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Construction
Architect-Engineer Contracting in the U.S. Army Corps of Engineers

FOR THE COMMANDER:

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Purpose. This engineer pamphlet provides guidance and procedures for U.S. Army Corps of Engineers personnel contracting and managing Architect-Engineer services. It defines the related roles and responsibilities of the Government and Architect-Engineer firms in the planning, acquisition, and management of Architect-Engineer contracts.

Applicability. This pamphlet applies to all Headquarters, U.S. Army Corps of Engineers/Office of the Chief of Engineers elements, major subordinate commands, Districts, laboratories, and field operating activities responsible for acquisition and management of Architect-Engineer contracts.

Distribution statement. Approved for public release; distribution is unlimited.

Proponent and exception authority. The proponent of this pamphlet is the Headquarters, U.S. Army Corps of Engineers, Directorate of Engineering and Construction. The proponent has the authority to approve exceptions or waivers to this pamphlet that are consistent with controlling law and regulations. Only the proponent of a publication or form may modify it by officially revising or rescinding it.

* This pamphlet supersedes EP 715-1-7, dated 12 February 2012.

Summary of Change

EP 715-1-7

Architect-Engineer Contracting in the U.S. Army Corps of Engineers

This major revision, dated 12 January 2026:

- Revises all chapter content and the location of information and adds three new chapters.
- Adds a chapter on small business, task order awards, and construction phase services.
- Removes all appendixes except for B, G, H, I, L and O, which were renumbered in this pamphlet.
- Consolidates content of the former Appendixes G and I with updates that now appear in Appendix C.
- Updates content of former Appendix H, which is now in Appendix B.
- Updates acquisition timelines in former Appendix L, which is now in Appendix D.
- Updates content of former Appendix O, which is now in Appendix E.
- Updates former Appendix Y, which is now Appendix F, and adds an example project.
- Removes the Architect-Engineer Liability Process flow chart from Chapter 10, moving it to Appendix G.
- Creates the list of references in Appendix A.
- Adds the Glossary of Terms.
- Provides clarifications, updated references, and procedures throughout.

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Glossary of Terms

Chapter 1

Introduction

1-1. Purpose

This engineer pamphlet provides guidance and procedures for U.S. Army Corps of Engineers personnel contracting and managing Architect-Engine services. It defines the related roles and responsibilities of the Government and Architect-Engine firms in the planning, acquisition, and management of Architect-Engine contracts.

1-2. Distribution statement

Approved for public release; distribution is unlimited.

1-3. References

See Appendix A.

1-4. Records management (recordkeeping) requirements

a. The records management requirement for all record numbers, associated forms, and reports required by this publication are addressed in the Army Records Retention Schedule. Detailed information for all related record numbers is located on the U.S. Army Corps of Engineers (USACE) Records Management Site <https://usace.dps.mil/sites/INTRA-CIOG6/SitePages/Records-Management.aspx>. If any record numbers, forms, and reports are not current, addressed, and/or published correctly, see DA Pam 25-403 for guidance.

b. Enter Architect-Engine (A-E) past performance information into the Contractor Performance Assessment Reporting System (CPARS) per instructions at <http://www.cpars.gov>. Include copies of all interim and final evaluations in the Contracting Officer's Representative's (COR) file. The Procuring Contracting Officer (PCO) or their designee includes past performance information in the contract file per Federal Acquisition Regulation (FAR) 4.8.

1-5. Associated publications

This section contains no entries.

1-6. Availability

Access this EP on the official USACE publications web page at <http://www.publications.usace.army.mil/>.

1-7. Scope

This pamphlet is generally applicable to all types of A-E contracts. The material covers acquisition, price negotiation, and contract administration focused primarily on firm-

fixed-price contracts (FFP), as that is the type most often used in A-E contracting. FAR Parts 31, 32, and 42 and 15.4, 16.3, and 16.4 provide specific guidance on cost reimbursement (CR) contracts.

1–8. Background

The Selection of Architects and Engineers Statute (A-E Statute), Title 40 of the United States Code, Section 1101–1104 (40 USC 1101–1104) and its supplements, defines A-E services and specifies the federal policy for procuring A-E services. The A-E Statute requires public announcement of requirements for A-E services (known as a synopsis), selection of the most highly qualified (MHQ) firms based on demonstrated competence and professional qualifications, and the negotiation of a fair and reasonable price. FAR 36.6, its related supplements, and USACE Acquisition Instruction (UAI) 5136.6 implement the A-E Statute.

1–9. Responsibilities

a. Commanders are responsible for regularly evaluating the A-E contracting process in their command to confirm it is efficient and effective.

b. The Headquarters, U.S. Army Corps of Engineers (HQUSACE) Directorate of Contracting (CECT) serves as the Head of Contracting Activity (HCA) as designated by the Army Senior Procurement Executive (SPE) and comprises four distinct segments. These include:

(1) Strategic Operations Division, responsible for CECT HQ strategic and day-to-day operations involving internal and external governance; Systems Integration and Data Analytics is a headquarters element engaged in policy development, program evaluation, and acquisition workforce development.

(2) Contracting Operations Division, responsible for mission execution, program delivery, and Senior Contracting Official (SCO) acquisition document approvals.

(3) Oversight and Support Division, responsible for HCA oversight responsibilities, procurement policy, and contract execution oversight.

(4) The Office of Small Business Programs, responsible for USACE small business (SB) guidance and procedures and is composed of two segments.

(a) The headquarters element is engaged in policy development, program evaluation, and acquisition workforce development focused on SB.

(b) The regional element is composed of Small Business Professionals (SBPs) located at major subordinate commands (MSCs) and Centers and are responsible for SCO-level technical oversight, approval of SB acquisition matters, and overseeing District and Center contracting services as they relate to SB.

c. HQUSACE Directorate of Engineering and Construction (CEEC) serves as the focal point for technical equities of project delivery across the enterprise, including civil works (CW), military construction, interagency and international support services, and environmental programs. Technical aspects of engineering and construction management and contractual quality oversight are provided. The Engineering and Construction (E&C) Directorate, Construction Division:

(1) Is responsible for USACE technical guidance and procedures for A-E contracting, including maintenance of this pamphlet. The Construction Division, in coordination with the CECT and other HQUSACE elements, identifies and implements regulatory and procedural changes to improve the A-E contracting process throughout USACE.

(2) Supports CECT and SCOs in monitoring the compliance of USACE Divisions/Centers with A-E procurement regulations and this pamphlet through automated and special reports, informal coordination, conferences, training, and other appropriate methods.

(3) Serves as the Proponent for USACE Proponent-Sponsored Engineer Corps Training (PROSPECT) A-E contracting training to the USACE Learning Center; develops course materials and schedules; and maintains a solid cadre of high-performing instructors.

1-10. Training

a. Architect-Engineer Contracting, USACE PROSPECT Course Control Number 004 (<https://ulc.usace.army.mil/>), is recommended training for USACE team members involved in the acquisition, selection, and management of A-E contracting activities.

b. Fiscal Law, <https://jagu.llc.army.mil/> is recommended training to promote fiscal awareness and responsibilities associated with the acquisition and management of A-E contracts and task orders (TOs).

Chapter 2

Acquisition Planning

2-1. Principles

a. Proposed contracts for A-E services will be structured to maximize competition, provide contract opportunities for industry, and maximize SB participation while satisfying the needs of the government in the most effective, economical, and timely manner.

b. Acquisition planning for A-E services will be conducted according to the appropriate regulations at FAR Part 7 and the corresponding regulations in the Defense Federal Acquisition Regulation Supplement (DFARS), Army Federal Acquisition Regulation Supplement (AFARS), and the UAI Desk Guide (UDG).

c. Where the regulations refer to a “written” acquisition plan, this is known as a “formal” acquisition plan. Where a written acquisition plan is not required, it is known as an “informal” acquisition plan (the acquisition strategy section of the Project Management Plan, prepared consistent with ER 5-1-11, may be used as an informal acquisition plan, when appropriate). See also FAR 37.5 and the corresponding subparts in the DFARS, AFARS, and UAI for information on acquisition strategies.

d. Acquisition planning for A-E services is accomplished by the Project Delivery Team (PDT) under the leadership of a dedicated A-E Contracting team member and a dedicated Engineering Division team member, who coordinate the involvement of PDT members. The members of the PDT are Engineering, Construction, Contracting, Office of Counsel, Project Management, the SBPs, and other appropriate personnel. The Engineering team member is responsible for developing the technical elements of the acquisition documents with the Contracting team member who leads development of the acquisition documents. These dedicated team members typically have the primary role in preparing a schedule and budget and for developing the required documents, coordinating input, and addressing review comments from PDT members.

(1) Proactive identification and allocation of specialized skills, particularly for A-E evaluation boards and cost/price analysis, is required for maintaining the acquisition schedule. Securing these skilled personnel early in the process prevents delays and promotes timely project completion. The PDT should identify early a cost price analysis specialist, or someone with equivalent cost and price analysis expertise, to support the contract negotiation process and the technical team members needed for the evaluation and selection process.

(2) Engagement with the SCO early is recommended and is through a Contracting individual such as the Business Oversight Branch, Contracting Officer (KO), or Chief of the Contracting Office (CoCO) per regulation and/or policy. If the project requires SCO approval at any stage, include members of the SCO team in the first PDT meeting.

e. Funding to support PDT efforts on an A-E Indefinite Delivery Contract (IDC), Single Award Task Order Contract (SATOC), or Multiple Award Task Order Contract (MATOC) for pre-solicitation phase, solicitation phase, evaluation phase, negotiation phase, and award phase will follow CERM-F (2019-43) Memorandum, SUBJECT: Updated Accounting Policy for Single/Multiple Award Task Order Contracts (SATOC/MATOC) dated 26 June 2019. Funding for customer-specific SATOCs, MATOCs, or project-specific “C-Type” contracts is provided by the proponent needing the A-E services (customer, end user, or specific military installation).

2–2. Responsibilities

a. *General.* The Deputy for Programs and Project Management, the Chief of Engineering Division, the CoCO, the SBP, and the chiefs of other functional elements, as appropriate, within USACE (Center, District, or laboratory) having A-E contracting authority are responsible for acquisition planning for A-E services.

b. *Time standards.* Responsive acquisition services are vital to mission accomplishment, and Commanders should regularly review the A-E contracting process in their command to confirm that A-E IDCs, C-Type contracts, and TOs (issued from an IDC) are procured according to the time standards in paragraph 2–11 to the maximum extent possible.

2–3. Regulations and guidance documents

- a. 40 USC 1102 et Seq, The Selection of Architect-Engineers.
- b. FAR Part 7.1 – Acquisition Plans.
- c. DFARS Part 207.1 – Acquisition Plans.
- d. DFARS Policy, Guidance, and Instruction (PGI) Part 207.1 – Acquisition Plans.
- e. AFARS Part 5107 – Acquisition Planning.
- f. AFARS Part 5137.590-6 – Acquisition Strategy Content.
- g. UAI Part 5107 – Acquisition Planning and UDG Attachment 1, Document Review and Approval Matrix.
- h. UAI Part 5137.5 – Management Oversight of Service Contracts.
- i. USACE EM 5-1-11.

2–4. Definition of Architect-Engineer services

- a. *Regulatory requirements.* A-E services are defined in 40 USC 1102 as:

(1) Professional services of an architectural or engineering nature, as defined by state law, if applicable, that are required to be performed or approved by a person licensed, registered, or certified to provide those services described in this paragraph;

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

(3) Those other professional services of an architectural or engineering nature or incidental services that members of the architectural and engineering professions (and individuals in their employ) may logically or justifiably perform, including studies, investigations, surveying and mapping, tests, evaluations, consultations, comprehensive planning, program management, conceptual designs, plans and specifications, value engineering, construction phase services (CPS), soils engineering, drawing reviews, preparation of Operation and Maintenance (O&M) manuals, and other related services.

b. Additional Federal Acquisition Regulations Architect-Engineer definition. See also FAR 36.601-4 for what KOs should consider A-E services subject to FAR 36.6.

c. Environmental services. Appendix B provides further guidance on which types of environmental services should typically be procured as A-E services.

d. Surveying, mapping, and geospatial services. Appendix C provides specific discussion and guidance on the procurement of surveying, mapping, and geospatial services.

e. Design-build. “Design-build” (DB) means combining design and construction in a single contract awarded to one contractor. See 10 USC 3241. A DB contract is procured as a construction contract consistent with either two-phase DB selection procedures (10 USC 3241) or one-step, turn-key procedures, as authorized by 10 USC 2862 and agency procedures at UAI 5136.303-100. However, the preparation of a DB Request for Proposal (RFP) is considered A-E services and must be procured using Selection of A-E procedures. See FAR 36.209, AFARS 5136.209, and UAI 5136.209 for information on awarding a construction contract to the firm that designed the project.

2–5. North American Industry Classification System

The North American Industry Classification System (NAICS) classifies various businesses and industries (Table 2–1). The Small Business Administration (SBA) establishes a small-business size standard for each NAICS code. Work principally defined by the following NAICS codes are typically procured as A-E services.

Table 2-1
List of Architect-Engineer North American Industry Classification System codes*

Industry	NAICS
Architectural Services	541310
Landscape Architectural Services	541320
Engineering Services	541330
Geophysical Surveying and Mapping Services	541360
Surveying and Mapping (except Geophysical) Services	541370
Interior Design Services	541410
Environmental Consulting Services	541620

*Note: Current NAICS size standards are in Title 13 of the Code of Federal Regulations (CFR), Chapter 1, Part 121, Section 121.201 (13 CFR 121-201).

2-6. General considerations

a. See FAR Part 7 and the related supplements for general requirements for acquisition planning, and FAR 16.5 for specific requirements for IDCs. Effective acquisition planning (informal or formal) determines the nature, type, scope, and number of contracts required for a project, program, or organization, including contracts for A-E services. Acquisition planning considers the nature, complexity, and dollar value of the anticipated work, schedule and urgency, budget and funding stream, industry capabilities, and SB opportunities. Unrelated or dissimilar work is not to be consolidated in the same contract.

b. During the planning phase of each acquisition, the most appropriate Product Service Code (PSC) is selected based on the scope of work. The Product or Service Code data element code should be selected based on the predominant product or service that is being purchased. PSC codes at the TO level should be chosen based on the TO's scope of work. See the Product and Service Code manual at <https://www.acquisition.gov/psc-manual> for a complete list of PSC codes.

2-7. Small business considerations

See Chapter 3 for a discussion of the SB considerations for A-E contracts, and DFARS 219.201(c) for general policy on coordination with the SBP. Each proposed synopsis for A-E services must be coordinated internally with the local District/Center SBP.

2–8. Acquisition planning and acquisition strategy for Architect-Engineer contracts

a. Overall acquisition strategy.

(1) As required by UAI 5107.102, the Overall Acquisition Strategy (OAS) covering all anticipated contracts over \$1 million (\$1M) is prepared annually, and a formal written acquisition plan is prepared, as appropriate, for an individual acquisition.

(2) Each District/Center prepares an overall A-E acquisition strategy that indicates the total number of planned A-E contracts to be used/acquired for a given year. The District/Center's A-E-specific annual strategy identifies the types of contracts, qualifications, monetary value, and contract time limits. The District/Center annual A-E acquisition strategy should reflect an equitable distribution of different business sizes and locations based on anticipated workload.

(3) The annual A-E acquisition strategy rolls into the Regional Acquisition Board reporting (ER 5-1-13), where anticipated workload, available capacities, and expirations of ongoing contracts determine the need to award new contracts.

b. Limitations on ordering periods.

(1) As provided in UAI 5117.204, the total of the basic and option periods of an A-E services contract, including the total ordering period of an A-E IDC (MATOCs and SATOCs), may exceed 5 years only with SCO approval. For USACE A-E IDCs, a total ordering period of 5 years is the standard. However, due to the specialized nature of hazardous, toxic, and radioactive waste (HTRW) work, A-E IDCs for HTRW programs have a 5-year ordering period with additional options of up to 2 years. This facilitates USACE knowledge retention, competency, and efficiency with new IDC acquisitions and promotes A-E firm participation, thereby maintaining an industrial base.

(2) Additionally, as provided in DFARS 217.204(e)(i), the base ordering period of an A-E IDC may be for any period up to 5 years and may be subsequently extended for one or more successive periods per an option provided in the contract or a modification of the contract. Either way, the total ordering period must not exceed 10 years unless the head of the agency determines in writing that exceptional circumstances require a longer ordering period. DFARS 217.204(e)(iii) further provides that approval must be obtained from the SPE before issuing an order against an A-E IDC if performance under the order is expected to extend more than 1 year beyond the 10 -year limit or extended limit described in DFARS 217.204(e)(i).

(a) Therefore, careful acquisition planning is necessary to verify orders issued against A-E IDCs do not violate DFARS 217.204(e)(iii). See AFARS 5117.204 and Appendix GG in AFARS 5117.174, for delegation information for these approvals.

(b) A common misconception is that this performance period limitation begins with the TO award date. However, the clock starts from the original A-E IDC award date, not the date of the TO award.

(c) TOs must consider the time elapsed since the IDC award date when doing a check for compliance with DFARS 217.204(e)(iii). It is recommended the projected performance period of each TO be added to the time elapsed since the A-E IDC award to confirm compliance.

c. Architect-Engineer acquisition plans for indefinite delivery contracts and stand-alone (C-Type) contracts.

(1) A-E acquisitions for SATOCs, MATOCs, and individual C-Type contracts require a written acquisition plan when the value exceeds the thresholds in DFARS 207.103. The requirements for a written acquisition plan are contained in FAR 7.1, DFARS 207.103, AFARS 5107.103, and UAI 5107.103-90 and are driven by contract value, length of contract, and geographic footprint. The content required for a written acquisition plan follows the format in FAR 7.105 and DFARS 207.105. Thresholds for approval are in the UAI/UDG.

(2) Acquisition plans will be fully coordinated among the stakeholders, including the functional elements. Consideration of services required, design-bid-build (DBB), DB (see ER 1180-1-9), and other delivery methods leading to a construction contract solicitation and award are part of the acquisition planning process.

d. Architect-Engineer acquisition strategies for indefinite delivery contracts and stand-alone, C-Type contracts.

(1) An A-E acquisition strategy is required for SATOCs, MATOCs, and C-Type contracts with a value greater than the simplified acquisition threshold (SAT) (AFARS 5137.590-3; UAI 5137.590-3). See UDG Attachment 1 for the different acquisition approval thresholds. See AFARS 5137.590-6 for the content required for an acquisition strategy.

(2) Note the acquisition strategy requirement under AFARS 5137.5 is in addition to the OAS requirement in UAI 5107.102(b). The annual OAS relates to the total anticipated workload of the District/Center, whereas the acquisition strategy relates to a specific program/contract/TO requirement. Therefore, the preparation of the OAS document does not replace the AFARS requirement for an acquisition strategy.

(3) This acquisition strategy requirement does not apply to individual TOs issued under IDC contracts and similar ordering agreements wherein the decision authority has already approved the acquisition strategy and the TO is within the scope of the contract (AFARS 5137.590-2(d)).

e. Combined Acquisition Strategy/Acquisition Plan. Prepare a Combined Acquisition Strategy/Acquisition Plan where the requirement exceeds the thresholds identified in UDG Attachment 1. A Combined Acquisition Strategy/Acquisition Plan must comprehensively address all requirements outlined in FAR 7.105, DFARS 207.105, AFARS 5137.5, and applicable USACE supplements.

