracts and Delivery Orders for Supplies and Services (DFARS 217.7802(b) – required when >SAT PIL 2009-02)	>$25M≤$100M	PARC	12
Non-DOD Contracts and Delivery Orders for Supplies and Services (DFARS 217.7802(b) – required when >SAT PIL 2009-02)	>$100M≤$500M	HCA	26
Non-DOD Contracts and Delivery Orders for Supplies and Services (DFARS 217.7802(b) – required when >SAT PIL 2009-02)	>$500M	DASA(P)	86
DETERMINATION & FINDINGS FOR SINGLE AWARD TASK ORDER CONTRACTS (SATOCS)			
D&F for use of Single Award Task/Delivery Order Contracts (FAR 16.504 (c)(1)(ii)(D)(1)(i), (ii) & (iii) & DFARS216.504)	>$103M	SPE	114
D&F for use of Single Award Task/Delivery Order Contracts (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	114

DOCUMENT & REGULATORY CITE(S)	DOLLAR THRESHOLD	APPROVAL AUTHORITY	APPROX. TOTAL APPROVAL DAYS
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	15
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	KO	7
Justification and Approval (FAR 6.304(a)(2)) (This includes sole source actions for FMS)	>$650K≤$12.5M	PARC-Level Special Comp Advocate (SCA)	19
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	HQ DOC	33
Sole Source Award to 8(a) (FAR 6.204 & 15 U.S.C. 637(a))	>$20M≤$85.5M	HQ DOC	33
Justification and Approval (FAR 6.304(a)(4))	>$85.5M	SPE	151
MISCELLANEOUS ACTIONS			
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	19
Use of Letter Contracts Limitations (FAR 16.603-3, DFARS 216.603-3)	≥$0	PARC	7
Use of Undefinitized Contract Actions (UCAs) (DFARS 217.7400, 217.7402 Exceptions, & 216.603 - USACE HCA has delegated approval of UCAs to the PARC via written letter)	≥$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 (FAR32.501-2(a)(3) & AFARS5132.501-2(a)(3))	≥$0	PARC (Copy must be submitted to DASA(P))	19
Release of Long Range Acquisition Estimates (AFARS5105.404-1(a))	≥$0	PARC	19

Violations or Possible Violations of Procurement Integrity Act (FAR 3.104-7/AFARS 5103.104-7)	≥$0	PARC	40
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	19
Award/Extension of Contracts for ≥18 Months for a Vessel, Aircraft or Vehicle Lease, Charter or Similar Agreement (DFARS 207.470(b))	≥$0	PARC	28
Use of Fixed-Ceiling-Price Contract with Retroactive Price Determination (applicable to R&D only, refer to FAR 16.206-3(d))	≤$150K	PARC	19
Use of Alternate Structured Approach in Determining Profit or Fee Objectives (DFARS 215.404-4(c)(2)(C)(*2*))	≥$0	PARC	19
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	40
Approve substitution of a surety bond (FAR 28.106-2)	≥$0	PARC	19
Issuance of a Personal Services Contract (D&F Required IAW DFARS 237.104(b)(iii)(A))	≥$0	HCA	33
Exceptions to Policy at FAR 3.601 & 3.602 Contracts with Government Employees or Organizations Owned by Government Employees	≥$0	HCA	33
Buy American Act--Construction Materials Exception (AFARS 5125.202(a)(1) and (a)(2))	≥$0	HCA	33
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	40

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 ≥$500K<$50M ≥$50M<$250M	BOB or "Peer" Designated by DCC/CCC DCC/CCC PARC (thru RCC)	5 10 15
COMPLIANCE REVIEWS			
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 HCA or Higher Peer Review)*	≥$250M	PARC (thru RCC)	15
PEER REVIEWS **(AT HCA LEVEL AND ABOVE - Separate from Compliance Reviews)**			
Non-Competitive Acquisitions – Prior to Entering Negotiations & Prior to Contract Award	≥$250M<$500M ≥$500M	HCA (thru DOC) DPAP (thru HCA & DASA(P))	15 45-60
Competitive Acquisitions – Prior to Solicitation Issuance; Prior to Requesting Final Proposal Revisions; & Prior to Contract Award	≥$250M<$1B ≥$1B	HCA (thru DOC) DPAP (thru HCA & DASA(P))	15 45-60
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	19
Ratify Unauthorized Commitment (AFARS5101.602-3)	>$100K	HCA	33