2-9. Contract types

a. *General.* The KO is responsible for selecting the appropriate contract type (see FAR Part 16) in coordination with technical and legal personnel. FAR 16.1 provides general policies and guidance on selecting the contract type. A-E services are generally awarded as FFP. See FAR 16.202.

b. *Firm-fixed-price contract.* An FFP contract is appropriate when the statement of work (SOW) can be well defined and there is sufficient time to announce, select, negotiate, and award a contract. An FFP contract minimizes the government's risk and administrative burden. Other types of FFP contracts may be appropriate at times. See FAR 16.2.

c. *Cost-reimbursement contract.* A CR contract (FAR 16.3) can be used when uncertainties in the SOW do not permit the costs of performance to be estimated with sufficient reliability to use an FFP contract. A CR contract must not be used as a substitute for developing a detailed SOW or providing adequate procurement lead time. The most common CR contract types used for A-E services in USACE are cost plus fixed fee (FAR 6.306), where the contractor receives a fixed fee, independent of actual costs. Use of a CR contract type must be approved consistent with FAR 16.301-2(b) and DFARS 216.301-1. See UDG Attachment 1 for approval thresholds to utilize CR contract type.

d. *Time and materials/labor-hour contract.* A time and materials, labor-hour (TM/LH) contract or TO (FAR 16.601 and 16.602) compensates the contractor for actual hours worked at predetermined rates. This contract type does not provide a financial incentive for a contractor to perform efficiently, and hence, is one of the least preferred contract types. Somewhat similar to a CR contract, a TM/LH contract may be applicable when the extent or duration of work or anticipated costs cannot be estimated with any reasonable degree of confidence. TM/LH contracts require higher level approval at SCO or HCA, extensive justification, and time to obtain approval for use (DFARS 216.601(d)(i)(A)).

(1) A TM/LH contract, TO, or an option on a A-E DBB TO might be appropriate for CPS support with the Designer of Record (DOR) to minimize construction schedule impacts and liquidated damages when modifications to designs and stamped drawings are anticipated but cannot be firmly quantified due to such things as differing site conditions and variances not due to DOR error or omissions. A TM/LH contract or option for work, such as dredging payment surveys, may be appropriate where the duration of the survey work depends on the progress of the dredging contractor and the work duration is not within the direct control of the survey contractor.

(2) Use of TM/LH contract types must be approved consistent with FAR 16.601(d), FAR 16.602, and FAR 12.207(b). See UDG Attachment 1 for approval thresholds to use a TM/LH contract type. The use of TM/LH just for CPS as part of a design FFP TO is part of the approved acquisition strategy.

e. *Indefinite delivery contract.* IDCs (also known as indefinite delivery, indefinite quantity contracts, D-Type contracts) are the predominant contract type used for A-E services in USACE. IDCs must comply with FAR 16.5 and FAR 36.6. An IDC is recommended for recurring types of A-E services where procurement of these services individually by normal announcement, selection, negotiation, and award procedures is not economical or timely. The government places orders for individual A-E requirements using individual TOs. Task orders for projects are negotiated and issued under the terms and conditions of the IDCs. IDCs are acquired by publicly synopsising requirements, holding an evaluation board, and negotiating award of either a SATOC or MATOC.

(1) *Single award task order contract.*

(a) A SATOC is a single base IDC with a specific scope that is awarded to a single A-E firm under which TOs are issued. If just one award is identified in the synopsis, the selection panel reviews all responses to the synopsis, ranks a minimum of three firms considered MHQ, and recommends the top-ranked firm for negotiation and award. When only one firm is selected for award of an IDC base contract, it is a SATOC.

(b) Districts and Centers may award SATOCs without having to justify why multiple awards are not appropriate (FAR 16.500(d)). As a result, when an A-E SATOC has been properly awarded and no other SATOC awarded by the District or Center includes the same or similar (overlapping) scope of work awarded from the same or similar synopsis to avoid A-E MATOC TO selection procedures, Districts and Centers need not comply with the procedures required for TO awards when using a MATOC.

1. Districts and Centers are not to award multiple A-E SATOCs that have the same or overlapping scopes of work. The final ranking identifying the MHQ firms must include, at a minimum, three firms in the final rank to be compliant with the A-E Statute. The final ranking of MHQ firms for a SATOC may contain more than the minimum of three but cannot contain fewer. All firms in the final ranking are considered MHQ to provide the services.

2. The scope of each SATOC should be narrowed, both substantively and geographically, so that only one contractor is selected as the MHQ firm to perform the entire scope of services under the SATOC.

(2) *Multiple award task order contract.*

(a) When more than one A-E contract is awarded from a single synopsis, the evaluation panel reviews all responses to the synopsis, ranks a minimum of three firms considered MHQ, and recommends at least three firms for negotiation and award. Capacity of the contract is shared among the firms each awarded a MATOC.

(b) An individual firm is selected from the MATOC holders and awarded a TO for each requirement that falls within scope of the base contract. The MHQ firm for a particular requirement is determined through a TO selection process described in Chapter 6 of this EP. The selection and award of TOs under A-E MATOCs must also be

executed as qualifications-based contract actions per the A-E Statute, following the requirements of FAR 16.500(d), FAR 36.6, and the Memorandum on Updated Procedures for the Selection of Task Orders on A-E IDCs, dated 1 April 2025.

1. When awarding more than one A-E contract from a single synopsis, it is necessary to select and award to at least three firms to comply with the A-E Statute, FAR 16.500(d), and FAR 36.6. This is because of the statutory and regulatory requirement to conduct discussions and prepare a selection report recommending at least three firms that are considered MHQ to perform the required services.

2. As a result, the final ranking of the MHQ firms may contain more than the minimum of three firms but cannot contain fewer. All firms in the final ranking are considered MHQ, with the firms selected for award being the highest qualified among the MHQs if more than the targeted number of awards stated in the synopsis end up on the final ranking.

3. In the event that three firms are not part of the MATOC ordering pool, making it noncompliant with the A-E Statute and the procedures in FAR 36.6, the MATOC (base contracts) requires a justification and approval (J&A) consistent with a recognized exception under FAR 6.3 to award an A-E MATOC with less than three firms in the pool. This is because for every contract action involving the procurement of A-E services, agencies must follow the A-E Statute and the procedures of FAR 36.6, which is a recognized “competitive procedure” and an exception to full and open competition per FAR 6.102(d)(1).

4. Any deviation from a recognized competitive procedure must fall under a recognized exception under FAR 6.3. If such a situation arises, full coordination between Engineering, Contracting, Office of Counsel, and consultation with the SBP takes place to develop the necessary J&A to make the base awards. The contract file must be updated to reflect the documentation needed for issuing TOs from that pool.

(3) *Avoid overly broad scopes.* It is important that the scopes of work for an A-E IDC (SATOCs and MATOCs) not be overly broad (for example, all manner of A-E work that could potentially be performed within a region). The use of such broad scopes makes it difficult to comply with the 2023 National Defense Authorization Act (NDAA) (NDAA 2023), the A-E Statute, and implementing regulations. Define the A-E services to be procured in the context of anticipated requirements to permit the selection of the MHQ firm(s), and include descriptions of project types that represent those type of services. Consider services and work products needed, specialized technical expertise, professional qualifications, and/or knowledge of locality that will produce high-quality, technically sound professional deliverables.

(4) *Annual updates for Standard Form 330, Part I and Part II.* Firms are encouraged to update their qualification information on an annual basis in the FAR. Around the anniversary date of the base contract award, Contracting will request the A-E firm(s) to update their SF 330 (Architect-Engineer Qualifications), Part I and Part II on file to showcase relevant, recently completed projects and to update resume

experiences of their key personnel. Any changes in key personnel and subcontractors from what was originally negotiated and approved at time of award must be reviewed for formal approval by the KO per the procedures specified in this EP and FAR 52.244-4.

(a) The updated SF 330 replaces the prior year version, and the prior year version is archived in a Paperless Contract File (PCF). The updated version is used until the next version is received. Chapter 4 and Chapter 7 provide additional information and detail regarding the annual update process for the SF 330 Part I and Part II.

(b) The standard annual update process involves substituting existing information with more recent information and is not an additive process whereby a firm adds to their qualifications beyond what was originally required in the synopsis. This maintains the original synopsis requirements of qualifications from which the firms were selected and maintains the integrity of the competition in the MATOC pool.

(c) District/Center KOs, with input from Engineering, may increase the number of allowable example projects to a maximum of 20 during the annual SF 330 update. The update notice may also specify project types to better align submissions with forecasted workload. Other requirements from the original synopsis are to remain unchanged. If adopted, firms may refresh example projects as long as they stay within the limit and continue to meet qualification standards.

f. *Simplified acquisition procedures.* For A-E contracts not expected to exceed the SAT, the procedures in FAR 36.602-5 may be used. FAR Part 13 does not apply.

2–10. Selection of contract type

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

a. *Scope certainty.* Use an FFP C-Type contractor TO if the scope can be defined and the level of effort reasonably estimated. As noted above, A-E services are generally awarded as FFP.

b. *Nature and size of work.* If the required services are within the scope and available capacity of an existing IDC, first consider a TO award under the existing IDC. If an existing contract tool at the local District or Center is not available to support a project requirement, then consider available A-E capacity at another USACE District. If no existing USACE tools are available for use, then initiate a new announcement and selection process or consider use of other agency contracts (paragraph 2–12).

c. *Schedule.* If an existing USACE IDC is available, consider a TO for time-sensitive, small-, moderate-, and large-size projects with reasonable project delivery schedules. A separate project (or program)-focused SATOC to optimize schedule metrics may be appropriate for a project that is technically complex or requires significant specialty work that may be difficult to scope under a traditional C-Type contract or MATOC and/or for projects that may have unique schedule constraints. Consider limited competition only in urgent and emergency circumstances; limiting

competition must be justified and approved consistent with the appropriate authority (FAR 6.302-2, 16.505(b)(2)(i)(A)).

2–11. Architect-Engineer time standards

a. *General.* Prompt procurement of A-E services is essential to minimize impacts to project execution and program delivery. Time standards have been established as a guide for awarding A-E IDCs, C-Type contracts, and A-E TOs in USACE (see Appendix D). Commanders and organizational leadership are responsible for confirming that these standards are followed to the maximum extent possible.

b. *Typical durations for award of Architect-Engineer contracts/task orders.*

(1) *Single award/multiple award task orders and C-Type contracts.* The amount of time necessary to award a base A-E contract depends on the type of contract, technical complexity, and dollar value to be awarded. Availability of resources can also have a significant role in the process. The PDT should refer to the most current fiscal year Procurement Administrative Lead Time (PALT) Estimates memo issued by the Assistant Secretary of the Army for Acquisition, Logistics, and Technology.

(a) The target award goal for a C-Type contract is 6 to 8 months. The target timeline for award of a SATOC is 7 to 8 months. The target timeline for award of a MATOC is 12 to 13 months, assuming three firms in the pool. The time required to acquire a MATOC often depends on the contract dollar amount, number of contracts to be awarded, and timing of the process.

(b) When award of a contract is subject to SCO or Head of Contracting Agency approval, additional time is required. The UAI/UDG should be consulted to assess the most current procurement requirements for documentation required and review time. The activities for these target durations are tabulated and shown in Appendix D.

(2) *Task order awards.* The target time period for award of an A-E TO is 90 days from receipt of the design instruction, directive, project, or program scope, with adequate detail to begin the selection process when placing an order against a MATOC. The award time may be less for TO awards using a SATOC. If the TO is ordered from a MATOC having a large pool (more than three firms), the time frame may be longer as the documentation for the A-E selection memo can be more complex. The activities required to issue a TO against an IDC are tabulated in Appendix D.

(3) *Timelines.* IDCs and TOs for A-E services should be awarded in shorter durations than the established time standards, if necessary, to meet critical customer requirements. Similarly, longer durations may be necessary for complex and/or very large A-E IDCs and TOs. The PDT will meet early in the process and establish PCF milestones within 2 business days of cabinet assignment in PCF. These PCF milestones are mandatory consistent with AFARS 5104.802(f)(i)(3).

(4) *Delays.* The above standards exclude those factors beyond the reasonable control of a USACE command, including, but not limited to, delay in receipt of funds,

changes in requirements or scope of services, deferral or suspension of a project, unsuccessful negotiations with the MHQ firm(s), or delaying the award due to a protest. Timeliness remains important to all stakeholders in A-E acquisitions regardless of the circumstances.

2–12. Use of other agency contracts

a. If a USACE District or Center is considering the use of other Army, Department of Defense (DoD), or federal agency procurements for A-E services, it must verify that the non-USACE contract was procured following the requirement of the A-E Statute, the agency establishing the A-E IDC has multi-agency authority, and the project requirements fall within the scope of the base contract. Use of non-DoD contracts is strictly regulated, as noted in DFARS 217.7 and AFARS 5117.7.

b. This requirement identifies specific rules for such contracts and defines roles and responsibilities for the acquisition strategy and approval process. USACE commands must carefully review any intended use of a contract other than USACE procurement for A-E Contracting and must confirm appropriate consideration for all requirements of this EP. If any other agency contract for A-E services was not procured as required by the A-E Statute, USACE is prohibited from using such contract(s). See also UAI 5117.7 for USACE-specific procedures.

2–13. Proper Architect-Engineer procedures

USACE commands will ensure that the planning for A-E contracts follows proper business processes and must include strategy and planning per the UAI and EP requirements. Engineering Division and other technical divisions that will be involved with acquisition and administration of A-E contracts, including A-E contracts for CPS, construction management services, survey, mapping, geospatial, and HTRW are required to review and concur with the acquisition strategy and acquisition plans, as applicable. The Engineering Division must verify that the A-E COR is technically and administratively qualified to perform COR duties that will be appointed by the KO for each A-E contract or TO. See UAI/UDG 5101.604 for COR requirements.

2–14. Inherently governmental functions and personal services

a. *Inherently governmental functions.* The KO, assisted by members of the PDT, must review all acquisitions to determine that A-E contracts do not include work that is inherently governmental consistent with FAR 7.5. See UAI 5107.5 on USACE procedures for documenting that the work is not inherently governmental.

b. *Personal services.* Additionally, the KO, assisted by members of the PDT, will review all acquisitions to confirm that the service being acquired is not a personal service, nor that the scope of work is written in such a way as to become a personal service, unless specifically authorized by statute. See FAR 37.104, DFARS 237.104, AFARS 5137.104, and UAI 5137.104.

Chapter 3

Small Business Planning and Participation in Architecture-Engineer Contract Acquisitions and Task Orders

3–1. Principles

a. It is government policy to provide maximum practicable opportunities in acquisitions to SB, veteran-owned small business (VOSB), service-disabled veteran-owned small business (SDVOSB), Historically Underutilized Business Zone (HUBZone) small business, small disadvantaged business (SDB), Economically Disadvantaged Women-Owned Small Business (EDWOSB), and women-owned small business (WOSB) concerns. Such concerns must also have the maximum practicable opportunity to participate as subcontractors in contracts awarded to other than SB concerns consistent with efficient contract performance.

b. To best effectuate SB policy, the SBP is included in the PDT and engaged early to help develop schedules and confirm all SB aspects are included.

3–2. Responsibilities

a. The SBP is a member of the acquisition team (along with Engineering, Contracting, Construction, Office of Counsel, Project Management, and other appropriate personnel) with responsibilities for early and timely participation in the planning and analysis of government requirements and for consideration of SB set-asides or an unrestricted action with an SB reserve. See FAR 19.5, 19.8, 19.13, 19.14, and 19.15. The SBP should be part of the review of the acquisition strategy and plan.

b. The KO and technical team lead work early and closely with the SBP to develop adequate and appropriate market research parameters prior to posting the sources sought. The SBP provides input and reviews the synopsis before it is issued by Contracting. The KO and SBP work with the TO board chairperson to assess use of SATOCs and MATOCs that provide prime SB firms maximum practicable opportunities. Chapter 6 provides additional information and references regarding SBP participation in the TO process when using an A-E MATOC.

c. Engineering and Contracting enforce compliance with SB goals by holding all prime contractors responsible for meeting their obligations. Engineering coordinates with Contracting on subcontractor changes to confirm appropriate justification is provided by the prime if a subcontractor substitution is made, especially when replacing an SB with one that is other than an SB. Additions to the subcontracting team outside the original negotiated arrangement that responded to the synopsis requirements is to be avoided, as this can skew the TO competition in a MATOC pool. Contracting monitors the Individual Subcontracting Reports (ISRs) in Electronic Subcontracting Reporting System (eSRS) to verify the prime contractor is progressing toward its negotiated goals.

3–3. Regulatory basis

- a. FAR Part 19, DFARS Part 219, AFARS Supplement Part 5119, and UAI Part 5119 – Small Business Programs.
- b. FAR 19.5 – Small Business Total Set-Asides, Partial Set-Asides, and Reserves.
- c. DFARS 219.5 – Small Business Total Set-Asides, Partial Set-Asides, and Reserves.

3–4. Terminology

- a. *Small business size standards.* The SBA establishes SB size standards on an industry-by-industry basis. SB size standards and corresponding NAICS codes are provided in 13 CFR 121.201. Size standards are stated in either number of employees or average annual receipts. Instructions for locating size standards are found at FAR 19.102(a).
- b. *Total small business set-aside.* The purpose of SB set-asides is to award certain acquisitions exclusively to SB concerns.¹ A “set-aside for small business” is the limiting of an acquisition exclusively for participation by SB concerns. An SB set-aside may be open to any of the SB concerns identified at FAR 19.000(a)(3). The SB set-aside categories include total SB, 8(a), SDVOSB, HUBZone, EDWOSB, and WOSB.
- c. *Small business reserve.* The purpose of an SB reserve is to award one or more MATOCs to any of the SB concerns identified at FAR 19.000(a)(3) under a full and open competition. Initial (base award) MATOCs are awarded as full and open (unrestricted) and identified as “no set used” for the contract action report. When making awards under the SB reserve, identify the specific set-aside used using codes provided in the Federal Procurement Data System (FPDS) User Manual.

3–5. Market research

- a. *Methods.*

(1) *Sources sought.* Contracting issues a “sources sought” after coordination and review by the SBP and input from the technical team lead and PDT. Posting should not be less than 30 calendar days for base contract acquisitions. If less than 30 calendar days, the PDT will address possible impacts to an SB response in the market research report and/or acquisition strategy. Failure to provide adequate time may result in the sources sought needing to be reissued. It is also recommended that the PDT coordinate

¹ “Concern” means any business entity organized for profit (even if its ownership is in the hands of a nonprofit entity) with a place of business located in the United States (U.S.) or its outlying areas and that makes a significant contribution to the U.S. economy through payment of taxes and/or use of American products, material, and/or labor, etc. “Concern” includes, but is not limited to, an individual, partnership, corporation, joint venture, association, or cooperative. For more information, see Title 13, Chapter I, Part 121 Subpart A, Section 121.105 (13 CFR 121.105).

with the SBP or other to share the link to the source sought with industry and trade organizations to increase industry visibility and input.

(2) *SAM.gov Data Bank.* The System for Award Management (SAM) Data Bank within SAM.gov can be utilized to review SB experience across the federal government to review other contracts with the same NAICS, PSC, and dollar values.

(3) *Industry days conducted for the specific action.* Industry days should be detailed and provide industry with an adequate understanding of the type of work to be procured under the scope of the contract. This should be done prior to the acquisition strategy being finalized.

(4) *Small business search.* This SBA database search tool (<https://search.certifications.sba.gov/>) is also used for identifying SBs. Keyword searches are coordinated with the technical team lead and SBP.

(5) *Other methods.* The project delivery team may identify other methods such as reviewing historical procurements.

b. Required minimums.

(1) The PDT, including the SBP, will analyze and document the market research results to determine the best acquisition strategy (for example, set-asides, reserves, unrestricted). Set-aside decisions should be made based on the market and not the assumption that SB cannot perform the work. An SB reserve is not based on a dollar threshold value.

(2) To comply with the A-E Statute for an unrestricted A-E MATOC with an SB reserve, the reserve must have at least three SB firms to be able to set aside a TO requirement for firms in the reserve pool.

(3) If a set-aside or an SB reserve is not feasible based on market research results or other considerations, the public announcement (synopsis) is released as unrestricted. More than three firms identified after market research concludes is recommended to promote success of meeting the required minimum of three firms and to manage risk of synopsis cancellation for an SB set-aside and re-evaluation of the acquisition.

c. Considerations.

(1) Market research queries for A-E acquisitions, especially IDCs, search for qualified firms using a footprint larger than the geographic footprint of the anticipated IDC award to optimize finding the desired expertise and experience.

(2) If market research indicates the required minimum of firms are not available for the full base contract scope of services, consider how broadly scoped the base contract is and if an SB reserve can be considered to support a smaller portion (lower complexity) of the overall base contract requirement or if two separate MATOCs could be procured, with one having a base contract scope of reduced technical complexity or

capacity requirement. An SB reserve is a business category and not a dollar value. For each TO, the PDT must evaluate whether the TO will be set aside for the reserve within each awarded IDC (see Chapter 6 for more details). The reserve is still part of the overall value of the IDC and does not separate maximum value over the life of the IDC.

(3) Special note for Business Development Program (8(a)): Consistent with the A-E Statute (40 USC 1102), competition is required. Regardless of other requirements identified in FAR 19 or FAR 6, A-E may not be sole sourced to an 8(a) company without a J&A for a sole source or limited competition. Competitive set-aside procedures under FAR 19.805 are authorized for A-E acquisitions.

3–6. Small business programs and acquisition of Architect-Engineer contracts

a. All A-E procurements, including SB set-asides or an SB reserve, must meet the requirements of the A-E Statute and FAR 36.6.

b. The KO must have a reasonable expectation of receiving a sufficient number of responses from SB or SB socioeconomic categories (such as SDVOSB or HUBZone) to proceed with a set-aside or SB reserve. The KO, with the support of the SBP, assesses market research to determine if the A-E Statute requirements can be met with an SB set-aside. If there are not sufficient qualified SB firms to support a set-aside, the KO will consider the viability of an SB reserve in an unrestricted competition, in consultation with the SBP and PDT members. Both the set-aside and the reserve can consider SB and/or socio-economic SB categories provided the A-E Statute requirements can be met during selection.

c. Set aside C-Type and TOs for acquisitions for A-E services in connection with a military construction or military family housing project under \$1M unless the KO determines the criteria for set-aside cannot be met. See 10 USC 2855 and DFARS 219.502-2(3). The \$1M threshold applies to the estimated value of the A-E work, not the estimated construction cost (ECC) value. The DFARS does not preclude setting aside Military Construction (MILCON) or family housing projects that exceed \$1M.

(1) This requirement applies to MILCON, as defined by 10 USC 2801(a). DFARS 219.502-2 applies to the authorized project scope. For MILCON, it is the aggregate of A-E services anticipated for MILCON or Unspecified Minor Military Construction Authority new construction, and not each individual A-E awards that may be needed to ultimately produce the complete design package.

(2) Lack of an SB on an existing MATOC or available SATOC is not a valid rationale to determine that a set-aside cannot be met for A-E Services for MILCON or Family Housing Projects under \$1M (DFARS 219.502-2). If an existing SATOC or MATOC is not available, a project-specific C-Type contract should be considered.

d. For A-E actions, the public announcement is a synopsis where qualification statements are requested (SF 330); price proposals are not requested in the synopsis. Chapter 4 and Chapter 5 of this EP provide additional information on SB participation

during the announcement, selection, negotiation, and award of new A-E base contracts. Task orders are addressed in Chapter 6.

(1) *Synopsis.* An SB subcontracting plan is not part of the submittal requirements in response to an A-E synopsis. Percentages from the DoD Source Selection Procedures and Army Source Selection Supplement are not applicable to A-E selection. SB percentages are not required to be in a synopsis.

(2) *Subcontracting plans.*

(a) For contracts exceeding the threshold specified in FAR 19.702(a)(1), other than small A-E firms are required to submit a subcontracting plan in response to the Request for Price Proposal (RFPP), which is issued after the notice of selection for negotiation of award. If the selected firm fails to negotiate a subcontracting plan acceptable to the KO within the time prescribed, the negotiation is terminated and the KO initiates negotiation with the next ranked firm. For IDCs, it is the total value of the IDC for determining the contractors subcontracting plan value.

(b) For any new contract, TO, or modification, the Engineering team, during their technical analysis, is to review the contractors proposed level of effort and labor mix to confirm they are properly using the subcontractors that were identified in the SF 330 as part of their team. Additionally, Contracting should leverage the biannual eSRS ISR reviews to provide prime contractors feedback during negotiations toward their SB goals. Companies failing to adequately provide support to SB according to their subcontracting plan may be subject to liquidated damages consistent with FAR 19.705-7(d). The analysis needs to also verify that mentor protégé companies or joint ventures (JVs) are properly using the correct labor mix, as identified their agreements.

(c) Concerns to look for when reviewing a proposal include the following:

1. JVs where firms are teamed together and the work is primarily kept by the other than small firm(s).

a) Task order RFPP responses that propose adding subcontractors, as those additions can shift work away from the subcontractors originally intended to perform that work as was negotiated in the IDC award.

b) An other than SB requesting to add a new discipline to their firm that results in the other than SB keeping the work that was originally intended for a subcontractor (often an SB) and was a consideration in the prime's evaluation for the IDC award.

2. Most A-E firms have large team arrangements that influenced their qualifications and selection for an IDC. Engineering should be aware while reviewing proposals that deviations from a firm's proposed team composition is generally not acceptable since the majority of project requirements fall within the range of work the prime was expected to perform with the team they competed with.

(d) Contracting personnel should be alert for a disregard for negotiated subcontracting plan agreements. It is necessary to hold A-E firms accountable for upholding their teamed arrangements and demonstrate active engagement with their subcontractors.

e. *For unrestricted acquisition, consider the following:*

(1) Acquisition strategies include SB participation as a secondary evaluation factor with a minimum quantitative requirement stated in the synopsis. For the unrestricted synopsis with an SB reserve, include language in the posted synopsis that indicates the acquisition is full and open competition with a Small Business Reserve to inform SBs of the opportunity.

(2) For unrestricted announcements with an SB reserve, an increase in the total number of awards in the unrestricted pool may be considered if the targeted number of awards stated in the synopsis for the SB reserve cannot be met or the required minimum of three SB firms cannot be met to establish the SB reserve. The PDT may consider the following language to be included in the synopsis: "If less than three small business SF 330s are received in response to the synopsis, those SB firms will be considered for evaluation in the unrestricted category. If less than three SB firms are determined most highly qualified to form a reserve pool, then those one or two SB firms identified as most highly qualified will be added to the unrestricted category for evaluation and consideration of award in the unrestricted pool."

f. *For small business set-asides, consider the following:*

(1) Contracts awarded as an SB set-aside must contain the FAR 52.219-14, which limits subcontracting according to the DoD Class Deviation of this clause titled DEVIATION 2021-O0008 at https://www.acq.osd.mil/dpap/dars/class_deviations.html. Self-performance may include work performed by a first-tier subcontractor that is a "similarly situated entity" (has the same SB program status as the contract that qualified the prime contractor for the award, and is considered small for the size standard under the NAICS code the prime contractor assigned to the subcontract) to the specific set-aside of the prime contractor.

(2) For the synopsis announced as Unrestricted with Small Business Reserve, limitations of subcontracting do not apply to reserves at the base contract level since the response is to an unrestricted announcement, but do apply to TOs that are set aside (13 CFR 125.6; FAR 19.505(a)(2)). For the synopsis announced as an SB set-aside, the limitation on subcontracting is applicable at the base contract level.

3–7. Small business program and task order selection using an Architect-Engineer multiple award task order contract

a. When the MATOC contains an SB reserve pool, the qualifications of the reserve pool must first be considered, regardless of dollar value, to the project-specific requirements. When applicable, the KO, in consultation with the selection board chair and the local SBP, will prepare and execute a DD Form 2579 (Small Business

Coordination Record) (see USACE Alert 23-HQ-026 and 23-HQ-026 Revision 1, Utilization of DD Form 2579 Small Business Coordination Record). See Chapter 6 of this EP for additional details regarding TO selection when using an A-E MATOC.

b. When the determination is to keep the award within the SB reserve pool, then only the SB firms in the reserve pool are issued a Task Order Requirement Notice (TORN) and the decision of the TO board is to decide the ranking of the qualifications (rank all the firms that received the TORN) as it pertains to the specific project criteria. The TO board decides the ranking of the SB firms based on evaluation of each firm's qualifications as it pertains to the specific project criteria, the SF 330 on file, TORN supplemental information (if provided), evaluation criteria as required by FAR 36.602-1, and any additional criteria that was listed in the TORN and CPARS information.

c. When the determination is to not limit the TO award to the SB reserve pool, then all firms in the MATOC are considered qualified and all are issued a TORN. The TO board decides the ranking of the firms based on evaluation of each firm's qualifications as it pertains to the specific project criteria, the SF 330 on file, the TORN supplemental information (if provided), the evaluation criteria, as required by FAR 36.602-1, and any additional criteria that was listed in the TORN and CPARS information. The basis of the ranking and selection decision must be in writing and must be reasonable and supported.

Chapter 4 Announcement and Selection of Indefinite Delivery Contracts and C-Type Contracts

4-1. Principles

a. Public announcements for A-E services will reflect the needs of the government without arbitrarily restricting eligible firms, and must describe the work required and selection criteria in sufficient detail to facilitate a meaningful selection of the MHQ firm(s).

b. Public announcements for A-E services will be fully coordinated among all pertinent PDT members such as Contracting, Small Business, and Engineering Division.

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

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

4-2. General

The guidance and procedures in paragraphs 4-4 through 4-14 apply to the selection of firms for new IDCs and project-specific, C-Type contracts for A-E services, except as otherwise noted in paragraph 4-15 for certain special cases. Guidance and procedures for A-E TO awards are provided in Chapter 6.

4-3. Responsibilities

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

b. The District/Center CoCO is responsible for the procurement-related content of public announcements for A-E services and general oversight of the A-E selection process to promote regulatory compliance.

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

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

(2) Approve A-E selections consistent with delegated authorities (UAI 5136.602-4) and Appendix GG in AFARS 5117.174.

(3) Designate members who are eligible to serve on A-E preselection and selection boards, as authorized by FAR 36.602-2 and UAI 5136.602-3.

(4) Alternatively, the Commander may re-delegate selection authority to the District/Center Chief of Engineering, the CoCO, or other appropriate officials per UAI 5136.602-4. The delegated selection authority will then establish appropriate qualifications for board members and designate specific personnel who satisfy those qualifications as board members and chairpersons. Other appropriate officials are not limited to a grade-level equivalent to the CoCO but are individuals who have the equivalent authority and responsibilities as the CoCO. Typically, the Engineering Division Chief or the E&C Division Chief (in those Districts/Centers where the E&C Divisions are combined) is considered equivalent to the authority and responsibilities of the CoCO.

d. MSC Commanders are responsible for quality assurance (QA) of the A-E selection process in their subordinate District or Center.

4-4. Public announcement

a. *Regulatory requirements.* Consistent with FAR 5.203(d), FAR 5.205(d), and FAR 36.601-1, all requirements for A-E services expected to exceed the SAT must be publicized (synopsized) on the SAM.gov website, except when properly waived or it is not required, as prescribed by FAR 5.202(a). The SAM.gov website is the official government point of entry (GPE) of the federal government (FAR 5.003).

(1) USACE contracting offices are required to post public announcements on the SAM.gov website via the Solicitation Module of Procurement Integrated Enterprise Environment (PIEE). Allow a minimum of 30 calendar days response time from the date of publication of the synopsis to contract for A-E services expected to exceed the SAT.

(2) A-E selection does not fall under FAR Part 15 and is exempt from the procedures set forth in the DoD Source Selection Procedures. A Source Selection Plan is not required prior to issuance of the public announcement (synopsis).

b. *Authority to synopsize.*

(1) Issue a synopsis for an A-E contract, which has the equivalent effect as a solicitation for other types of contracts, when the government has a definite intention to award a contract. Before issuing a synopsis, the KO must have a written statement, or equivalent, indicating that funds are available.

(2) For an IDC, funds in the amount sufficient to cover the base contract minimum guarantee is considered sufficient to meet the requirements of AFARS 5132.702(a)(i). For high-priority requirements, a synopsis may be issued prior to receiving formal authorization and/or funding when there is a high probability that the requirement will

not be canceled and the synopsis indicates that funds are not presently available for the contract (AFARS 5132.702(a)(ii)).

c. *Format.* Instructions and the format for preparing synopses are given in FAR 5.207 and DFARS 205.207. Each synopsis considers that unrelated requirements are not unnecessarily consolidated or bundled into one contract; the scope and geographic area of an IDC should not be unduly broad; the monetary limits of an IDC is set at the reasonable levels consistent with market research; and unjustified, overly restrictive technical requirements are not included. Appendix E provides supplemental instructions, synopsis content, and a template format for a standard synopsis for A-E services.

d. *Content.* Describe in the synopsis, the contract scope, project requirements, required services, selection criteria, and submission instructions. FAR 36.602 governs the selection procedures for A-E services contracts. Describe the specific work required in sufficient detail to facilitate a meaningful selection of the MHQ firm(s). The relative importance of all selection criteria must be clearly stated. Do not include criteria that are not directly related to project requirements or that unnecessarily restrict competition, such as:

- (1) Specifying the minimum number of personnel in a firm.
- (2) Specifying nonessential or secondary disciplines.
- (3) Specifying disciplines, capabilities, or a percentage of work (except the prime firm in an SB set-aside, as discussed in Chapter 3) that must be performed “in house.”
- (4) Requiring certification of personnel by a private organization unless required by USACE regulation; for example, ER 11-1-321 requires Certified Value Specialist certification through SAVE International (<https://www.value-eng.org/>).
- (5) Restricting firms to those located in a specific geographic area.
- (6) Specifying how the services should be performed (instead, describe the needed end products).
- (7) Requiring the submission of any A-E services price-related data.
- (8) Requiring the submission of excessive qualification information.
- (9) Restricting a firm from being considered due to having another current contract with the same contracting office.
- (10) Requiring a security clearance to be considered for selection (however, eligibility for a clearance, such as U.S. citizenship, may be required).

e. *Review and transmittal.* A synopsis will be prepared by appropriate PDT technical, contracting, and legal personnel, and be fully staffed, including the SB

professional. If a formal acquisition strategy or a waiver of any contract regulation is required, then approval must be obtained prior to synopsisizing. Synopses will be transmitted to SAM.gov, via the solicitation module of PIEE, electronically, as described in FAR 5.207.

f. Contact with firms. Requests for clarification of a synopsis and/or for additional information will be carefully handled to avoid providing any information that could give, or appear to give, an advantage to a firm in submitting their qualifications. Technical inquiries and questions relating to the requirements and procedures outlined in the synopsis are submitted via ProjNet according to the instructions described in the synopsis. ProjNet is set up to track all review comments received and responses to those comments. The Contract Specialist (CS) identified in the synopsis serves as the point of contact, coordinates with the technical lead (TL) in E&C, and posts the response for all potential offerors to see.

g. Amendments. Amend the synopsis if necessary, or if found to be in error, and extend the response date appropriately.

4–5. Contractor Performance Assessment Reporting System

CPARS is an automated database of performance evaluations of contractors that contain both government and contractor comments to provide a balanced view of performance, allowing source selection officials to look beyond contractor references. Past performance evaluations within the past 6 years are maintained and used during selection (FAR 42.1503(g)). Chapter 9 provides additional information on the background, regulatory authority, functions, and use of CPARS.

4–6. Board membership

a. General requirements.

(1) A-E evaluation boards will be constituted based on the requirements in FAR 36.602-2. The chairperson will be appointed first using the established qualifications criteria or from a previously approved chairperson appointment memo signed by the Commander or the delegated selection authority. The chairperson appoints board members with appropriate expertise from the approved list of eligible personnel signed by the Commander or the delegated selection authority. The chairperson may determine a board members eligibility by applying the qualifications established by the Commander or the delegated selection authority.

(2) Each board must have at least three members (see Chapter 6 for TO board requirements). A majority of the members must be USACE personnel. Appropriately qualified technical personnel from the functional element requesting the services should be represented. A CS or KO assists the board to achieve regulatory compliance. Where practical, a representative from the Construction Division that will manage the subsequent construction contract is recommended to participate on an evaluation board for a C-Type contract for the design of a specific construction project. There is no regulatory restriction on a government employee serving on an evaluation board for an

A-E contract and later participating in the negotiation and/or administration of that contract.

b. Board member qualifications.

(1) Evaluation boards will have collective experience composed of highly qualified professional employees having technical expertise in the services being acquired (architecture, engineering, construction), experience with acquisition procedures, and experience with the specific type of technical services being contracted. A board will consist primarily of architects, engineers, and/or land surveyors, as appropriate, for the type of work. However, personnel in other disciplines may be members to provide supplemental specialized expertise when needed.

(2) The chairperson will be a USACE Engineering Division employee and be a registered or licensed engineer, architect, geologist, or land surveyor as appropriate for the type of work (ER 690-1-1212). All USACE architects, engineers, geologists, and land surveyors serving as board members will be registered. In special cases where adequate registered engineers, architects, and/or land surveyors are not available to staff required preselection and selection boards, the Chief of Engineering may issue a waiver to allow an engineer, architect, or land surveyor without a professional license to serve on selection boards, provided that the individual has comparable education, knowledge, and experience that qualifies the individual for professional registration. Professional registration of all other board members is encouraged. Additional board membership requirements include the following:

(a) *Board members.* A board report will indicate which board members are registered. All board members will comply with the procurement integrity requirements of FAR 3.104, sign a Nondisclosure Certification prior to evaluating A-E qualifications, and file an OGE Form 450 (Confidential Financial Disclosure Report) annually.

(b) *Preselection board.* A chairperson will be at least a General Schedule (GS)-13 or have equivalent technical experience and have considerable experience on A-E evaluation boards. A majority of the members will have experience on A-E evaluation boards.