DOCUMENT & REGULATORY CITE(S)	DOLLAR THRESHOLD	APPROVAL AUTHORITY	APPROX. TOTAL APPROVAL DAYS
WAIVERS			
Use of Forward Pricing Rate Agreements Waiver (DFARS 215.407-3(b)(i))	≥$700K	PARC	19
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	19
Use of "Insurance--Liability to Third Persons" Clause - Applicable to Cost Reimbursement Contracts Waiver (DFARS 228.311-1)	≥$0	PARC	40
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	15
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	54

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	114
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	114
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≤$7.777M	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) *(Submit to PARC for reporting and best practices)*	$7.777M≤$15M	RCC	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)	>$15M	PARC	40

APPENDIX 6-1

AFTER-THE-FACT J&A UPWARD REPORTING FORM

After-The-Fact J&A Upward Reporting Form

1. Contracting Officer: _____

   E-Mail: _____

   Telephone No.: _____

2. Center/District 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):

   - Explain why a J&A cannot be prepared and submitted at this time:

   - Estimated Dollar Value: _____

   - Contract type (e.g.; FFP, T&M): _____

   - Date of Award: _____

5. Date verbal notification provided to SCA or ASCA (PARC): _____

6. Date verbal approval received :_____

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

Note: a. Actions over $650,000 up to $12,500,000, the J&A must be submitted within 10 calendar days after verbal notification to the SCA or ASCA (PARC).

b. Actions over $12,500,000, the J&A must be submitted within 5 calendar days after verbal notification to the SCA or ASCA (PARC), for timely processing of higher level approval.

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 Procurement Instruction Letter (PIL) 2008-07-01, dated 11 Jul 2008, subject: Justification of Procurement Method.

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

_____
XXXXX X. XXXXX
Office of Counsel

USACE ACQUISITION INSTRUCTION (UAI)

APPENDIX 6-3

J&A CHECKLIST &
LINK TO DASA(P) J&A SOP 13-01

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: Competition Advocate.
>$12.5 Million to $85.5 Million: HCA or Designee.
>$85.5 Million: Agency Senior Procurement Executive.

Thru AFARS Revision #26
Dated October 1, 2012

USACE ACQUISITION INSTRUCTION (UAI)

APPENDIX 8-1

LIMITED SOURCE J&A TEMPLATE

1. Pursuant to Defense Federal Acquisition Regulation Supplement (DFARS) 208.405-70 entitled, “Additional Ordering Procedures”, subparagraphs (b), each order that exceeds $150,000 shall be placed on a competitive basis in accordance with DFARS 208.405-70(c), unless the requirement is waived on the basis of a justification that is prepared and approved in accordance with Federal Acquisition Regulation (FAR) 8.405-6 and includes a written determination that--

   a. A statute expressly authorizes or requires that the purchase be made from a specified source; or

   b. One of the circumstances described at FAR 16.505(b)(2)(i) through (iii) applies to the order. Follow the procedures at DFARS PGI 216.505-70 if FAR 16.505(b)(2)(ii) or (iii) is deemed applicable.

2. Pursuant to DFARS 216.505-70 entitled “Orders Under Multiple Award Contracts” subparagraph (b), each order that exceeds $150,000 shall be placed on a competitive basis in accordance with paragraph (c), unless the requirement is waived on the basis of a justification that is prepared and approved in accordance with FAR 8.405-6 and includes a written determination that--

   a. A statute expressly authorizes or requires that the purchase be made from a specified source; or

   b. One of the circumstances described at FAR 16.505(b)(2)(i) through (iv) applies to the order. Follow the procedures at PGI 216.505-70 if FAR 16.505(b)(2)(ii) or (iii) is deemed applicable.

3. The following guidance is provided for justification and approvals prepared in accordance with FAR 8.405-6.

   a. Pursuant to FAR 8.405-6, orders placed under Federal Supply Schedule (FSS) are exempt from the requirements in Part 6. However, the Contracting Officer must justify his/her action when restricting consideration under the following circumstances:

      (1) Competition is restricted to at least three schedule contractors, see FAR 8.405-1 or 8.405-2 or,

      (2) A specific brand name product, peculiar to one manufacturer is required.