(c) *Selection board.* A chairperson will be at least a GS-13 and have technical experience and extensive experience on A-E acquisitions and evaluation boards. A majority of the members will have experience on A-E evaluation boards. A person may serve as a member on both the preselection and selection boards for the same contract.

c. External board representatives.

(1) Federal sponsors/stakeholders external to USACE may be invited, when practical, to nominate qualified representatives as members to the A-E evaluation boards for their projects (FAR 36.602-2). Nominations must be submitted to the respective evaluation board chairperson for approval. External board representatives must meet the same general qualifications as USACE personnel. Specifically, they must have the appropriate background to knowledgeably evaluate the experience and

qualifications of A-E firms in the required type of work, be licensed/registered, and sign the appropriate source selection nondisclosure form.

(2) City/county governments and non-federal sponsors are considered nongovernment entities since they are not federal government organizations. Therefore, city/county/sponsor participation in an A-E selection board is an advisory role only (as a non-voting member). See FAR 7.503(c)(12).

(3) Use of nongovernment advisors (NGAs) on an A-E selection board requires written determination and approval. See FAR 37.204 and UAI 5137.204. The KO will verify that required approvals are obtained before nongovernment personnel are allowed to provide A-E selection support. The KO will verify there is no organizational conflict of interest and none of the functions to be performed are inherently governmental. NGAs will not have access to past performance information and will not be part of the discussions for final ranking of firms.

4-7. Architect-Engineer selection criteria

a. Regulatory requirements. FAR 36.602-1(a) and DFARS PGI 236.602-1 address A-E selection criteria. DFARS PGI 236.602-1(a)(6) emphasizes that the primary factor in A-E selection is the determination of the MHQ firm, and that secondary factors should not be given greater significance than technical qualifications and past performance.

b. Selection criteria (IDC and C-Type). FAR 36.602-1 provides the minimum selection criteria used to evaluate firms responding to the synopsis. To follow the procedures at DFARS PGI 236.602-1(a), the synopsis will include stating the primary selection criteria specific to a project under a C-Type contract, or to the specific services and deliverables required under an IDC and their relative order of importance. Next, the synopsis will include secondary selection factors and their relative order of importance, as applicable. Specific criteria unique to the SATOC or MATOC scope, or project-specific criteria unique for a C-Type contract, must be used when evaluating a firm's capabilities under the required FAR and DFARS criteria. Include only selection criteria that will be true discriminators in determining the MHQ firm(s) for the types of services to be provided and deliverables to be produced.

(1) Do not request a subcontracting plan, consistent with FAR 19.704 and FAR 52.219-9, from A-E firms responding to a synopsis. The other than SB firms do not yet know if they have been selected for negotiation. Request subcontracting plans from other than SBs as part of the RFPP after selection approval and notification. SBs are not required to submit a formal subcontracting plan.

(2) Acknowledgement of SB participation in the SF 330 Section H is required (FAR 19.702(a)(1)(i)). If SB percentages are stated in the synopsis, they can be used during evaluation as secondary "tie-breaker" selection criteria.

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

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

(a) *Specialized experience and technical competence.*

1. Per FAR 36.602-1(a)(2), a board will evaluate the specialized experience of a firm on similar projects or anticipated services to be performed under the base contract IDC or C-Type contract and their technical capabilities such as performing engineering studies, preparing DBB or DB construction solicitation packages, horizontal designs, vertical designs, application of USACE standards, design quality management procedures, value engineering, cost estimating, geotechnical, computer-aided design (CAD)/building information modeling (BIM), equipment resources, and laboratory requirements of the prime firm and any subcontractors to provide those services.

2. The board will evaluate, where appropriate, passive design strategies, experience in energy and water efficiency, pollution prevention, waste reduction, and use of recovered materials. The effectiveness of the proposed project team (including management structure; coordination of disciplines, offices, and/or subcontractors; and prior working relationships) will also be evaluated.

(b) *Professional qualifications.*

1. Per FAR 36.602-1(a)(1), a board will evaluate, as appropriate, the education, training, registration, licenses, certifications, overall and relevant experience, and longevity with the firm of the key personnel (management and technical). This criterion is primarily concerned with evaluating the qualifications of the key personnel, those individuals with major responsibilities in the performance of work on the contract and/or who provide unusual or unique expertise. They demonstrate familiarity with the acquisition requirements and provide training and quality control (QC) for staff assigned.

2. Key personnel (Section F on the SF 330) must be registered, licensed, or certified, as appropriate, for the disciplines listed in the synopsis but do not have to be registered in the particular state(s) where the base IDC contract is applicable. For C-Type contract awards and some project-specific TOs, there may be disciplines that require licensing in the state where the project is located.

(c) *Past performance.* As prescribed in FAR 36.602-1(a)(4), use past performance evaluation data provided by Contracting from CPARS for assessment of quality, schedule, cost control, management, utilization of SB, and regulatory compliance (DFARS PGI 236.602-1(a)(4)). Use Past Performance Questionnaires (PPQ) if an example project in Section F does not have a CPARS. This usually is necessary for non-federal contracts and situations where an A-E firm is the designer on a DB contract. UAI 5115.304-100 provides Form PPQ-0 (9/30/11) to be used.

(d) *Capacity*. As prescribed in FAR 36.602-1(a)(3), capacity considers the number of personnel on the Contractor's proposed team. A board will consider a firm's experience with similar size projects, the anticipated magnitude of services to be provided, and the available size of its proposed team when evaluating the capacity of a firm to perform the work in the required time. The board considers the full potential capabilities of the total team presented in both Parts I and II of the SF 330 submitted.

(e) *Knowledge of the locality*. As prescribed in FAR 36.602-1(a)(5)), knowledge of the locality is considered separately from geographic proximity since the latter is a secondary criterion consistent with DFARS PGI 236.602-1(a)(6). The firm's location is not inherently relevant to their expertise, experience and knowledge of specific site conditions, geological features, climatic conditions, soil conditions, local laws/regulations, or unique or unusual local construction methods.

(f) *Other appropriate selection criteria*. As prescribed in FAR 36.602-1(a)(6), other criteria may be included as primary criteria to address requirements that may be unique to the acquisition.

(2) *Secondary selection criteria*. The secondary selection criteria are identified and listed separately in relative order of importance after the listing of the primary selection criteria in the synopsis. The secondary criteria will not be applied by a preselection board and will only be used by a selection board as a tie-breaker, if necessary, in ranking the MHQ firms. The secondary criteria will not be commingled with the primary criteria in the evaluation process. The secondary criteria are systematically applied one at a time until the tie is broken.

(a) *Small business commitment*. As prescribed in DFARS PGI 236.602-1(a)(6)(C)), consider the extent to which potential contractors identify and commit to SBs and SDBs if the NAICS Industry Subsector of the subcontracted effort is one in which use of an evaluation factor or subfactor for participation of SDB concerns is currently authorized (see FAR 19.201(b)), and to historically black college or university and minority institution performance as subcontractors. Measure the extent of participation as a percentage of the total anticipated contract value or capacity regardless of prime firm size. The greater the participation, the greater the consideration. For limitations on subcontracting, see Chapter 3.

(b) *Geographic proximity*. As prescribed in (FAR 36.602-1(a)(5) and DFARS PGI 236.602-1(a)(6)), proximity is simply the physical location of a firm in relation to the location of a project or geographic area where work will be performed. The physical location of a firm does not factor into the technical ability of a firm to perform the required services. When multiple offices of the prime firm and/or subcontractors will be involved in the performance of a project or contract, consider the weighted distance from the project or regional area based on the relative amount of participation of each performing office when applying this criterion.

(c) *Volume of contract awards*. As prescribed in DFARS PGI 236.602-1(a)(6)(A)), consider equitable distribution of work and the volume of DoD work awarded during the

previous 12 months. Consider firms that have not had, or had very little, recent prior DoD awards. Extract data from the SAM.gov Data Bank (FPDS) for DoD A-E contract awards during the previous 12 months, measured from the closing date of the synopsis.

4–8. General procedures for evaluation boards (for IDCs and C-Type)

a. Information used by boards. Boards will consider only the following information: SF 330 Parts I and II; any required supplemental information; documented performance evaluations from CPARS (or PPQs if example projects are non-federal); DoD contract award data; and the results of discussions of the MHQ firms. A board will not assume qualifications that are not clearly stated in a firm’s submission or available from CPARS. A board will review the entire submission of each firm and not excerpts or summaries. A firm will not be contacted to clarify or supplement its submission. Boards will not consider any cost factors.

b. A-E selection submissions. A-E submissions are electronic and will be handled by the government consistent with FAR 15.207 and FAR 15.208, including the late proposal rules in FAR 15.208. A firm will not be considered if its SF 330 Part I is not signed unless the SF 330 Part I is accompanied with a signed cover letter or a current signed SF 330 Part II. If a firm does not submit a SF 330 Part II with its SF 330 Part I, or does not have one on file in SAM.gov, it will not be considered (FAR 36.603(b)).

c. Small business status. If a contract has been set aside for SB consistent with FAR 19.5, the CS must check that each prime firm is an SB under the appropriate NAICS in SAM.gov and on the SF 330 Part II. The board must also be aware that on set-asides, a prime SB firm may use similarly situated SB subcontractors to meet the 50% self-performance requirement, as described in Chapter 3 (FAR 19.507(e) and FAR 52.219-14).

d. Evaluation method. A board may use any qualitative method, such as adjectival or color coding, to evaluate and compare the qualifications of the firms relevant to each selection criterion. Do not use numerical scoring or weighting (such as assigning points or percentages to selection criteria). The chairperson will develop and provide selection board worksheets to identify the approach for analysis and facilitate consistency during the evaluation process since a formal source selection plan is not required for A-E acquisitions. Sources for contracts for A-E services must be selected according to the procedures in FAR 36.601-3(b) rather than the solicitation or source selection procedures prescribed in FAR Parts 13, 14, and 15.

e. Conduct of board meetings.

(1) Hold board meetings in conference rooms or other areas isolated as much as possible from distractions. Alternatively, board meetings may be held virtually. The Contract Specialist will coordinate with the chairperson to identify a secured electronic location that allows the voting members, KO, CS, assigned attorney, and technical advisors access to the meeting.

(2) All SF 330 qualifications received will be posted in the secured electronic location for members to review and evaluate. All information and evaluation sheets are saved in the secured electronic location. Sufficient time should be provided for the meetings to proceed continuously until they are finished. Board members should schedule their other activities so that interruptions of the board meetings are kept to an absolute minimum.

f. Reports. All documentation, board member worksheets, and any other working documents pertaining to the review must be saved in the secured electronic location. No documents should be permanently saved on individual hard drives or any drives on their computer, except on the secured electronic location. The documentation must reflect the final consensus of the board. If preliminary or individual evaluations are prepared prior to board discussions, then the report must discuss how any significant differences among those evaluations were resolved.

(1) A board must retain documents and worksheets generated during its evaluation so that the evaluation is sufficiently documented and allows review of the merits of the selection decision if challenged in a bid protest. Failure to retain evaluation documents will raise protest risk by presenting a record with inadequate supporting rationale for the Comptroller General or court to find the selection decision reasonable.

(2) Handwritten worksheets are unacceptable and must be scanned for the Contracting file. The cover and each page of the report containing source selection information will be labeled "CUI" (Controlled Unclassified Information) in the header and "CUI" "SOURCE SELECTION INFORMATION - SEE FAR 2.101 AND 3.104" in the footer and be protected, as required by FAR 3.104-5. Personal worksheets must be similarly protected. Board members must not disclose the evaluation results to anyone who does not have a specific, acceptable reason to know and is not authorized to receive source selection information under AFARS 5103.104-4.

4-9. Preselection board

a. General.

(1) Preselection boards are permitted consistent with FAR 36.602-2(a). Consider holding a preselection board when a large number of firms respond to a synopsis. The purpose of a preselection board is to determine which firms are highly qualified and have a reasonable chance of being considered as MHQ by the selection board (UAI 5136.602-3). This also reduces the number of SF 330s each selection board member has to review because the selection board reviews only the SF 330s of firms with high potential to be considered MHQ.

(2) Preselection boards are advantageous when many firms respond to a synopsis. They allow for an initial review of all SF 330s received, which reduces the number of SF 330s for subsequent review by the selection board. The preselection board members may divide the SF 330s among themselves so that each preselection board

member does not have to review every SF 330. Generally, the use of only a selection board is best suited with a limited number of SF 330 responses.

b. Determination of the most highly qualified firms. Evaluate each firm against the primary selection criteria, even if it appears a firm does not demonstrate certain required qualifications. The board must discuss all evaluations to reach consensus. The firms demonstrating better aggregate qualifications relevant to the primary selection criteria are considered highly qualified. The preselection board will not consider any secondary selection criteria. A preselection board will not be restricted to a specific or maximum number of firms for referral to a selection board.

c. Preselection board report. A preselection board report will be prepared. It will include a memorandum for the selection board chairperson signed by the preselection board members, a copy of the synopsis, list of firms that responded to the synopsis, and it will identify those firms eliminated for consideration and list those firms considered highly qualified. The report must include an evaluation summary that clearly identifies the specific weaknesses and/or deficient qualifications of each firm not recommended as highly qualified. The report will be provided to the selection board and made a part of the selection board report. Separate approval of a preselection report is not required.

4–10. Selection board

a. General.

(1) The functions of a selection board are described in FAR 36.602-3. If a preselection board was held, the selection board evaluates the most highly qualified firms identified by the preselection board and recommends at least three firms considered as MHQ, in order of preference.

(2) If a preselection board was not held, then the initial review by the selection board is to perform the functions associated with the preselection board. This requires all selection board members to evaluate all SF 330s received in response to the synopsis. The selection board prepares the list of firms that responded to the synopsis, identifies those firms eliminated for consideration, and lists those firms considered the most highly qualified. However, unlike a preselection board, selection board members cannot divide up the SF 330s for this initial evaluation review; each member must review all submissions.

(3) Selection board members develop the MHQ list by eliminating firms on the most highly qualified list for further consideration. Selection board responsibilities conclude when notification letters have been sent and requested debriefs have been held. The procedures required to arrive at a fair and reasonable price and eventual contract award are not part of the selection board process.

b. Review of preselection report. If a selection board considers the preselection board report inadequate, then it will document the reasons and return the report to the preselection board for appropriate action. A selection board need not return the

preselection report because it considers some of the firms to be less than highly qualified, provided a sufficient number of highly qualified firms remain.

c. Determination of most highly qualified firms.

(1) All selection board members must personally evaluate the SF 330 of all the highly qualified firms. Firms that demonstrate higher aggregate qualifications relevant to the primary selection criteria are considered the MHQ firms. Secondary selection criteria will not be considered prior to discussions when determining the rank of the MHQ firms.

(2) To comply with the A-E Statute, at least three MHQ firms must be ranked and recommended. There can be more firms in the final MHQ rank than the targeted number of awards mentioned in the synopsis. Ideally, more than the minimum is recommended for an A-E MATOC award to allow alternates if negotiations are unsuccessful with one of the initial firms selected.

(3) If the selection board cannot recommend the required minimum of three firms, the synopsis is canceled and the scope of the synopsis should be revised to increase competition and the synopsis reissued. If appropriate under factual and legal criteria, a J&A under FAR 6.3 may be prepared to award an A-E MATOC with fewer than three firms in the pool or award a SATOC with fewer than three firms in the final rank.

d. Discussions.

(1) For new IDCs and C-Type awards, discussions must be held with at least three of the MHQ firms, as required by FAR 36.602-3(c). Full A-E Statute procedures must be followed consistent with FAR 36.6. Discussions are held with all firms on the MHQ list (which often may be more than the targeted number of awards stated in the synopsis or the required minimum) and should use the same method (telephone, video teleconference, written response, or in person).

(2) It is necessary to hold discussions with all firms on the MHQ list because the results of those discussions are used to develop the final ranking of firms. Written discussions are often the most used; however, other forms can be used if they provide better value. The majority of the selection board members will participate in the discussions. For nonroutine IDC awards or a high-risk C-Type award, presentations by the firms may be recommended and are attended by all board members consistent with FAR 15.102. Firms will be given sufficient advance notice to allow responsible representatives to participate in the discussions or presentations, and in person or virtual participation is acceptable.

(3) All firms are asked the same questions about their experience, capabilities, capacity, organization, management, QC procedures, and approach for the project, as appropriate. All questions must relate to the announced selection criteria. Information obtained from discussions that influenced the final ranking must be documented in the selection report. Firms will not revise their SF 330 as a result of discussions.

e. *Final ranking of most highly qualified firms.* After discussions with firms on the MHQ list or review of presentations, a board will, by consensus, rank the firms in order of preference using the primary selection criteria. If two or more firms are technically equal, secondary criteria is applied as a tie-breaker and the final ranking of firms decided. Firms are technically equal when there is no meaningful difference in their aggregate qualifications relative to the primary criteria. Their ranking is then determined by application of the secondary selection criteria. The secondary factors will be used to establish a ranking order for the technically equal MHQ firms, and hence, the order for negotiation.

f. *Selection board report.*

(1) A selection board report must be prepared for each acquisition. The selection report must include a description of the discussions and evaluation conducted by the board to allow the selection authority to review the considerations on which the recommendations are based (FAR 36.602-3). The report must clearly describe the reasons why each highly qualified firm was eliminated and considered less qualified than the firms considered MHQ; summarize the relative strengths of each MHQ firm with respect to the selection criteria; and clearly describe the rationale for the relative ranking of each firm.

(2) The selection report includes the preselection report if a preselection board was held; otherwise, the selection report also includes the documentation that would have been part of the preselection report. SF 330s are not included in the selection board report.

g. *Selection board report format.* The selection report must have a CUI cover sheet and include:

(1) A memorandum to the selection authority signed by the selection board members.

(2) The Preselection Board Report (or corresponding documentation if formal preselection not held) as Enclosure 1 to the selection memorandum.

(3) The list and rationale for the elimination of highly qualified firms as Enclosure 2 to the selection memorandum.

(4) The discussion questions as Enclosure 3 to the selection memorandum.

(5) The rationale for ranking of the MHQ firms as Enclosure 4 to the selection memorandum.

(6) Enclosure 5 that identifies and references the Contracting Division as the point of contact for questions and information regarding the electronic archiving of the SF 330s.

4–11. Approval of selections

a. The UAI 5136.602-4(a) delegates A-E selection approval authority to USACE Center Directors/District Commanders, who are authorized to re-delegate this authority to the Center/District Chief of Engineering, the CoCO, or other appropriate officials not below the level of the CoCO. All firms on the final selection list (the final ranking) are considered “selected firms” with whom negotiations may take place (FAR 36.602-4(b)). Selection approval authorizes the initiation of negotiation, beginning with the highest qualified firm(s) (highest ranked) on the final selection list and ranking of MHQ firms. FAR 36.602-4(c) provides guidance if the selection authority does not agree with the recommendations of a selection board.

b. No contract may be awarded after 1 year from the closing date of a public announcement, unless justified in writing by the KO. The KO will consider whether the selected firms’ qualifications and the specific A-E market are substantially unchanged since the selection.