4. Circumstances that may justify restrictions cited in paragraph 3 (a) 1 and 2 above include:

   a. Only one source is capable of responding due to the unique or specialized nature of the work.

b. The new work is a logical follow-on to an original Federal Supply Schedule order provided that the original order was placed in accordance with the applicable Federal Supply Schedule ordering procedures.

c. An urgent and compelling need exists and following the ordering procedures would result in unacceptable delays.

d. Ordering activities shall procure such requirements only if the need to do so is justified in writing and approved at the levels specified at FAR 8.405-6(f) and (h)(2) and (3).

e. See FAR 8.405-6(b)(3), for posting requirements.

5. Justifications are required for brand name purchases when the following applies.

a. The item is peculiar to one manufacturer (e.g., a particular brand name, product, or a feature of a product, peculiar to one manufacturer).

b. A brand name item, whether available on one or more schedule contacts, is an item peculiar to one manufacturer.

c. Brand name specifications shall not be used unless the particular brand name, product, or feature is essential to the Government's requirements, and market research indicated other companies similar products, or products lacking the particular feature, do not meet, or cannot be modified to meet, the agency's needs.

d. For proposed orders exceeding $25,000, but not exceeding the simplified acquisition threshold, the ordering activity contracting officer shall document the circumstances when restricting consideration.

6. The format for Limited Sources Justification and Approval can be the same format as the basic J&A or in compliance with FAR 8.405-6(g)(2) except, at the top of the document the title should read "Limited Sources Justification and Approval".

USACE ACQUISITION INSTRUCTION (UAI)

APPENDIX 15-1

D&F SAMPLE

DETERMINATION AND FINDINGS

Authority to Use Non-Voting Contractor Support for IDIQ MATOC
Healthcare Facilities for U.S. Air Force Medical Service
Contracts WXXXXX-04-D-0010 thru 13, Task Order RFP 0035

Upon the basis of the findings and determination which I hereby make pursuant to the authority of 41 U.S.C. 419 (as implemented by Federal Acquisition Regulation Subparts 37.203 and 37.204 and AFARS Subpart 5137.204) contractor support may be utilized for the proposed contract described below.

FINDINGS

1. Background: The US Air Force Medical Systems (AFMS) has been tasked to conduct an acquisition for the provision of medical service support to active members and their families. AFMS has implemented a Program Management Plan to authorize the U.S. Army Corps of Engineers (USACE) to act as the proponent contracting agency in support of the nationwide SRM initiative. The IDIQ MATOC provides facility sustainment, restoration and modernization (SRM), to include military construction (MILCON), repair, and maintenance of hospitals, clinics, administrative buildings, health facilities, warehouses, veterinary clinics, ancillary facilities and wellness centers. The execution of this program/contract may cross USACE division/district geographical boundaries, and may include Operations & Maintenance (O&M), MILCON, (Military Construction) and BRAC (Base Realignment and Closure) funded projects. The Nationwide Unrestricted Multiple Award Task Order contract will be in effect from base year 2004 to option year 2008. A fair opportunity source selection process will be conducted in support of this task order acquisition.

2. Program Goals: Continuance of program through a fair opportunity selection process under an existing Unrestricted MATOC for the 88th Medical Group, Wright Patterson AFB, near Dayton, Ohio. The task order requirement includes considerable renovation, 60,000sf over-all, and 500sf of new construction that will address the following problem areas:

- Emergency Department, Outpatient Records & part of an Outpatient Clinic (base bid)

- Inpatient Medical Unit, Surgical In-patient Unit, ENT/Audiology Department, Prenatal Clinic, Optometry & Ophthalmology, Hematology/Oncology Department, In-Patient Medical Records (Option 1)

- Graduate Medical Education (GME) Training Center (Option 2)

- Initial Outfitting (Option 3)

3. Discussions: The Air Force, our customer, has requested (per attached email messages) that Jerry Growler be utilized as an advisor to the AFMS MATOC Source

Selection Board (SSEB) for this acquisition. Offerors have been informed via an amendment to the RFP that a non-Government advisor will assist in the evaluation. The use of a non-Government advisor will be strictly controlled. He will have access to only those portions of the proposals and source selection information that is needed to perform SSO duties; and he will not serve as a voting member of the Source Selection Organization (SSO), or participate in rating proposals or recommending a selection. Mr. Growler will be required to sign a Non-Disclosure Agreement and Source Selection Participation Agreement for the unrestricted MATOC task order solicitation. Although there are other USACE employees outside the Seattle District that could perform this duty, the Health Facilities Division has identified Mr. Jerry Scotter as the focal point for the Air Force Health Facilities of modernization at the Wright Patterson Medical Center. Accordingly it is requested that the following non-Government advisor be utilized in the evaluation of the proposals.

Contractor Organization: ABC Company
Individual: Mr. Jonathan Growler, P.E.

The Air Force Health Facilities Division hired, under the ABC Company contract, Mr. Jerry Scotter for the specific purpose of project manager and quality assurance for all Air Force Medical Center projects. His participation as a non-voting advisor on the Wright Patterson Clinical Renovation Source Selection Evaluation Board (SSEB) will only entail a technical advisory role related to the source selection, excluding any consensus ruling and disclosure of past performance information. Mr. Growler has the historical, as well as current detailed knowledge on the Gateway to Healthcare II project, which is specified as a requirement in his statement of work under his Air Force contract. Mr. Growler supports AFMS as the Program Manager Health Facilities Office, Wright Patterson AFB, OH, under ABC Company Contract. Kenneth Carleton is the Contracting Officer and is certifying by signature of this document that performing the services identified within this D&F are within scope of the contract that Mr. Growler is performing under. ABC Company, the prime contractor that Mr. Growler is performing PM services under, does not participate in any partnering, sub-contracting, or other agreements with any of the firms included under the AF MATOC pool. In addition, ABC Company is not organizationally related to any of the firms included under the AF MATOC pool.

Mr. Growler is involved with the project management of Wright Patterson Hospital on a daily basis and has detailed in-depth knowledge of all aspects of the facility. Additionally, he is the only individual who has participated in the full range of renovation projects and new construction that includes:

- Programming
- Design and Technical Reviews
- Project Phasing
- Medical Facility 5 Year Planning and Prioritization
- MATOC Contract RFP Development and Review
- Response to contract RFIs

- Medical Facility Maintenance and Repair
- Construction Management
- Cost Benefit Analysis
- MEDJOC Contract Review and Negotiation
- Medical Facility Maintenance and Repair Contract Development and Negotiation
- Medical Facility Contract Management

Mr. Growler is a subject matter expert in the Design and Construction of Healthcare facilities in the following areas:

Factor/Sub-factor & Specific area(s) to be evaluated:

Personnel Qualifications	Management Capability
Risk	Betterments
Teamwork	Technical Requirements

Mr. Growler possesses unique insight into, and can adequately represent, the requirements of the SSEB as synthesized with the overall RFP goals and objectives. Such an understanding is critical to determining if Contractors meet or exceed the minimum technical requirements as stated within the solicitation. As PM, Mr. Growler represents the facility on critical programmatic matters, and is the most qualified, logical individual to represent the Air Force as a non-voting member of the SSEB for this Unrestricted MATOC task order.

Under FAR 7.503(b) (12) (ii) participating as a voting member on a source selection board is an inherently Governmental function. The prohibition found under the FAR does not apply to non-voting members of the source selection board. The use of Non-Government advisors will be strictly controlled.

The source selection information to be released to Mr. Growler will be strictly controlled by the Contracting Officer. In order to further abide by FAR Subpart 9.5, “Organizational Conflicts of Interest,” Mr. Growler will sign a statement stating that he will not enter into any AF MATOC related agreements with any AF MATOC Contractors to include subcontractors and will refrain from disclosing proprietary information to unauthorized personnel.

The chairperson of the Source Selection Evaluation Board (SSEB) will monitor Mr. Growler’s activities while in the evaluation area. Mr. Growler’s support will be limited to specific tasks on an as needed basis, and only in those areas where Government expertise is not otherwise available. After Mr. Growler has completed his particular area of evaluation, he will be released from the evaluation process. Mr. Growler will not have access to the Price section of the proposal.

PARC CONCURRENCE

CONCUR:_____ Date: _____
XXXX X. XXXXXX
PARC Counsel

CONCUR:_____ Date: _____
XXXXX X. XXXXXX
Principal Assistant
Responsible for Contracting

DETERMINATION

Upon the basis of the findings above, I hereby determine, pursuant to the Federal Acquisition Regulation (FAR) Subpart XXXX, that [insert the appropriate description of what is being determined etc] is both necessary and justified.

_____ Date

_____ SIGNATURE BLOCK OF APPROVAL AUTHORITY

APPENDIX 15-2

NAVFAC/USACE PAST PERFORMANCE QUESIONNAIRE (PPQ)
INSTRUCTIONS FOR IMPLEMENTATION
AND FORM

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 and resume.