4–12. Notifications

a. The KO or assigned designee promptly notifies the firms in writing after selection approval, per FAR 15.503(a). The KO is copied on all notifications if someone other than Contracting provides the notice. All firms who responded to the synopsis are notified of their selection status within 3 calendar days after approval of the selection. Notifications are not made after a preselection board.

b. The notification must indicate to the firm that it is one of the following:

(1) The highest rated for a SATOC or C-Type contract award, or one of the highest rated if a MATOC award. For a MATOC award, the highest ranked firms are those firms with whom negotiations will begin initially.

(2) Among the MHQ firms but not the highest rated for a SATOC or C-Type contract award, or one of the MHQ firms but not among the highest rated if award is a MATOC.

(3) Not among the MHQ firms.

c. The notification for a new IDC or C-Type award must inform each firm that it may request a debriefing according to paragraph 4–12.d. There is no need to identify firms as alternates since all firms on the final selection list are considered qualified to perform the required services (FAR 36.602-4(b)) and each was considered eligible for negotiation if circumstances exist that a negotiation would be unsuccessful with a higher ranked firm (FAR 36.606(f)).

d. A written or electronic request for a debriefing must be received by the KO or assigned designee within 3 calendar days after the date on which the firm received the notification of the evaluation of their SF 330 submission (FAR 15.506(a)(1)). Debriefs

occur within 5 calendar days after receipt of the written request, unless impractical and the reason is documented in the contract file (FAR 15.506(a)(2)).

e. The technical information for a debrief is prepared by the board chairperson (or board member) and provided to the KO, who coordinates review of the material for the debrief with Office of Counsel. KOs normally chair the debriefs with attendance from a board member who participated in the evaluation. There is flexibility for the KO to allow a board member to chair the debrief if that is acceptable at a local policy level.

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

4-13. Debriefings

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

b. Unless impractical, debriefings to unsuccessful firms should be conducted within 5 calendar days after receipt of a written request consistent with FAR 15.506 and FAR 36.607(b). A request under the Freedom of Information Act (FOIA), 5 U.S.C. section 552, will be immediately referred to the local FOIA officer (AR 25-55).

c. Debriefings will be conducted by telephone, in writing, in person, or by any method acceptable to the KO. Debriefings are coordinated and conducted by the KO or designated representative, as determined by local policy agreements (FAR 15.505(d)). The debriefing is based on the selection board report, as appropriate, and held according to FAR 15.506 (b) through (f). Note that FAR 15.506 (d)(2 through 5) is not applicable for A-E debriefs.

(1) The debriefing will summarize the significant weaknesses or deficiencies in a firm's qualifications (FAR 15.506(d)(1)). A firm's qualifications will not be compared point-by-point with those of any other specific firm, but with the other firms collectively (FAR 15.506(e)).

(2) A firm's SF 330 will not be revealed or given to any other firm (FAR 15.506(e) and FAR 24.202(a)). After final selection, the identity of only the firm(s) with whom negotiations will be conducted can be revealed (FAR 36.607). Enhanced debriefing requirement of DFARS 215.506 is not applicable to A-E procurements, so the release of the A-E Selection Board Report is not a part of the A-E debriefing process. See FAR 36.607 for release of information on firm selection.

4–14. Disposition of original Standard Form 330

SF 330s will be carefully safeguarded and retained by the Contracting Division in the PCF for future use consistent with FAR 36.603. Do not include SF 330s as an enclosure in the A-E Selection Board report. The Contracting Division will request annual updates for both SF 330 Part I and SF 330 Part II around the award date of the MATOC to facilitate an efficient TO evaluation process, as described in Chapter 6.

4–15. Annual updates to Standard Form 330 Part I and Part II

a. FAR 36.603 requires updates of SF 330 qualifications to be offered at least once a year to maintain current qualifications for a firm. Contracting provides notification around the award date of the IDC and provide firms the opportunity to update both Part I and Part II of the SF 330. A best practice is to create a separate email inbox to issue the notification letter and receive the annual updates separate from an individual's specific email inbox. SATOC and MATOC IDC holders are provided the opportunity to update their SF 330. Updating the SF 330 on file is optional and at the discretion of the firm. The update is a submittal of a completed SF 330 form (Part I and Part II); it is not change pages or slip sheets. Chapter 7 provides additional information on the annual update process.

b. The updated SF 330 is to remain consistent with the requirements of the synopsis from which the firm was selected for contract award (regarding number of resumes, types of key personnel, number of projects, page counts, and font size). On occasion, the KO may allow a one-time increase in the number of example projects permitted for the annual update. If this adjustment occurs, subsequent annual updates should contain a number of example projects at or below the new maximum, with 20 projects recommended as the "not to exceed" new maximum.

c. The update must demonstrate the firm has maintained its qualifications and is still highly qualified to fulfill the base contract requirements described in the synopsis from which the firm was selected. The goal is for the updated SF 330 to showcase recent qualifications and experiences as it pertains to the scope of services in the base contract. Most updates will occur within Section E, Section F, Section G, Section H, and Part II.

d. Services provided by the IDC holder's team are limited to those key personnel and subcontractors identified and agreed on during the original base contract negotiation or subsequent approvals. See Chapter 4 and Chapter 7 for additional information.

(1) Changes to the team require a firm to demonstrate the necessity for the change and that the proposed replacement(s) possess qualifications of equal or greater value. These changes are subject to KO approval before the new team members can be utilized by TO boards (FAR 36.606(e), FAR 44.204(b) and FAR 52.244-4).

(2) Changes are expected to be a replacement of a previously negotiated team member. If the outgoing member is an SB, the expectation is the substitution (replacement) is also an SB. See Chapter 6 for TO awards and one-time subcontractor adds to address highly specialized or unique project requirements.

e. The original SF 330 and subsequent updates are kept in a secure place with limited access. Older versions of the SF 330 are removed and archived from the secure folder so the most current version is being used by TO board members. Local policies should be established regarding maintenance of the SF 330 folder. If PCF is used to access current SF 330s, then Contracting will establish the access controls and maintenance for the most current SF 330 version available.

4–16. Special cases

a. *Contract actions and dollar thresholds under the simplified acquisition threshold.*

(1) Contract actions not expected to exceed SAT. The short A-E selection processes in FAR 36.602-5 may be used for awards less than the SAT using form SF 252 (Architect-Engineer Contract).

(2) Contract actions expected to exceed \$25,000 but not the SAT. A public announcement on SAM.gov website is required. The response period may be less than 30 days (FAR 5.203(b)); at least 10–15 calendar days is recommended. If less than three qualified firms respond to the synopsis, other qualified firms will be identified from CPARS, SF 330s on file, additional market research, or any other means. These firms will be contacted about their interest, sent the synopsis, and requested to submit an updated SF 330 Part II and an SF 330 Part I as required by the selection board. The firms will be given a reasonable period to respond.

b. *Nonappropriated fund contracts (AR 215-4).*

(1) Public announcement is required. If a contract is synopsisized, it may be for less than 30 days. A list of qualified firms may be developed from CPARS; recommendations from the installation, nonappropriated fund (NAF) sponsor, or professional societies; responses to a public announcement; existing firms under contract; or any other appropriate source.

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

c. *Contracting with the Small Business Administration.*

(1) Consistent with (FAR 19.8), A-E services may be procured through the SBA's 8(a) Business Development Program. USACE may request the names of 8(a) firms from SBA or recommend qualified 8(a) firms to SBA for approval. Competitive 8(a) set-asides are authorized provided market research supports this decision. Sole source 8(a) is not authorized for A-E actions due to the A-E Statute.

(2) A sufficient number of qualified 8(a) firms must be considered such that the required minimum of firms, as stated in the A-E Statute, are deemed MHQ to provide the services. Firms present their qualifications using the SF 330. The qualifications of 8(a) firms will be reviewed and selection documented by USACE consistent with FAR 36.602.

d. *Unusual and compelling urgency.* Consistent with (FAR 5.202(a)(2) and FAR 6.302-2), if the conditions in FAR 6.302-2 are met, public announcement is not required prior to award. However, as many firms as is practical under the circumstances should be identified. J&A processes under FAR 6.303 and FAR 6.304 are required, which includes posting the J&A within 30 days after award.

e. *Sole source justification.* Only one responsible source and no other supplies or services will satisfy agency requirements (FAR 6.302-1). In circumstances where a signed/stamped set of drawings needs revision, a partial design needs completion, or a full design needs code updating, then going back to the DOR as a sole source may be considered (FAR 6.302-1). The use of such justification should be used only in circumstances where a design needs to be updated. See Chapter 8 for getting back to the DOR for construction phase support services.

f. *Notification.* A public notice is not required if contract actions will be performed outside the United States and its outlying areas and only local sources will be solicited. This exception does not apply to proposed contract actions covered by the World Trade Organization Government Procurement Agreement or a Free Trade Agreement (FAR 5.202(a)(12)). Normal selection and approval procedures in FAR 36.6 are followed. See the restriction in DFARS 236.602-70 on the award of overseas A-E contracts to foreign firms.

g. *Design competition.* The use of design competition must be approved by HQUSACE (ATTN: CEEC) (FAR 36.602-1(b)).

Chapter 5

Negotiation and Award of Indefinite Delivery Contract and C-Type Contracts

5–1. Principles

- a. The contract negotiation phase and award phase are the responsibility of the KO to promote full compliance with regulatory requirements.
- b. Negotiation begins with the MHQ firm(s) after approval of selection and is based on a thorough SOW that fully conveys the customer's requirements and pertinent technical criteria if a stand-alone (C-Type) contract, or the base contract services and work product deliverables if an IDC.
- c. Negotiations are conducted in a professional and sincere manner involving experienced and well-prepared team members after approval of selection. The procedures in FAR 15 are followed when issuing the RFPP, receipt of proposals, and price negotiations.
- d. Proactive identification for cost/price analysis is critical for maintaining the acquisition schedule. Securing this skill set early in the process enables the PDT to have the necessary skills in overheads, hourly rates, and cost analysis to effectively negotiate the new A-E contract.
- e. The primary objective in negotiation is to agree on a price that is fair and reasonable to the government and gives the A-E firm sufficient financial incentive to produce quality services and products on schedule. The government performs technical, price, and cost analyses, where appropriate, for all contract types.
- f. For specific C-Type contracts, the negotiations primarily consider establishing hourly rates for the required disciplines and level of effort required to provide the services and deliver the products as defined in the SOW.
- g. For IDCs, the negotiations establish the hourly rates for the required disciplines in the base contract and other engineering services. When awarding a multiple-year IDC, negotiations include an economic escalation factor to be applied to labor rates during the contract's ordering periods beyond the base award.

5–2. Responsibilities

The CoCO will verify that personnel assigned to negotiate and administer A-E services have the necessary experience and training.

5–3. Regulatory basis

A-E contract negotiations are conducted primarily, consistent with FAR 36.605, with guidance from FAR 15.4 and supplements thereto.

5–4. Negotiation team

a. Team members.

(1) A-E contract negotiation is a team effort among engineers, architects, contracting specialists, Office of Counsel, contract auditors (for advisory support), and other subject matter specialists under the authority of the KO, who is solely responsible for the final price agreement (FAR 15.405(a)). The role of individual PDT members in the negotiation phase is determined at the local policy level with KO concurrence. The negotiation team must collectively have thorough knowledge and understanding of the base contract requirements, associated required disciplines, and contracting policies. (In this pamphlet, “negotiators” mean the members of the government negotiation team.)

(2) There is no regulation that precludes a government employee who participated on an evaluation board from developing the independent government estimate (IGE) or from analyzing a price proposal, nor from participating in negotiations. Also, there is no regulation that precludes a member of the negotiation team from participating in the administration of the contract. The procedures required to arrive at a fair and reasonable price, and eventual contract award and management thereof, are not part of the evaluation board process and have no bearing on selection of the MHQ firm. The KO retains the discretion to impose any restrictions necessary to promote the integrity of the acquisition process.

b. Training. Engineers, architects, and surveyors who are primary participants in A-E negotiations are required to take PROSPECT Course Number 004, Architect-Engineer Contracting, and the Fiscal Law Course (see paragraph 1–10) sponsored by the U.S. Army Judge Advocate General. Participants are encouraged to take Defense Acquisition University (DAU) Courses CON 0470, Contract Negotiation Techniques and CON 2420V, Architect-Engineer Indirect Rates. DAU courses are available at <https://www.dau.edu/courses>.

5–5. Statement of work

a. Use a SOW for A-E services. A thorough and clear SOW is critical to ensure the contractor and the government understand the work and can negotiate a fair and reasonable price. FAR 37.102(a)(1) designates A-E contracts as nonperformance-based; therefore, the SOW in Section C of the base IDC or C-Type is written as a SOW and not a performance work statement. A thorough and clear SOW also helps enable negotiations that are fair and efficient, performance will be successful, and administration of the A-E contract will be fair and effective.

(1) *C-Type statement of work.* The SOW is written to a specific set of project requirements. This includes requirements for engineering and design, detailed technical criteria, clearly defined deliverables, schedules with interim milestones, meetings, status reports, partnering, relevant project programming documentation, and use of software.

(2) *IDC statement of work.* The SOW for an IDC describes the general requirements for services, work products, deliverables, and project types to be provided by the base contract (FAR 16.504). Specific project requirements are then detailed in individual TO SOWs ordered under the IDC. The base contract SOW is included in Section C in the Uniform Contract Format (UCF) (FAR 15.204-1 and UAI 5114/5115). For IDCs, when issuing the RFPP package, include the list of disciplines to be negotiated under the base contract.

b. The IDC SOW is generally less detailed than a C-Type SOW. However, the IDC SOW must still clearly describe the general scope, nature, complexity, work products, partnering, and overall purpose of the base contract services the government will acquire. This level of detail enables a prospective offeror to make an informed decision on whether to submit an offer.

c. Both types of SOWs generally include the following topics:

(1) General responsibilities of the A-E firm.

(2) Location of work (the geographic footprint of the IDC or project location).

(3) Work to be performed (project or project type description, services to be provided under the base contract, or project-specific criteria).

(4) Reference to technical criteria and standards (as applicable to the base contract IDC or the project requirements).

(5) Reference to schedule and requirements (as applicable to the IDC, including TO ordering instructions or the specific project deliverable schedule, if a C-Type contract).

(6) Confirmation notices, meetings, and status reports.

(7) Administrative instructions like invoicing requirements, SAM.gov registration requirements, ISR reporting, and service contract reporting (SCR).

(a) SCR annual reporting requirements are maintained in SAM.gov. The requirement for what is reported is limited to PSCs in specific category management spend areas and to specific dollar thresholds (currently obligations or de-obligations in excess of \$3M) (FAR 4.17, DFARS 204.17, FAR 52.204-15).

(b) SCR is not required for any A-E contract actions. Although generally considered professional services, A-E Services (PSCs beginning with C) for the purposes of category management spend area fall under Category 4: Facilities & Construction rather than Category 2: Professional Services and are therefore exempt from SCR requirements. Other professional services under Category 2 do require SCR on an annual basis. The list of PSCs required to submit SCR is in DFARS PGI 204.1703.

(8) Antiterrorism and operational security requirements, as applied to the base contract.

5–6. Request for Price Proposal

The KO signs the RFPP. The KO or an authorized representative notifies the final selected firm in writing regarding their selection for contract negotiations. This notification applies to IDCs, C-Type contracts, and base contract modifications, and will include a request for the firm to submit a price proposal (FAR 36.606(b)). For new IDCs, the RFPP package specifies the disciplines subject to base contract negotiation. This list of disciplines provided must be the same for all anticipated IDC holders within the A-E MATOC.

a. For Joint-Venture (JV) arrangements, ask offerors to submit Defense Contract Audit Agency (DCAA) certified rate audits with their offers, if available. Include clarification that rates for the JV will be consistent with the JV Agreement and generally acceptable accounting principles.

b. The applicability of blended rates (sometimes referred to as composite rates) is determined based on the JV Agreement. Do not tell offerors how to submit their rates nor instruct offerors to add rates together and divide by the total number of firms to create one labor rate.

5–7. Preproposal conference

a. *General.* A preproposal conference(s) may be held between the A-E firm and pertinent government representatives to discuss, clarify, and resolve questions concerning the contract requirements, SOW, and RFPP instructions. A preproposal conference is more typical and highly recommended for a project-specific C-Type award. A preproposal conference can help facilitate a more accurate IGE and A-E proposal. The conference provides clarification of the requirements and level of effort to perform the services described in the SOW. Alternatively, the A-E firm can submit questions as a request for information (RFI) to the point of contact named in the RFPP if a preproposal conference is not held.

b. *Cost.* An A-E firm's costs for preparing proposals and attending preproposal conferences are normal costs of doing business and are included in a firm's overhead rate. A firm is not compensated for attending or traveling to a preproposal conference unless the firm performs work of tangible benefit to the government in connection with the conference and the work is properly authorized in advance by the KO.

c. *Contract requirements.* Early in the negotiation phase, the government will discuss the following contract requirements with the A-E firm and document these discussions in the pre-negotiation objectives memorandum (POM) and price negotiation memorandum (PNM):

(1) Performance evaluation process (FAR 36.604, DFARS 236.604, and Chapter 6 of this pamphlet).

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

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

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

(5) Payments (FAR 32.111(d)(1), FAR 52.232-10).

(6) Subcontractors and outside associates and consultants (A-E Services) (FAR 36.606(e), FAR 44.204(b) and FAR 52.244-4).

(a) This clause stipulates that the contractor obtain the written consent of the KO prior to substitution of subcontractors, associates, or consultants specifically identified and agreed to during negotiations.

(b) The prime A-E firm must obtain the KO's consent to change any subcontractors that were identified during selection and negotiation. The KO should refer the qualifications of any new subcontractor to the original selection board (to the extent that these individuals are available) for evaluation. Approval of these substitutions may result in a price credit to the government.

(7) Subcontracting plan requirements and reporting (FAR 19.705, FAR 52.219-16, FAR 19.702(a)(1)(i)).

(8) Conflict of interest (FAR 36.209, FAR 9.5).

(a) No contract for the construction of a project will be awarded to the firm that designed the project or its subsidiaries or affiliates, except with the approval of the head of the agency or authorized representative.

(b) Conflict applies to both DBB and DB RFPs. The DOR cannot be a construction contractor. The A-E firm that prepared the DB RFP package cannot be the construction contractor's DOR.

5–8. Partnering

a. *General.* Partnering is a mindset as much as it is a commitment to build and sustain successful value-driven relationships that enable the collaboration needed for teams to collectively solve problems and achieve a common set of goals. Partnering for A-E actions may be applied on a C-Type contract award or a TO award based on project complexity, schedule, stakeholder risks, and external constraints. For A-E actions, tools for assessing partnering intensity levels and associated activities are provided EP 34-1-1, dated 12 September 2024. Partnering is discussed during negotiations and begins after contract award.

b. Costs. For new IDCs where project costs are determined based on level of effort defined within TO SOWs, partnering is discussed during negotiations. For C-Type contracts, a dedicated line item for partnering is included, which is specifically addressed during the negotiation process.

c. Scope. In either scenario, the SOW can be revised to reflect the additional discussions and clarifications from negotiations. As a best practice, it is generally more effective and least draining on government resources and the A-E firm to hold a preproposal conference. To optimize efficiency and minimize costs for C-Type contracts, it is recommended that partnering meetings be scheduled to coincide with already-required meetings and design review conferences.