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 17-1

DETERMINATION & FINDINGS (D&F)
FOR CERTIFICATION OF REQUIREMENTS FOR PROPER USE OF NON-DOD CONTRACTS
ASSISTED ACQUISITION
TEMPLATE

1. References:

   a. Memorandum, Director, Defense Procurement and Acquisition Policy, January 18, 2008, Subject: Interagency Acquisition.
   b. Army Policy, dated 12 Jul 05, Subject: Proper Use of Non-Department of Defense (Non-DoD) Contracts.

2. This certification relates to an "assisted acquisition" under the Army policy referenced above. An "assisted acquisition" is a contract awarded, or a task or delivery order placed, on behalf of the Army by a non-DoD agency.

Findings

3. Requirement Information.

   a. Description of services/supplies: (add information here)

   b. Non-DoD Contracting Agency: (add information here)

   c. Contracting Officer at Non-DoD Contracting Agency (name and phone):

   d. Non-DoD Contract Number: (add information here)

4. I certify that the proposed use of this non-DoD contract is in the best interest of the Army considering the following factors:

   a. Availability of a suitable DoD contract vehicle. (EXPLAIN WHY A SUITABLE DOD CONTRACT IS NOT AVAILABLE FOR THIS ACQUISITION. INCLUDE DESCRIPTION OF MARKET RESEARCH.)

   b. Ability to satisfy customer requirements. (EXPLAIN HOW THE ORDER WILL SATISFY CUSTOMER REQUIREMENTS.)

   c. Delivery schedule. (EXPLAIN HOW THE ORDER WILL SATISFY DELIVERY SCHEDULE REQUIREMENTS.)

   d. Cost effectiveness and price (including discounts and fees charged by contract holder). (EXPLAIN WHY THE ORDER IS COST EFFECTIVE, AND THE PRICE IS REASONABLE.)

   e. Contract administration (including ability to provide contract oversight). (EXPLAIN PLAN FOR CONTRACT ADMINISTRATION, INCLUDING OVERSIGHT OF CONTRACT PERFORMANCE.)

   f. Socio-economic opportunities (e.g., small business (SB), HUBZone, small disadvantaged business, service disabled veteran owned SB). (DESCRIBE THE CONSIDERATION OF SOCIO-ECONOMIC OPPORTUNITIES.)

   g. Comparative costs of using a DoD, as opposed to a non-DoD, contractual instrument – to include administrative fees charged by the non-DoD agency. (EXPLAIN THE COST COMPARISON.)

h. Other applicable considerations. (DESCRIBE ANY OTHER CONSIDERATIONS SUPPORTING THE USE OF A NON-DOD CONTRACT.)

i. For actions under the authority of the Economy Act I have verified the Intergovernmental Support Agreement dated (ADD THE APPROVAL DATE) has been approved by at the Senior Executive Service, Flag, or General Officer level. *(A copy may be attached*)

Determination:

5. I further determine and certify that:

a. The supplies and/or services to be provided are within the scope of the non-DoD contract identified above.

b. The proposed funding is appropriate for the procurement and is being used in a manner consistent with any appropriation limitations.

c. All unique terms, conditions, and requirements will be incorporated into the order or contract, as appropriate, to comply with all applicable DoD-unique statutes, regulations, directives and other requirements.

d. The review and approval procedures set forth in paragraph 4 of the Army Policy referenced above, on Proper Use of Non-Department of Defense (Non-DoD) Contracts, have been completed and are a part of this D&F.

6. A written concurrence from the non-DoD contracting officer at the servicing organization, that the supplies and/or services to be provided are within the scope of the non-DoD contract, is attached.

Project Manager

_____	_____
Name	Signature
_____	_____
Title / Organization	Date

Funds Authorizing Official

_____	_____
Name	Signature
_____	_____
Title / Organization	Date

Requiring Activity Legal Counsel

_____	_____
Name	Signature
_____	_____
Title / Organization	Date

DoD Contracting Officer

_____	_____
Name	Signature
_____	_____
Title / Organization	Date

Requirements Certifying Official: (06/GS-15 level or higher)

_____	_____
Name	Signature
_____	_____
Title / Grade / Organization	Date

Contracting Approving Official

_____	_____
Name	Signature
_____	_____
Organization	Date

USACE ACQUISITION INSTRUCTION (UAI)

APPENDIX 17-2

DETERMINATION & FINDINGS (D&F) FOR CERTIFICATION OF REQUIREMENTS FOR PROPER USE OF NON-DOD CONTRACTS **DIRECTED** ACQUISITION TEMPLATE

1. References:

   a. Memorandum, Director, Defense Procurement and Acquisition Policy, January 18, 2008, Subject: Interagency Acquisition.
   b. Army Policy, dated 12 Jul 04, subject: Proper Use of Non-Department of Defense (Non-DoD) Contracts.