5–9. Service contract labor standards statute

a. The Service Contract Labor Standards Statute (SCLS) (formally known as the Service Contract Act (SCA), FAR 22.10) applies to an A-E contract if the SOW involves the use of service employees (such as drilling and survey crews, clerks, photographers, and laboratory technicians) to a significant or substantial extent. If the SCLS applies, then a wage determination (WD) must be obtained from SAM.gov for the service employees anticipated in the contract.

b. WDs are obtained electronically by the CS from the SAM.gov WD site. The WD must be provided to the firm for use in preparing its proposal. The proposed labor rates and benefits for service employees must be at least equal to the WD. For surveying and mapping contracts, the WD for the location of the performing office of the prime contractor and any subcontractors must be used instead for the WD for the location of the work. For A-E IDC base contracts, the majority of the contracted services and work product deliverables, as described in the synopsis, are professional A-E services and WD rates are not negotiated as part of the base contract.

5–10. Developing the independent government estimate for negotiations

a. An IGE for each base IDC is required to establish a range for negotiation to determine fair and reasonable labor rates, overhead, and escalation rates to be used for the contract ordering period (base plus all options) (FAR 36.605). An IGE is also required for TOs exceeding the SAT for orders placed on the base contract (see Chapter 6).

b. For C-Type contracts, the IGE will include developing labor and overhead rates representative of the class of firms and disciplines anticipated for the award, as well as estimating the level of effort for those disciplines involved in the project services.

c. An IGE is prepared, reviewed, and approved according to the procedures in the UAI/UDG, Attachment 3 IGE Signatory Matrix. Disclosure of the IGE will comply with FAR 36.605(b). See Appendix F for guidance on developing an IGE and performing the statutory design fee check.

5–11. Fact-finding sessions

a. The negotiator(s) may hold fact-finding sessions (FAR 15.201) with a firm after receiving its price proposal and prior to negotiations. The purpose of fact-finding is to obtain information to better understand the proposal and its assumptions, and to clarify any ambiguities, omissions, or uncertainties in the RFPP and SOW apparent after review of the proposal. Costs and labor efforts are not typically discussed during fact-finding; however, types of labor may be discussed. Fact-finding is not a negotiation. Negotiation will take place after fact-finding and after the KO has signed the POM (FAR 15.406-1). Confirmation from the KO to hold a fact-finding session is obtained prior to holding one and an outline of discussion topics is prepared prior to the meeting. After fact-finding, a revised proposal may be requested.

b. A detailed proposal analysis or audit is not performed before a fact-finding session and/or a conforming proposal (a proposal that properly complies with the RFPP instructions) is received. The government uses fact-finding to verify the A-E firm has a solid understanding of the requirements in the SOW. No negotiation will take place during fact-finding.

c. The POM will not be drafted before a fact-finding session is held. This is to avoid the appearance of a negotiation taking place without an approved POM.

d. Fact-finding efforts will be documented in the POM. Provide a summary of the item(s) discussed, acknowledge if a revised SOW was sent to the A-E and if a revised proposal was received in the POM.

e. Occasionally it may be necessary to hold another fact-finding session if the revised proposal received still does not meet government expectations on the prime, JV, and/or its subcontractors on the IDC scope, or the project requirements and deliverables to be produced for the C-Type.

5–12. Proposal analysis and pre-negotiation objectives memorandum

a. *Proposal analysis.* An A-E proposal will be analyzed, consistent with FAR 15.404, with pre-negotiation objectives established prior to negotiations (FAR 15.406-1). Proposal analysis includes technical analysis, price analysis, and cost analysis (where required). For A-E IDCs, profit is most often negotiated on a TO level (see Chapter 6 for TO analysis). Engineering provides the estimate of labor rates (unburdened) for the contract disciplines to Contracting. Contracting, along with knowledgeable experts, evaluate the overhead (OH), consistent with FAR 31, and review the escalation rates in the proposal received. Contracting is responsible for negotiating hourly rates, OH, and escalation for all ordering periods on a new IDC (also referred to as a D-Type contract), as well as for C-Type contracts. For a C-Type contract, Engineering assists Contracting with negotiating the level of effort of the disciplines.

b. *Audit.* An audit should be considered for the cases listed in DFARS 215.404-2 and DFARS PGI 215.404-2, and is documented in the POM. An audit is appropriate when the available information is inadequate to determine the reasonableness of the proposed price (FAR 15.404-2(a)). The DCAA is the appropriate audit agency for most USACE contracts. Consider an audit for an IDC where the total contract amount, including all option periods, exceeds the pertinent threshold in DFARS PGI 215.404-2 for the anticipated type of TO (fixed price or cost reimbursement).

c. *Proposal evaluations for joint ventures.* Understanding the structure of the JV is necessary for determination of a fair and reasonable price acceptable to the government when performing proposal evaluations, specifically the blended labor rates proposed. FAR 9.603 requires contractors to fully disclose all teaming arrangements in their offers. These arrangements are normally provided through a written agreement between the participating contractors, to include the name of the JV, names of participants, and limitations on the powers and rights of participants, funding requirements, etc. The form and substance of the JV should correlate to the offeror's proposal.

d. *Pre-negotiation Objectives Memorandum for Indefinite Delivery Contract or C-Type.*

(1) The pre-negotiation objectives (FAR 15.406-1) are documented in the POM. The POM is developed after a proposal has been analyzed and the government determines a negotiation is needed. For situations where the A-E expectations and government expectations on level of effort and price are similar and the reasonableness of the proposed price can be supported without negotiations, a Consolidated POM-PNM may be prepared to award without negotiations (AFARS 5115.406-3(a)).

(2) The POM establishes the pertinent negotiation issues and the cost and profit objectives (FAR 15.406-1). The numerical objectives will be shown in a tabular comparison with the corresponding elements of the proposal, IGE, and audit (if available). Keyed to the numerical objectives will be a discussion of the significant differences among the IGE, audit (if performed), proposal, and the issues to be covered during the negotiations. The POM may be organized by phase of work, task, discipline, or other appropriate manner. The POM includes the significant details of the contracting action and the course of action the negotiator(s) intend to pursue. The POM is approved by the KO prior to negotiations (AFARS 5115.406-1).

5–13. Negotiation elements for new contracts

a. *Conduct of negotiations.* Negotiations are conducted in an atmosphere of professionalism, patience, and trust. The KO assigns responsibilities to the negotiation team members according to their expertise and capabilities. The KO maintains oversight and overall responsibilities for the negotiation process and outcome. Negotiating members come from Contracting or Engineering, or both organizations, based on available expertise.

b. Negotiation team. It is imperative that the KO assemble a negotiation team with skill sets appropriate for the services required to discuss roles and responsibilities during negotiations. This is an extensive process (time, knowledge, resourcing), and the team should confirm they have built the appropriate amount of time into the schedule. It is recommended that the team identify a cost price analysis to support the evaluation of the hourly rates and overheads.

c. Fundamental approach for negotiations.

(1) *New IDCs (D-Type).* Agreement on labor rates and overhead rates is the central issue in the negotiation of an IDC. The key focus areas for negotiating a new IDC are hourly rates of the contract disciplines, which is an escalation factor to adjust the rates periodically for inflation, overhead, and general and administrative expense (G&A) rates. The negotiation of total price pertains only to the TOs issued under an IDC. The specific hourly or daily rate negotiated for each position classification should include a common understanding on the type of work each level will perform. Rates, or a method for determining rates, can be developed using references such as the Engineering News-Record cost indices or the Department of Labor (DoL) Employment Cost Index.

(2) *C-Type contracts.* The negotiation of a specific C-Type contract includes identifying the quantity and mix of disciplines, position classifications, labor rates, and OH rates. Identifying other direct costs (ODCs) (such as travel, per diem, sampling, analysis, CAD/BIM), level of effort to accomplish the work, and profit are also part of a C-Type contract negotiation.

(a) A unit cost or price can be negotiated for all anticipated supplies or repetitive work on a C-Type contract. For example, survey monuments or support services (such as soils tests); or unit costs or prices for specific types of services, such as a daily rate for a survey crew or per-acre rate for a topographic survey. For travel that cannot be anticipated, the contract may include a statement that travel costs will be computed consistent with FAR 31.205-46.

(b) The portion of the C-Type contract price for A-E design services for the preparation of designs, plans, drawings, and specifications may not exceed the statutory limit. FAR 15.404-4(c)(4)(i)(B) describes the fee limitation for public works or utilities, while DFARS 236.606-70 describes the fee limitation for DoD-specific work. The fee limitation should be checked for any updates; fee limitations (as of the writing of this EP) are 10% for DoD-funded projects and 6% for all others, such as interagency and civil works. If the C-Type is for preparation of a DB RFP, then the fee limitation is not applicable.

d. Statement of work. The negotiators must verify that the firm is proposing to use personnel appropriate for the required work of the IDC or specific C-Type requirements. The ECC is not part of the negotiation of a base IDC. See Chapter 6 for application of the ECC associated with design services that are part of the C-Type contract.

e. *Price.* Price is not a part of negotiation of a new IDC, but it is part of the negotiation for a C-Type, project-specific contract.

f. *Labor and overhead costs.*

(1) Position classifications will be evaluated in the technical analysis for a new IDC base contract and a C-Type contract. Labor rates will be examined by audit or review of payroll records and evaluated for their reasonableness. Overhead costs will be reviewed, which may include an audit, for allowability consistent with FAR 31.2. The review will address the allowability of overhead costs to the contract, the acceptability of specific costs according to FAR 31.205, conformance with accounting standards (FAR 30), and reasonableness.

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

(3) Guidance on proposal evaluations for JVs is detailed in USACE Alert 24-HQ-025; however, these principles are equally relevant when evaluating subcontractors operating independently. Companies may not submit blended rates. Given the lack of price competition in basic C or D contracts and resulting TOs, thorough data substantiation is essential for the government to negotiate fair and reasonable labor rates.

(4) Disagreement over the labor rate for a certain position classification might be resolved using additional classification levels (such as junior, mid, or senior level; or entry level, journeyman, and senior level). For a C-Type contract, consider adjusting the proportion of time of individual employees with different labor rates that comprise that classification. Disagreement over labor and/or overhead rates may also be resolved by negotiating composite labor and overhead rates.

(5) The POM for labor rates and overhead rates must not be based on arbitrary caps. For a C-Type contract, if labor rates and/or overhead rates are so high as to make the total price unreasonable, the negotiators should first seek justifiable reductions in the judgmental elements of the proposal (such as labor hours and position classifications) before negotiating the labor rates and overhead rates. For new IDCs, the base contract rates for the disciplines involved, the corresponding escalation rate, and overhead rates are to reflect fair market values.

g. Travel. The schedule of negotiated contract rates will include unit costs for anticipated repetitive travel items, such as vehicle cost per mile or per day. Per diem for certain locations of work is addressed on the C-Type contract and typically not on the IDC itself, unless the IDC has a very narrow scope of services and geographic footprint. For travel that cannot be anticipated, the contract may include a statement that travel costs will be computed consistent with FAR 31.205-46.

h. Other direct costs. ODCs are costs directly related to a project requirement and are more commonly negotiated with the C-Type contract (or a TO from an IDC). Typical for an IDC negotiation are the indirect costs; those are costs that are not directly related to a specific project but associated with the firms cost of doing business.

i. Profit.

(1) Profit is typically negotiated for each TO under an IDC. See Chapter 6 for calculation of profit on a TO.

(2) For a C-Type contract, profit is negotiated using procedures outlined for a TO award (see Chapter 6), which considers complexity, period of performance (POP), and support of socioeconomic programs. Risk is embedded as part of all three factors that are considered by the PDT.

(3) The Alternate Structured Approach Method (DFARS 215.404-4, DFARS 215.404-73, and UDG 5115.404-73-2) must be used when establishing the government estimate for profit on an A-E contract. The profit rate will be applied to the total of the prime firm's costs and any subcontractors' costs (FAR 15.404). Profit of the prime is to be allowed on all costs, including travel, reproduction, and sub-contractor profit. The alternate structured approach on an FFP award assigns a single profit to the entire contract. There should not be separate profits for each subcontractor.

j. Statutory fee limitation. The contract price (fee) to an A-E firm for production and delivery of designs, plans, drawings, and specifications must not exceed 10% of the estimated cost of the construction project for Departments of the Army, Navy, and Air Force (DoD) customers and 6% for non-DoD. The statutory limitation of 10 USC 7540(b) is applicable to those design services on a C-Type contract. The statutory limit is not applied to the IDC base contract itself, except as reference by inclusion as a base contract clause. See Chapter 6 for additional clarification on the 10%/6% statutory limit for TOs. (FAR 15.404-4(c)(4)(i)(B), FAR 36.606(a), and DFARS 236.606-70).

(1) Work performed by A-E firms under design contracts is separated into two work categories. Design Services are the production and delivery of designs, plans, drawings, and specifications and are subject to the statutory fee limitation. Engineering Services are the other services in the A-E design contract and are not subject to the statutory fee limitation.

(2) Examples of services that may be excluded when determining compliance with the statutory limitation are provided in Appendix F. The examples serve as a guide in determining types of services that may not be subject to the statutory limitation.

(3) The statutory limit also applies to A-E contract modifications for design work not initially included in the contract and/or for redesign of features in the original contract. Examples on how to apply a statutory check for modifications and for redesign efforts are provided in Appendix F.

(4) If a contract or modification also includes other services, the part of the price attributable to the other services is not subject to the statutory fee limitation.

k. Completion or termination of negotiations.

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

(2) For a new IDC, agreement on every item in a price proposal is not necessary (disciplines and labor rates). Establishing overhead rates that are reasonable and allowable must be consistent with requirements of FAR 31.105, FAR 31.202, and FAR 31.203. For new A-E MATOC, the disciplines negotiated must be consistent between each IDC in the pool since each firm was selected in response to the same synopsis requirements. The negotiators should consider the impact of specific labor rates on the prices of typical TOs anticipated under the IDC. The rates for certain classifications (such as a principal) may exceed the POM but may not have a significant price impact in typical future TOs. If the final offer is not acceptable, then negotiations are terminated.

l. Modifications. The negotiation of modifications to a C-Type contract generally follow the same procedures as the negotiation of contracts consistent with FAR Part 43. Modifications to previously negotiated IDC arrangements for key personnel and subcontractors require KO review and approval.

5–14. Subcontracting plan

The SB subcontracting plan is an element of the negotiation process and is made a part of the contract (FAR 19.704). It is required for any contract awarded to an other than SB entity over the threshold specified in FAR 19.702(a)(1) (including any options).

a. FAR 52.244-4 stipulates that the contractor must obtain the written consent of the KO prior to substitution of subcontractors, associates, or consultants specifically identified and agreed to during negotiations. The prime A-E firm must obtain the KO's consent to change any subcontractors that were identified during selection and negotiation. The KO should refer the qualifications of any new subcontractor to the

original evaluation board (to the extent that these individuals are available) for evaluation.

b. Approval of these substitutions may result in a price credit to the government. Approval must consider impacts to the subcontracting plan when the prime is an other than SB. Impacts to the limitation on subcontracting must also be considered if the prime is an SB and an other than SB is proposed as a substitution for services previously selected for an SB. For example, it is expected that an SB subcontractor will be replaced by another SB subcontractor. Additional details on subcontracting plans can be found in Chapter 3.

c. An A-E firm or JV with other than SB status is required to submit an SB subcontracting plan in response to the RFPP when the threshold specified in FAR 19.702(a)(1)(i) is exceeded. The KO reviews the plan for acceptability (FAR 19.705-4) and makes the plan part of the base contract award (FAR 19.705-5(a)(5)). A checklist for use in review is provided in AFARS 5119.705-4(d)(i).

d. Contracting monitors the progress of the large business in achieving its SB goals through ISR reporting in October and April, regardless of the performance during each reporting period (FAR 19.705-6(f through h), FAR 19.705-7(a) and (b)). The KO reviews the ISR at eSRS for SB goal achievements and/or the firm's good-faith efforts to comply with its subcontracting plan. The SBP is included in the review process prior to the KO accepting or rejecting the ISR. If the firm fails to demonstrate a good-faith effort, the KO will notify the firm of liquidated damages to be assessed (FAR 19.705-7(e), FAR 52.219-16).

5–15. Price negotiation memorandum

The negotiators will complete the PNM (FAR 15.406-3 and its supplements) promptly after concluding negotiations. A PNM will discuss the principal elements of the negotiation and document the outcome of the pre-negotiation objectives identified in the approved POM. The PNM will demonstrate that the final accepted price complies with the statutory limitation, if applicable, and state the basis for a fair and reasonable price determination. If an audit was performed, the PNM will discuss any deviations from the audit recommendations in the final negotiated price. A PNM must be prepared, reviewed, and approved consistent with FAR 15.406-3 and approved by the KO (AFARS 5115.406-3).

5–16. Responsibility determination

The selection process addresses the technical capability, production, resources, and QA methods of the firm. Contracting is required to complete the Responsibility Determination according to FAR 9.104-1. A contractor must be registered in SAM.gov and maintain the registration through the life of the contract (FAR 4.1102(a). Additionally, the firm must also be compliant with National Institute of Standards and Technology (NIST) Special Publication 800-171 (DFARS 204.7303(b)(1), DFARS 252.204-7020) to confirm that they have a NIST score no older than 3 years.

KOs will also verify that the firm is not debarred, suspended, or proposed for debarment (FAR 9.405(a)) to be eligible for a contract award.

5–17. Contract preparation and award

a. *General.* An A-E base contract or C-Type will be prepared using the UCF in FAR 15.204.1, using SF 252, as the cover sheet (FAR 36.702(a)). The contract award date in block 2 on the SF 252 serves as the start date of the base contract, or a notice to proceed (NTP) start date may be provided for the C-Type. However, if the action is an emergency, an award letter may be used, which also serves as the NTP.

b. *Minimum guarantee.* To satisfy the minimum guarantee for an IDC, the first TO issued must be in the amount of the guaranteed minimum and be obligated at time of a contract award (FAR 16.504, FAR 16.505(b)(2)(D)). Appropriate departmental overhead or revolving funds are used to fund the guaranteed minimum if the base IDC serves many customers. Immediately upon award of a project-specific TO(s) in sufficient amount to satisfy the minimum guarantee, the KO must de-obligate funds used to award the base IDC and close out the guaranteed minimum TO.

5–18. Task order issuance and ordering

a. See Chapter 6 for TO announcement, selection, negotiation, and award from an IDC that is either a SATOC or MATOC. The SOW of a TO must always be within the scope of the base contract IDC (FAR 16.505(a)(2)).

b. For A-E firms in the MATOC, or holding a SATOC, the TO minimum and TO maximum mentioned in the base contract represents the smallest and largest dollar value the government expects the A-E to accept work for. For any anticipated awards less than the minimum or greater than the maximum, the A-E has the discretion to turn down without penalty from the government for lack of performance or compliance on their contract.

c. The A-E is not obligated to accept a TO less than the minimum nor greater than the maximum but can be awarded TOs with dollar values outside the stated minimum/maximum if other A-E Statute criteria are met during the TO evaluation process (FAR 52.216-19).