2. This certification relates to a "direct acquisition" under the Army Policy referenced above. A "direct acquisition" is a task or delivery order placed by a DoD official under a contract awarded by a non-DoD agency.

Findings

3. Requirement Information:

   a. Description of services/supplies: (add information here)

   b. Non-DoD Contracting Agency: (add information here)

   c. Point of Contact at Non-DoD Contracting Agency (name and phone): (add information here)

   d. Non-DoD Contract Number: (add information here)

4. I certify that the proposed use of this non-DoD contract is in the best interest of the Army considering the following factors:

   a. Availability of a suitable DoD contract vehicle. (EXPLAIN WHY A SUITABLE DOD CONTRACT IS NOT AVAILABLE FOR THIS ACQUISITION. INCLUDE DESCRIPTION OF MARKET RESEARCH.)

   b. Ability to satisfy customer requirements. (EXPLAIN HOW THE ORDER WILL SATISFY CUSTOMER REQUIREMENTS.)

   c. Delivery schedule. (EXPLAIN HOW THE ORDER WILL SATISFY DELIVERY SCHEDULE REQUIREMENTS.)

   d. Cost effectiveness and price (including discounts and fees charged by contract holder). (EXPLAIN WHY THE ORDER IS COST EFFECTIVE, AND THE PRICE IS REASONABLE.)

   e. Contract administration (including ability to provide contract oversight). (EXPLAIN PLAN FOR CONTRACT ADMINISTRATION, INCLUDING OVERSIGHT OF CONTRACT PERFORMANCE.)

   f. Socio-economic opportunities (e.g., small business (SB), HUBZone, small disadvantaged business, service disabled veteran owned SB). (DESCRIBE THE CONSIDERATION OF SOCIO-ECONOMIC OPPORTUNITIES.)

   g. Comparative costs of using a DoD, as opposed to a non-DoD, contractual instrument – to include administrative fees charged by the non-DoD agency. (EXPLAIN THE COST COMPARISON.)

h. Other applicable considerations. (DESCRIBE ANY OTHER CONSIDERATIONS SUPPORTING THE USE OF A NON-DOD CONTRACT.)

i. The Intergovernmental Support Agreement dated (ADD THE APPROVAL DATE) for contracting with this agency has been approved by at the Senior Executive Service, Flag, or General Officer level.

Determination:

5. I further determine and certify that:

a. The supplies and/or services to be provided are within the scope of the non-DoD contract identified above.

b. The proposed funding is appropriate for the procurement and is being used in a manner consistent with any appropriation limitations.

c. All unique terms, conditions, and requirements will be incorporated into the order or contract, as appropriate, to comply with all applicable DoD-unique statutes, regulations, directives and other requirements.

d. The review and approval procedures set forth in paragraph 4 of the Army Policy referenced above, on Proper Use of Non-Department of Defense (Non-DoD) Contracts, have been completed.

6. **(If services are being acquired, and the contracting officer in the contracting office issuing the task order does not have access to the non-DoD contract, including the statement of work, then the Contracting Officer shall include the following statement:)** A written concurrence from the non-DoD contracting officer at the servicing organization, that the services to be provided are within the scope of the non-DoD contract, is attached.

7. Written coordination has been/shall be obtained from USACE Office of Chief Counsel prior to placement of the order for services; and, legal review of orders for supplies shall be in accordance with USACE contracting procedures for legal review of orders for supplies.

Project Manager

_____	_____
Name	Signature
_____	_____
Title / Organization	Date

Funds Certifying Official

_____	_____
Name	Signature
_____	_____
Title / Organization	Date

Legal Review

_____	_____
Name	Signature
_____	_____
Title / Organization	Date

Contracting Officer

_____	_____
Name	Signature
_____	_____
Title / Organization	Date

Requirements Certifying Official: (06/GS-15 level or higher)

_____	_____
Name	Signature
_____	_____
Title / Organization	Date

Contracting Approving Official

_____	_____
Name	Signature
_____	_____
Organization	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 Contract Language

Personally Identifiable Information (PII) Breach Contractual Language
SAMPLE

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 33-1
(A, PART 3)

CONTRACT REQUESTS, CLAIMS AND APPEALS

TABLE OF CONTENTS

SUBPART 100 - AUTHORITIES
A3-100 Scope of Subpart.
A3-101 Contracting Officers.
A3-102 Armed Services Board of Contract Appeals.
A3-103 Federal Courts.