5–19. Nonappropriated funding contracts

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

5–20. Continuing contracts clause

USACE KOs are authorized to use a special continuing contracts clause in solicitations and contracts for specifically authorized CW projects that are not fully funded only after approval is received from the Chief of the CW Programs Integration Division at HQs

USACE. There are many Water Resource Development Acts that limit the use/availability of this authority by specifically stating that USACE may not invoke it. If planning to use this clause in a CW project, then Office of Counsel (OC) must be consulted. See UAI 5132.705 for the clauses and the instructions for their use.

Chapter 6

Announcement, Selection, Negotiation, and Award of Task Orders

6-1. Principles

a. Procedures in this chapter apply to TO awards made from A-E SATOCs and MATOCs having same or similar (overlapping) scopes. Announcement, selection, and negotiation is required for a TO award to be compliant with 40 USC Chapter 11, FAR 36.6, and FAR 16.5 when using an A-E SATOC or MATOC with overlapping scopes.

(1) Selection of a firm for TO award from the A-E MATOC pool is a qualifications-based selection process. Early engagement with the SBP is required to promote identifying opportunities for SB programs. The SOW of a TO must be within the scope of the IDC (FAR 16.505(a)(2)).

(2) When an A-E SATOC has been properly awarded and no other SATOC awarded by the District or Center includes the same or similar (overlapping) scope of work awarded from the same or similar synopsis, Districts or Centers do not need to comply with the TO announcement and selection procedures described below.

(3) The KO must have a written statement or equivalent indicating sufficient funds are available (funded Purchase Request and Commitment) or Subject to Availability of Funds (SAF) Memo) before issuing a TORN when using an A-E MATOC for a TO award. AFARS 5132.702(a)(ii), Attachment 5 and the UDG provide a summary of the exceptions that govern permissible issuance of a solicitation that is SAF and to promote adherence to the appropriate regulatory guidance. Solicitation for A-E TOs starts with issuing the TORN, not the RFPP.

b. A TO board convenes, reviews SF 330 information on file, determines if the SB reserve will be used, and prepares a Memorandum For Record (MFR) notifying the KO if additional information is needed to make a selection. The KO or assigned representative may issue a TORN after approval of the MFR, meaning the KO and the TO chairperson have both signed the MFR and the KO has signed the TORN. The Simplified TORN is the default TORN for USACE.

c. Selection notification to all firms issued a TORN is made after selection authority approval on the A-E Decision Memo is received by Contracting, and before issuing the RFPP to the selected firm. The KO may designate an alternate, depending on local policies or organizational structure, to notify the firms. The KO must be made aware of when notice is sent.

d. Negotiation for A-E TOs considers level of effort required to provide the services and products defined in the SOW and concludes with a fair and reasonable price to the government.

e. To comply with AFARS 5104.802(f)(i)(3), all milestones must be entered into the PCF. These milestones should accurately reflect the completion of A-E TOs and

follow the timelines outlined in the PALT memo. Although PCF identifies several required milestones, USACE must also enter the TORN RESPONSE DATE for all Requests for Supplemental Information (RSI) TORNs even if the PCF does not specifically flag it as mandatory. Dates will be entered in a logical order. The issue solicitation milestone is the TORN release date to A-E contractors, as detailed in UAI 5136.601-3-100.

6–2. Responsibilities

a. The Chief of Engineering and CoCO will verify personnel who participate on TO evaluation boards, negotiate A-E services, and manage A-E TOs have experience, training, and education aligned to perform these duties.

b. The KO must verify that any TO issued under an IDC is within the scope of that IDC and will approve the contract or suite of contracts that encompasses the required scope of services prior to the TO board convening. The TL or TO chairperson provides input to the KO regarding which A-E contracts have scopes that include the specific requirement. (FAR 16.505(a)(2)).

c. The TO board chairperson makes an initial review of the SF 330s on file and notifies the KO if the TO requirements can be set aside to a reserve pool (if one exists in the MATOC) or if the TO requirements should go unrestricted. The board reviews the SF 330s on file and prepares a TORN MFR notifying the KO of the TORN version to be issued (Simplified or RSI).

6–3. Regulatory basis

a. A-E TO announcement and selection must be conducted consistent with FAR 16.500(d), FAR 36.602, FAR 36.603, and Section 802 of the 2023 NDAA.

b. A-E TO negotiations must be conducted consistent with FAR 15.404, FAR 36.605, and FAR 36.606 and supplements thereto.

6–4. Task order evaluation board composition

a. The chairperson and any board members must have the same qualifications as stated in Chapter 4. The task order chairperson must have, as the minimum, the same qualifications as the preselection board chairperson. The composition of the evaluation board will be tailored to the TO requirements, subject to the following limitations:

(1) For TO projects with an estimated value greater than \$6M, the chairperson and evaluation board members will have the same makeup as stated in paragraph 4–6.b.

(2) For TO projects with an estimated value between the SAT and \$6M, the evaluation board may consist of as few as two evaluators, including the chairperson.

(3) For TO projects with an estimated value below the SAT, the evaluation board may consist of a single evaluator consistent with FAR 36.602-5(b).

b. Appointment memos for TO chairpersons and TO board members are recommended due to the volume of TOs processed annually.

c. Customers are permitted on TO boards provided the requirements in Chapter 4 for external board representatives are met.

6–5. Task order announcement and selection procedures (Architect-Engineer suite of contracts)

a. *Selecting an Architect-Engineer indefinite delivery contract.* The KO will approve the contract (SATOC), or suite of contracts (MATOC) to be used for the TO requirement. The TL (or chairperson) provides input to the KO regarding which specific A-E base contract(s) have scopes that include the project requirement.

b. *Small Business Coordination Record requirements.* Consistent with DD Form 2579, for A-E MATOCs with an SB reserve, the reserve pool must be given consideration first.

(1) When assessing the SB reserve, it is necessary that at least one of those firms appears highly qualified to perform the specific TO work. All firms in the SB reserve are considered MHQs for the type of work to be performed under the MATOC and are evaluated and ranked. If one SB firm is more qualified than the others, but three or more SBs are still capable of meeting the minimum requirements identified in the project-specific SOW, the reserve is still appropriate and the TO board chair may recommend using the SB reserve to the KO.

(2) When applicable, a DD Form 2579 is prepared by the KO after coordination with the TO chairperson and the local SBP. Submit the DD Form 2579 to the SBP before issuing a TORN. The DD Form 2579 is issued to the SBP prior to the start of solicitation, which, for A-E TOs, is when the KO issues the TORN. Notification is provided to the KO about using the SB reserve or going unrestricted to the entire MATOC pool. The decisions to use the reserve or go unrestricted can be provided as a separate notice or can be included as an additional paragraph in the MFR that addresses the need for supplemental information.

c. *Preparation of a task order board memorandum for record.* The selection board must first evaluate the firm's existing SF 330s against the criteria required by FAR 36.602-1. As part of this evaluation, the selection board will determine whether the qualification data in the firm's existing SF 330 is sufficient to determine the MHQ firm to perform the TO work, or the qualification data in the firm's existing SF 330 is insufficient to determine the MHQ firm to perform the TO work. An MFR is then prepared to document the determination. The MFR prepared by the board is submitted to the KO with a draft of the corresponding TORN.

d. *Task Order Requirement Notice.* When a TO is to be awarded under a MATOC, the KO must notify all A-E firms within the selected MATOC pool. A best practice is to create a separate email inbox for issuing the TORN and receiving the responses in lieu

of individual email inboxes. Districts may create their own internal controls for access depending on their established procedures.

(1) The selected pool is considered unrestricted if the decision is to issue the TORN to all firms in the MATOC. If the TO will be issued to the SB reserve, then only firms within that SB reserve are notified. The KO receives the MFR and DD Form 2579 (when required) prior to issuing the TORN.

(2) Once the MFR and DD Form 2579 process is complete, the KO has the sole authority to sign the TORN. Once the TORN is signed, it must be promptly distributed to the MATOC pool by the KO or authorized representative. An authorized representative can be outside the Contracting organization, provided the KO and CS are copied on the distribution list/email. A SOW is not included when issuing a TORN.

(3) The TORN includes a short description of the project scope of work and any specialized expertise required, the selection criteria, the anticipated date of the selection decision and the anticipated date of the TO award. Do not request supplemental information if the SF 330s on file have adequate information to make a selection.

(4) The TORN must list TO specific selection criteria in order of importance and relative weight (meaning the relative order of importance), and must include, at a minimum, the criteria as required by FAR 36.602-1. These criteria are applied to the specific TO requirements. Additional evaluation criteria or sub-criteria may be used after the minimum criteria are applied. The additional criteria are included in the TORN.

(a) Request for Supplemental Information Task Order Requirement Notice. The RSI TORN requests supplemental Information tailored to the specific TO requirement. The RSI TORN process may be used when the selection board determines that available information within the existing SF 330s is insufficient to determine the MHQ A-E firm to perform the TO requirement. Prior to issuing the RSI TORN, the District/Center Chief of Engineering must provide written approval for using the RSI TORN process.

1. The supplemental information may be received by an authorized representative outside of the Contracting organization, provided the KO and CS are also copied. The TO board will reconvene after receipt of the supplemental information to finalize evaluations and ranking. Firms that receive a TORN are already considered MHQ and therefore, all are ranked after evaluation based on their qualifications related to the specific project requirements.

2. Each IDC holder in the MATOC uses the team they originally competed with to win the contract, and it is expected each firm will subsequently compete on TOs using those (or any subsequently approved substitutions to the base contract). There must be a valid reason for Contracting to consider a one-time add to go outside the negotiated team; adding firms just to be more competitive on a TO is not considered valid rationale for not using the team members under contract.

3. The RSI TORN is intended to supplement existing information (already on file) and, as such, should focus on specific information required for the board to determine the MHQ firm to perform the specific TO requirement. The additional information is intended to draw out experiences and capabilities of the team in the contract that may not otherwise be showing in the SF 330 on file. It is not required, nor is it expected, to include information from a firm external to the negotiated team on file when providing supplemental information in response to an RSI TORN.

4. Limit requested supplemental information. This information should only be to supplement the existing SF 330s. Generally, the requested information should not exceed five pages. Provide each firm receiving the TORN an identical set of questions or request for information. Firms are not required to provide supplemental information to remain under consideration for selection. If fewer than three firms respond to the RSI TORN, J&A under FAR 6.3 is not required provided there are at least three IDC holders in the selected pool of the MATOC.

5. All firms issued the TORN are evaluated and all firms are ranked regardless of whether supplemental information is received. Firms are not to decline interest in project-specific work prior to completion of the TO board review when the anticipated award is within the stated minimum and maximum values of the contract. The government is not to offer firms the opportunity to confirm or withdraw their SF 330 for TO consideration prior to board review unless the TO anticipated award is outside the base contract minimum and maximum value.

6. The RSI TORN is a request for additional information directly related to the project requirements used in conjunction with the SF 330 information on file. Do not require submission of a new or updated SF 330 (or parts of an SF 330) for each TO.

7. A-E firms holding IDC contracts in the MATOC can submit updates to the SF 330 on file to the KO at any time outside the annual update cycle, if needed, but it is preferred for updates to take place during the annual update cycle. Substituting subcontractors requires J&A by the KO, which can slow down the government's overall TO evaluation process and getting to award. The KO must approve any changes to key personnel or the previously negotiated team arrangement prior to the TO board using those qualifications (FAR 52.244-4). With regularly occurring SF 330 annual updates to resumes and example projects, it is anticipated the need for supplemental information will be required occasionally and not routinely.

8. Responses to the RSI TORN are (most often) looking for highly skilled team members drawn from the existing base contract prime, JV, and/or subcontractor arrangements. These are team members that have experience with the stated project requirements. Proposed TO personnel are not required to also be key personnel listed in the SF 330; however, they must belong to one of the firms listed in the SF 330. These TO personnel, also referred to as TO key staffing or TO proposed team members, are individuals with a TO focus and responsibility, which is a different role and responsibility than those individuals identified as key personnel in Section E on the SF 330. Key personnel are individuals who have major responsibilities on the base contract and

occasionally provide unique or unusual expertise to a TO. For unique and highly specialized project requirements, see paragraph 6–5.d(4)(a)9.

9. Each firm should be given sufficient time to respond to the RSI TORN. Typically, given the focused nature of the request and the annual updating of the SF 330, most information can be provided within 5 business days. If a firm chooses not to respond, the SF 330 on file is still used by the TO board and the firm is given consideration for the award. Since a MATOC is publicly announced and must have a minimum of three firms in the pool to be FAR compliant, all firms in the pool are considered MHQ for the contract services. The role of the TO board is to rank these MHQ firms from the pool in regard to the specific project requirements.

10. The RSI TORN process is not to be routinely used; however, the board may request additional information or hold further discussions with the firms in the MATOC pool if the information received in response to the RSI TORN, when combined with the information on file, remains insufficient to determine the MHQ firm to fulfill the TO requirement. Typically, the RSI TORN will be necessary for large, technically complex projects. It should also be used when project-specific qualifications are not in the SF 330 and supplemental information is necessary to determine the MHQ firm to perform the specific TO work.

(b) *Simplified Task Order Requirement Notice.* The Simplified TORN process is used when the selection board concludes that the government already has sufficient information in the existing SF 330s to determine the MHQ firm to perform the TO requirement and that supplemental information is not needed.

1. The Simplified TORN must clearly state that supplemental information will not be requested, accepted, or evaluated. The routine request for additional information, whether from discussions or supplemental information (or both) is not a requirement when awarding an A-E TO from a MATOC (Section 802 NDAA 2023).

2. After the board provides the TO board MFR to Contracting, it may continue to work toward finalizing its recommendation to the A-E selection authority while Contracting, or the authorized representative assisting Contracting, issues the Simplified TORN. Alternatively, either an RSI TORN or discussions may take place if, after an in-depth review of the existing SF 330s, the board determines at any time during the evaluation that it needs additional information to determine the MHQ contractor to perform the TO requirement. If the RSI TORN is issued after a Simplified TORN, the board follows procedures for RSI TORN described above after approval by the District/Center Chief of Engineering is received.

e. *Discussions.* Discussions may occur after issuing the RSI TORN or the Simplified TORN if the TO board determines information is still needed. If follow-on discussions are necessary, the board should ask the same information from all firms who received a TORN to avoid any appearance of impartiality in this follow-on step.

f. Evaluation.

(1) Evaluations utilize the selection criteria specified in the TORN and the CPARS data provided by Contracting. The TO board is not required to review all CPARS data issued within the last 6 years on every IDC holder in the MATOC when conducting the TORN process. The TO board may consider that data if the specific project requirements are better served by a more exhaustive past-performance analysis. The TO board should consider past performance on previously awarded TOs from the MATOC, with recommendation that priority be applied to these evaluations.

(2) The TO board evaluates the SF 330s on file and any responses to the RSI TORN (if used) to rank all the firms that received the TORN, according to their qualifications related to the specific TO requirement. When considering capacity to accomplish the work in the required time, the number of active and open TOs a firm has in their IDC, in the MATOC, is considered when evaluating capacity of a firm for a new TO award.

g. Architect-Engineer selection memorandum.

(1) Following the evaluation, the TO board must prepare a selection memorandum recommending, in order of preference, at least three firms that are considered the MHQ to perform the work called for under the TO. A pool may have more than three firms; if so, then all firms in the pool who received a TORN are evaluated and ranked. A firm that chooses not to respond to the TORN is still evaluated using the SF 330 on file.

(2) The selection memorandum must apply the selection criteria to the A-E firm's qualification information and state the rationale for the ranking of the MHQ firms in sufficient detail to allow the selection authority to understand the basis for the recommendations. A detailed selection report is not necessary; however, it must be sufficiently detailed to rationally support the decision.

(3) The selection memorandum documentation need not be extensive, but it must clearly reflect the information used to evaluate (such as the information in the SF 330 and any supplemental information received or discussions held), and the results of the evaluation of the firm's qualifications as applied to the selection criteria used for the TO. The selection memorandum report will include the names of all board members and indicate which board members are registered or licensed. It is signed by the TO chairperson.

h. Architect-Engineer selection decision memorandum.

(1) The TO selection authority making the selection decision is designated consistent with AFARS Appendix GG, and USACE implementation guidance. Selection authority delegation is intended to be for other officials having equivalent authority and responsibilities as the CoCO (not tied to a grade level). It is recommended that selection authorities for TOs be within the Engineering organization since the recommended selection is based on a technical decision. Typically, it is the Engineering Division Chief or the E&C Division Chief (in those Districts/Centers where the E&C Divisions are

combined) that is considered equivalent to the authority and responsibilities of the CoCO. Alternatively, selection authority can also be with the organization having specialty mission-related expertise such as HTRW, unexploded ordnance removal, master planning, medical, and other unique requirements.

(2) It is recommended the Chief of Engineering in the District making the award be the selection authority for A-E awards exceeding \$6M due to the inherent complexity and/or visibility on projects of that magnitude. The TO selection authority will review the recommendations prepared by the evaluation board and make the final selection decision. FAR 36.602-4(b) provides guidance if the selection authority does not agree with the recommendations of the evaluation board.

i. Notification and debriefings.

(1) All firms issued a TORN for a TO award will be promptly notified after a selection decision. The KO or authorized representative will notify in writing or electronically, all firms of their selection status within 3 calendar days after approval of the selection decision. Unsuccessful offerors for TOs greater than \$6M will be given the opportunity for a debriefing, consistent with Chapter 46 of this EP, FAR 16.505(b)(6), and FAR 36.607, if requested.

(2) Debriefings are not required for TO awards estimated below \$6M. However, it is considered a best practice to simply acknowledge the opportunity for a debrief when notifications are sent and provide a debriefing if requested by a firm. Task order debriefings can be written or verbal; they can be informal and simple in content; and they can be as brief as 15-20 minutes. Local policies can establish standard operating procedures to streamline the Office of Counsel review of TO debrief material. Release of the TO selection memorandum or decision memo (even if redacted for propriety information) is not a part of the debrief (FAR 36.607).

6–6. Task order negotiation

a. The KO is solely responsible for the final price agreement (FAR 15.405(a)). The negotiation team (or individual) must collectively have a thorough knowledge and understanding of the SOW, the detailed project requirements, applicable technical criteria, and contracting policies. It is a shared responsibility by Engineering and Contracting for compliance with negotiated SB goals and keeping competition in the pool fair by holding the prime to use the team composition submitted and selected in response to the synopsis requirements. See Chapter 3 for additional information.

b. There is no regulation that precludes a government employee who sat on a TO evaluation board from developing an IGE and/or participating in the negotiation for that TO. There is no regulation that precludes a member who participated in negotiations from participating in the administration of the TO.

c. Engineers, architects, and surveyors who are primary participants in A-E TO negotiations must have the same minimum training as described in Chapter 5.