SUBPART 200 - CLAIMS
A3-200 Scope of Subpart.
A3-201 Background.
A3-202 Policy.
A3-203 Claim Processing Procedures.
A3-204 Affirmative Government Claims.
A3-205 Maritime Contract Claims.
A3-206 Maintenance of Records.
A3-207 Claims Management and Case Tracking.

SUBPART 300 - PROCEDURES FOR HANDLING APPEALS AT THE ARMED SERVICES BOARD OF CONTRACT APPEALS
A3-300 Scope of Subpart.
A3-301 Notice of Appeal.
A3-302 Nature of Appeals - General.
A3-303 Appeal File (Rule 4).
A3-304 Trial Attorneys.
A3-305 Pleadings.
A3-306 Motions.
A3-307 Briefs.
A3-308 Discovery.
A3-309 Alternative Dispute Resolution (ADR).
A3-310 Settlement.
A3-311 Decisions.
A3-312 Attorney Fee Claims.
A3-313 Appeals Management and Case Tracking.

SUBPART 400 - DIRECT ACTIONS IN THE UNITED STATES COURT OF FEDERAL CLAIMS
A3-400 Scope of Subpart.
A3-401 Responsibilities.
A3-402 Notice of Filing.
A3-403 Litigation Report.
A3-404 Significant Events.
A3-405 Alternative Dispute Resolution (ADR).
A3-406 Settlement.
A3-407 Decisions.
A3-408 Case Management and Tracking.

SUBPART 500 - APPEALS TO THE UNITED STATES COURT OF APPEALS FOR THE FEDERAL CIRCUIT

A3-500 Scope of Subpart.
A3-501 Notice of Appeal.
A3-502 Responsibilities.
A3-503 Significant Events.
A3-504 Oral Argument.
A3-505 Decision.
A3-506 Appeals Management and Tracking.

SUBPART 100 – AUTHORITIES

A3-100 Scope of Subpart.

This subpart sets forth the authorities of contracting officers, Division Commanders, the Armed Services Board of Contract Appeals ("ASBCA" or "Board"), and Federal courts to decide contract requests, claims and appeals. Further, the authority for Corps of Engineers' trial attorneys to represent the Government before the Board is stated.

A3-101 Contracting Officers.

The contracting officer's authority to decide or settle all claims relating to a contract is contained in FAR 33.210. A contracting officer's decision is final and conclusive and not subject to review by any forum, tribunal or Government agency, unless an appeal or suit is timely commenced (41 U.S.C. § 7103(f)). Further, in FAR 33.210, contracting officers are authorized to use Alternative Dispute Resolution (ADR) procedures under FAR 33.214 to resolve contract claims.

A3-102 Armed Services Board of Contract Appeals.

(a) Contract Disputes. The Contract Disputes Act of 1978, as amended, 41 U.S.C. §§ 7101-7109, provides that a contractor may appeal a contracting officer's final decision to the appropriate Board of Contract Appeals or to the United States Court of Federal Claims. A contractor has 90 days from receipt of a contracting officer's final decision to file an appeal with the appropriate Board of Contract Appeals. 41 U.S.C. § 7104(a). The ASBCA has been designated by the Secretary of the Army as the appropriate Board for the Corps of Engineers. The charter and rules of the ASBCA are found in DFARS, Appendix A.

(b) Real Estate Leases. The ASBCA has jurisdiction under the Contract Disputes Act for leases where the Government is the lessee. In cases not covered by the Contract Disputes Act, the Secretary of the Army has delegated authority to the Board.

(c) Correspondence. All correspondence with the ASBCA will be addressed to the Recorder, Armed Services Board of Contract Appeals, Skyline Six, 5109 Leesburg Pike, Falls Church, Virginia 22041-3208. Copies of all significant correspondence addressed to the ASBCA Recorder will be sent to the Engineer Chief Trial Attorney, HQUSACE.

(d) Delegations. The Engineer Chief Trial Attorney under a delegation from the Secretary of the Army is the authorized representative of the Secretary of the Army and has the sole authority and responsibility for the conduct and control of litigation of contract disputes for all Corps of Engineers cases docketed with the ASBCA of a value less than $3 million. AFARS 5133.212- 90(a)(2). The Assistant Judge Advocate General for Civil Law may determine on a case by case basis to delegate Corps of Engineers cases of a value of $3 million or more to the Engineer Chief Trial Attorney. 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 $100,000; for claims over $100,000 the contracting officer will, within 60 days, either issue a decision or notify the contractor of the date when a decision will be issued. For claims over $100,000, the contracting officer's final decision shall be issued within a reasonable period after the receipt of the claim. 41 U.S.C. § 7103(f)(3).

1. Contracting Officer's Final Decision. The written decision of the contracting officer may be in any appropriate form. The decision shall include a description of the claim, a reference to the pertinent contract terms, a statement of the factual areas of agreement and disagreement and a statement of the contracting officer's final decision with supporting rationale. The decision also must include a demand for payment in cases where the decision results in a finding that the contractor is indebted to the Government (affirmative Government claim). The decision must be written to inform the contractor of the facts and reasons upon which the contracting officer's conclusion is based and that the decision is final. To adequately meet the above requirements the facts shall be separately presented in a Findings of Fact section as part of the decision.

(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 $3 million. 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 $3 million. AFARS 5133.212-90(a)(2).

(c) Appeals of $3 million or more. The Assistant Judge Advocate General (TAJAG) for Civil Law may determine, on a case by case basis, to delegate Corps of Engineers cases of a value of $3 million or more to the Engineer Chief Trial Attorney. 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 36-1

Development, Review and Approval of Government Estimates Matrix

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 KO and the PDT with cost engineering representation. The PCO may request IGE if deemed necessary or appropriate. FAR 31.201

[5] "**Cost Engineering Organization**" - is the single cost engineering group located in a district/center/division designated to perform the cost engineering function. IGEs must be accurately prepared using the corporate automated cost estimating systems, e.g., latest approved version of Microcomputer Aided Cost Estimating System (MCACES) or a system previously approved by the chief of the cost engineering office. **5a** Delegated Authority is intended to be the appropriate member of the technical division performing construction contract administration and the management of that function. **5b** Delegated Authority is intended to be the appropriate member of the technical division managing the Chief of the Cost Engineering Organization.

[6] "**Project Delivery Team**" estimates prepared by the PDT shall be developed by members qualified to estimate their respective portion of the effort. Cost Engineering Organization PDT member is a viable option.

[7] "**Construction Activities"** refers to all types of work done by laborers and mechanics employed by the construction contractor or construction subcontractor on a particular building or work at the site thereof, including without limitations— Altering, remodeling, installation (if appropriate) on the site of the work of items fabricated off-site; Painting and decorating; Manufacturing or furnishing of materials, articles, supplies, or equipment on the site of the building or work; Transportation of materials and supplies between the site of the work within the meaning of paragraphs (1)(i) and (ii) of the "site of the work" definition of this section, and a facility which is dedicated to the construction of the building or work and is deemed part of the site of the work within the meaning of paragraph (2) of the "site of work" definition of this section; and Transportation of portions of the building or work between a secondary site where a significant portion of the building or work is constructed, which is part of the "site of the work" definition in paragraph (1)(ii) of this section, and the physical place or places where the building or work will remain. Includes maintenance of facilities. Per FAR 22.4

USACE ACQUISITION INSTRUCTION (UAI)

APPENDIX 37-1

ACQUISITION STRATEGY CONTENT GUIDE & CHECKLIST

(Includes AFARS Subpart 5137.590 guidance as well as emerging issues and lessons learned from prior ASSP Reviews)

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 - AAE 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? Are accompanying worksheets completed? Will the requirement to report Contracting Manpower to the CMRA database be included in the contract?

j. If this involves performance in Iraq or Afghanistan, have theater business clearances been obtained (IAW PARC Policy Alerts 08-04, 08-05)?

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 found at http:www.acq.osd.mil/se/publications.htm)

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 ID/IQ 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 Contracting Officer briefed the Director, Office of Small Business Programs on the proposed strategy? The pre-brief must be conducted prior to the formal 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; ID/IQ 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? 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? 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)

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 and PARC/Policy Alert 08-46.

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 $2,500, 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 Accounting office 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.