6–7. Task order statement of work

a. A thorough SOW is the basis for negotiating a fair and reasonable price, successful performance, and effective administration of an A-E TO. Task order SOWs are detailed and prescriptive and identify project-specific criteria, requirements, special conditions, and schedules for delivery of products and services provided. Since A-E acquisitions are not performance-based acquisitions per FAR 37.102, project requirements are prepared as a SOW and not as a performance work statement (PWS) (FAR 2.101, FAR 36.601-3).

b. A SOW typically includes the following topics: general responsibilities of the A-E firm; POP of the TO; project description; ECC, if relevant; points of contact (government, COR, and A-E firm); scope of A-E services; schedule and deliverables; reviews and conferences; technical criteria and standards, including government-furnished information; and administrative instructions, partnering, and general provisions. DOR support during construction solicitation and/or after construction award can be negotiated as options in the initial design contract/TO to allow maximum flexibility to exercise those based on prevailing project circumstances.

c. An A-E TO SOW will include a partnering line-item task describing a level of effort based on available project information, risks, constraints, and customer needs applied to the partnering intensity worksheets in EP 34-1-1. It is recommended that partnering meetings be scheduled concurrently with required meetings and design review conferences to minimize costs. There are three places in the A-E process to begin the partnering effort after selection.

(1) The partnering level of effort can be discussed in a virtual meeting with the selected A-E firm after notification of selection; that is, prior to the A-E Design Manager (DM)/Engineering Technical Lead (ETL) finalizing the SOW and the KO issuing the RFPP.

(2) Partnering can also be discussed after sending the RFPP to the A-E firm and before receiving the price proposal. Consider holding a preproposal conference for scope clarification that includes discussion on the partnering level described in the SOW.

(3) As a third option, a fact-finding session can be held after receipt of the proposal and prior to negotiation. This is most often done when there is a noticeable difference between the IGE level of effort and that submitted by the A-E firms.

6–8. Task order request for price proposal

a. The KO has the sole authority to sign the RFPP. Once the RFPP is signed, the A-E firm selected for negotiation and award of a TO will be notified by the KO or other authorized representative in writing to submit a price proposal for negotiation of a new TO or modification to a TO (FAR 36.606(b)). An authorized representative can be outside the contracting organization, provided the KO and CS are copied on the distribution list/email.

b. Office of Counsel review is required for all contract actions that meet the threshold identified in UAI 5101.602-290. Contracting will initiate and complete the Office of Counsel review. The price proposal may be received by an authorized representative outside the contracting organization, provided the KO and CS are also copied. An IGE prepared for A-E services is not required prior to issuing the RFPP to an A-E firm (FAR 36.605, UAI 5107.9002). IGE integrity must be considered and a process developed if anyone outside the contracting organization also receives a copy of the price proposal. The IGE for A-E services must be received by the KO prior to release of the A-E firm's price proposal. A Small Business Subcontracting Plan is not required when issuing TOs from an IDC SATOC or MATOC. The subcontracting plan is negotiated and part of the base contract IDC for a large business firm.

6–9. Task order preproposal conference

a. A preproposal conference(s) may be held between the A-E firm and pertinent government representatives to discuss and resolve questions concerning the SOW and RFPP instructions. A preproposal conference is highly recommended for technically complex projects. The project site may also be inspected if appropriate.

b. An A-E firm's costs for preparing proposals and attending preproposal conferences are normal costs of doing business and are included in a firm's overhead rate. A firm is not compensated for attending a preproposal conference for a TO award unless the firm performs work of tangible benefit to the government in connection with the conference, and the work is properly authorized in advance by the KO.

c. After the preproposal conference, an updated RFPP with a revised SOW attached may be issued to ask the A-E firm to submit a price proposal based on the revised SOW. A revised SOW after the preproposal conference can be beneficial to add clarity and increase the likelihood of receiving a proposal more closely aligned to government expectations on services and deliverables.

d. In those situations where the IGE was sent to the KO prior to the preproposal conference, there is no need to revise the IGE even if a revised SOW is sent to the A-E firm, as long as the revised SOW involved clarification and did not involve a significant or substantial change to the required services or deliverables.

6–10. Task orders and updating Standard Form 330 Part I and Part II

a. The government does not anticipate the A-E firm to change out key personnel or subcontractors with any degree of regularity on a TO basis since the prime or JV was selected and awarded a contract based on the qualifications of the teaming arrangement submitted in response to the synopsis. See Chapter 4 and Chapter 7 for additional information and access requirements on updates to SF 330 Part I and II.

b. The prime A-E firm must obtain the KO's consent to change any subcontractors or key personnel that were identified during selection and negotiation (FAR 36.606(e), FAR 44.204(b), and FAR 52.244-4) prior to consideration by the TO evaluation board. Information provided by the A-E firm to the KO must demonstrate qualifications of equal

or greater value to the original and a justification as to why the change is necessary. A capacity limitation is not rationale for adding additional subcontractors since capacity is an evaluation factor on which all firms in the MATOC pool are assessed based on their originally proposed team.

c. For highly specialized project requirements, a prime A-E firm may need to add a consultant to their team for a specific TO award. In situations like this, the KO will typically consent to a one-time add of a subcontractor or consultant due to the unique project requirements. This addition is for the specific TO only and is not a permanent add to the prime A-E firm's original negotiated and awarded team arrangement in the base contract. The need for a specialized subcontractor is submitted with explanation in response to an RSI TORN.

6–11. Service contract labor standards

For A-E TOs, most of the contracted services are typically professional A-E services, and the negotiated rates current at the time of TO award are applicable. If the SCLS applies, then a WD must be obtained from SAM.gov for the service employees anticipated in the TO contract, unless the IDC includes the current SCLS table. See Chapter 5 for additional information.

6–12. Independent government estimate for task orders

a. Consistent with FAR 36.605(a), an IGE is required for each A-E contract action (TO) expected to exceed the SAT (total absolute value of all elements of the action, including credits and options). For TOs less than the SAT, the KO has the discretion to request an IGE or some other format that demonstrates price reasonableness.

b. An IGE is not required prior to issuing an RFPP to an A-E firm, but it must be received by the KO prior to the KO or authorized representative releasing the A-E firm's proposal for analysis and beginning negotiations (FAR 36.605). Disclosure of the IGE will comply with FAR 36.605(b). In general, the overall amount of the IGE will not be disclosed except as permitted by agency regulations. Access to the IGE is limited to government personnel whose official duties require knowledge of the estimate to negotiate a fair and reasonable level of effort.

c. Develop the IGE using the IDC contract rates for labor and overhead that are current, or anticipated to be current, at the time of award of the TO and include travel, supplies, services and possibly profit relevant to the project-specific requirements. For travel, use joint travel regulation (JTR) policies and rates as the basis for estimating travel costs.

d. Revisions to the government-prepared IGE should be made only when there has been a significant and substantial change in the SOW or a significant and substantial error or omission is discovered in the government-prepared IGE that cannot be clarified in the POM. Revisions to an IGE cannot be made once the proposal has been reviewed by the person preparing the POM and/or negotiating the TO. Revision of a government-prepared IGE is not required to accept a proposal greater than the IGE.

e. The POM will adequately describe the differences between the IGE and A-E firm's price proposal. The PNM will document the results of discussions on those significant differences and provide explanation for any omissions or oversight that may have existed between the government-prepared IGE and the A-E price proposal.

f. Modifications to a TO are estimated using the IDC contract rates for labor and overhead that are current, or anticipated to be current, at the time of expected award of the modification. Also include travel, supplies, services, and possibly profit relevant to the TO modification.

g. Options will be negotiated when the base TO is negotiated using the labor and overhead rates anticipated to be in effect at the time of option execution. If an option cannot be exercised as negotiated or the time window to exercise the option has passed, the option is not awarded and a separate contract or TO is issued. Since options for FFP contracts and TOs are determined at the time of award, they cannot be renegotiated. It is important to exercise these options within the specified time frame; otherwise, they will expire and will no longer be available.

6–13. Fact-finding sessions for task order awards

a. The negotiator(s) may hold fact-finding sessions (FAR 15.406- 1(a)) with a firm after receiving its price proposal and prior to negotiations. The purpose of fact-finding is to obtain information to better understand the proposal and its assumptions, and to clarify any ambiguities, omissions, or uncertainties in the RFPP and SOW apparent after review of the proposal. It is recommended to have an outline of discussion points prepared prior to the fact-finding session.

b. Receipt of a revised price proposal after a fact-finding session is not indicative that a negotiation took place without an approved POM. The A-E may submit a revised proposal of their own after a fact-finding session, even if a revised SOW is not sent; their cover letter must acknowledge the revised proposal is a reflection of the fact-finding session. If there are significant clarifications from the fact-finding session that could impact level of effort for required services and deliverables, the SOW should be revised for the KO to issue the revised SOW to the A-E and request a revised proposal. This is acceptable and is not considered a revised proposal based on a negotiation. Fact-finding happens prior to approval of the POM by the KO.

c. The POM is not prepared before a fact-finding session is held and a reasonable price proposal is received that demonstrates to the government the A-E firm has a solid understanding of the SOW requirements. Negotiations will not be held without an approved POM. It is recommended to have an outline of discussion topics prepared for fact-finding to avoid the appearance or concern that negotiations took place without an approved POM.

d. Detailed proposal analysis is not required before a fact-finding session and/or a conforming proposal (a proposal that properly reflects the SOW and complies with the RFPP instructions) is received. Negotiations will not take place during fact-finding; that

is, the government will not state its bargaining position or objectives during fact-finding. Fact-finding, which is documented in the POM, serves to clarify aspects of the proposal and SOW. As such, the POM includes: a summary of any scope clarification items discussed during fact-finding; confirmation of whether a revised SOW was sent to A-E following fact-finding; and documentation of whether a revised proposal was received based on the fact-finding results.

e. Occasionally it may be necessary to hold a follow-on, fact-finding session if the revised proposal still does not meet government expectations on scope understanding, project requirements, and/or products to be produced. If multiple iterations occur, the KO may ask for an FPR, and if that remains unacceptable, negotiations cease and negotiations begin with the next ranked firm in the A-E selection memo begins.

6–14. Proposal analysis, pre-negotiation objectives, and price negotiation memorandum for task order awards

a. *Proposal analysis and audit.*

(1) For TOs, proposal analysis requires a technical analysis, price analysis, and/or cost analysis. When issuing a TO from an IDC, a price or cost analysis includes confirmation the A-E firm used the appropriate contract year rates in their proposal. An A-E proposal is analyzed consistent with FAR 15.404. Audits are typically not required for a TO awarded from an IDC.

(2) Engineering personnel should coordinate with Contracting regarding any deviations from the established team arrangement outlined in the IDC. This collaboration with Contracting promotes compliance with SB goals and holds firms accountable for the negotiated team arrangements that were part of their original submission that led to their qualifications-based selection. When reviewing a firm's proposal submitted in response to a RFPP, it is necessary to be aware of changes outside the negotiated team arrangement. Chapter 3 provides insights on some items to look out for.

b. *Pre-negotiation Objectives Memorandum for task order award.*

(1) The POM is developed after a proposal has been analyzed and the government determines a negotiation is needed. Pre-negotiation objectives are identified and itemized in the POM. A combined POM/PNM may be prepared to award without negotiations (AFARS 5115.406-1) for situations where the government expectations on level of effort and price is similar to those in the A-E firm's proposal. A POM template can be found at the Procurement.army.mil (PAM) Knowledge Management Portal website at <https://armyeitaas.sharepoint-mil.us/sites/ASA-ALT-PAM-Compass/SitePages/Templates.aspx>.

(2) The POM establishes the pertinent negotiation issues, levels of effort, cost, and profit objectives (FAR 15.406 -1). The numerical objectives will be shown in a tabular format for comparison of the corresponding elements of the proposal and the IGE.

Keyed to the numerical objectives will be a discussion of the significant differences between the IGE and proposal, and the issues to be covered during the negotiations.

(a) Differences between the IGE and A-E proposal are not to be simply split to facilitate reaching agreement. The starting point for most negotiations is the IGE unless the A-E proposal contains a detailed description identifying areas of work or effort that the IGE did not consider. The POM may be organized by phase of work, task, discipline, or other appropriate manner consistent with local policy.

(b) The POM includes significant details of the contracting action and the course of action the negotiators intend to pursue. It is recommended to include discussion points about TO performance (CPARS), designing within the ECC (FAR 36.609-1, FAR 52.236-22), and invoicing (FAR 32.111(d)(1)). The POM is approved by the KO prior to negotiations (AFARS 5115.406-1).

c. *Price Negotiation Memorandum for task order awards.* The negotiator(s) will complete the PNM (FAR 15.406-3 and its supplements) promptly after concluding negotiations. A PNM will discuss the principal elements of the negotiation and the pre-negotiation objectives from the approved POM. The PNM will demonstrate that the final accepted price complies with the statutory limitation, if applicable. If an audit was performed, the PNM will discuss any deviations from the audit recommendations in the final negotiated price. A PNM must be reviewed and approved by the KO consistent with FAR 15.406-3. Ordinarily, review and approval of a PNM should be concurrent with the review and approval of the final contract package.

6–15. Negotiation techniques of firm-fixed-price task order awards

a. *Conduct of negotiations.* Negotiations should be conducted in an atmosphere of professionalism, patience, and trust. The technical organization typically identifies a negotiator, this is often the individual who prepared the SOW and the IGE as that person is most familiar with the SOW and level of effort involved with the project requirements. The negotiator works from the approved POM and must be fully prepared and know what flexibility there is in the government position. The negotiator(s) must focus on the pertinent issues and be willing to adjust the government's position, when appropriate. Negotiations typically concern the quantity and mix of various position classifications. A TO may be new, modified, have options, or include work involving minor cost elements that are not in the contract rate schedule.

b. *Understanding the statement of work.*

(1) *General.* The government and A-E firm must have a common understanding of the SOW before discussing effort and price. The negotiators verify the firm is proposing to use personnel and procedures appropriate for the required work. The negotiators must know if there is any flexibility in the SOW requirements, including the schedule for deliverables. It might be possible to reach agreement if one or more items in the SOW are modified or deleted, provided by the government, or the firm better understands the requirements and their relationship to the overall success of the work.

(2) *Estimated construction cost.* The ECC for the work must be included in the SOW for design contracts. Design contracts can be preparation of a DB RFP; preparation of full plans and specs for a DBB RFP; or delivery of a partial design, such as an initial, interim, or final design package. For a contract involving design, agreement must be reached on the ECC of the project because it directly impacts compliance with the statutory limitation and the Design within Funding Limitation clause. The A-E firm must submit acceptable evidence of any perceived deficiencies in the government ECC value before the government considers any adjustment to the ECC.

c. Price.

(1) Bottom-line price agreement that is fair and reasonable is the objective of negotiation and is determined by mutual understanding on the level of effort for the project requirements described in the SOW (FAR 15.404-1(a), FAR 15.405). The negotiators should only make a bottom-line price offer as a final attempt to reach agreement after there is a common understanding of the SOW and a cost analysis has been done.

(2) The negotiators should not be preoccupied with any single cost item (such as labor hours, discipline level, or profit) since agreement on every item is not required to reach overall price agreement (FAR 15.405(a) and (b)). Conversely, final agreement does not indicate agreement on all elements of the proposal. Significant items affecting level of effort (and therefore affecting price) must be discussed according to the POM. The negotiators should not place themselves in a position where they are defending the government's position. Rather, a firm should be requested to explain and support its proposal and to offer appropriate revisions. Significant elements in price negotiation are discussed below.

d. Labor.

(1) Position classifications and labor hours will be evaluated in the technical analysis. Labor rates that will be in effect when the TO is awarded are the prevailing contract IDC rates to be used during negotiations; this applies to the base TO scope and any options concurrently being negotiated for award. If options are anticipated to award at a later date, meaning not when the base TO awards, then the rates used are those anticipated to be in effect when the option is expected to award. For TO modifications, the rates in effect at the time of the expected modification award are used.

(2) Disagreement over the labor category for a certain position classification might be resolved by using another classification level (use a junior level or journeyman level instead of a senior level) or by adjusting the proportion of time of individual employees with different labor rates that comprise that classification. Accordingly, the POM will confirm appropriate contract year labor rates were used as part of the price or cost analysis. If price remains unreasonable, the negotiators may first seek justifiable reductions in the judgmental elements of the proposal (such as labor hours and position classifications) before considering a reduction in scope.

e. *Travel.* Costs for all anticipated travel items, such as airline tickets, vehicle cost per mile or day, parking, gas, and per diem for certain locations of work, are evaluated using the JTR or fair market values as a guide for reasonableness. For travel that cannot be anticipated, the contract may include a statement that travel costs will be computed consistent with FAR 31.205-46.

f. *Other direct costs.* Costs that can be directly attributable to the project requirements are estimated as part of the overall price of the TO. A unit cost or price can be negotiated for all anticipated supplies (such as survey monuments) or support services (such as soils tests). Unit costs or prices may also be negotiated for specific types of services, such as a daily rate for a survey crew or per-acre rate for a topographic survey (FAR 31.202).

g. *Profit.*

(1) It is in the government's interest to negotiate sufficient profit to stimulate efficient contract performance. Profit must not be negotiated until a thorough understanding on the level of effort on the TO is agreed. The negotiator(s) should be primarily concerned with the total dollar amount of proposed profit, and not the method or rationale used by the firm to estimate profit for itself and any subcontractors (FAR 15.404-4(c)(5)).

(2) The Alternate Structured Approach method for profit is the only method used for A-E TOs when preparing the government estimate of a fair and reasonable price (DFARS 215.404-4(c)(2)(1)(i)(II) and UDG 5115.404-73-2). A firm is not required to compute its profit by this method. Profit is allowed on all costs, including travel and reproduction. The profit rate will be applied to the total of the prime firm's costs and any subcontractors' costs (including profit).

h. *Certified cost and pricing.* Certified cost and pricing information may still be required even if certified cost and pricing was received for the base IDC. IDC-level cost and pricing certification does not exempt a new certification from being received at the TO level if the value of the TO exceeds the thresholds of FAR 15.403-4.

i. *Statutory limitation.*

(1) Work performed by A-E firms for a design deliverable are classified in two categories: "design services" subject to the statutory fee limitation and "engineering services" not subject to the statutory fee limitation. The portion of the TO contract price for A-E services for the preparation of designs, plans, drawings, and specifications may not exceed the fee limitation of the project's ECC (FAR 15.404-4(c)(4)(i)(B), FAR 36.606(a), and DFARS 236.606-70). This limitation is statutory (10 USC 7540(b)). Examples of services that may be excluded from the A-E contract price when determining compliance with the statutory limitation are provided in Appendix F.

(2) The statutory fee limitation also applies to A-E contract modifications for design work not initially included in the contract and/or for redesign of features in the original contract. Appendix F provides an example of how to apply the statutory fee limitation to

A-E TO modifications and redesign work for both the design phase and the construction phase (after project award). This example shows how to confirm that a modification, or a series of modifications, does not exceed the statutory limitation.

(3) An A-E TO for preparation of the DB RFP solicitation is considered nondesign services for purposes of the statutory limitation. The statutory limitation does not apply to development of a DB RFP contract for construction solicitation.

j. Acceptance or termination of negotiations for task orders.

(1) When agreement is reached, the firm will be advised not to begin work until directed by the KO. Task order awards are prepared using DD Form 1155 (Order for Supplies or Services) (DFARS 216.505). A DD Form 1155 for a TO need only be signed by the KO and serves as the NTP. Modifications to TOs are issued on an SF 30 (Amendment of Solicitation/Modification of Contract).

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

k. Modifications to task orders. The negotiation of modifications generally follows the same procedures as the negotiation of the original TO consistent with FAR Part 43. The original TO is modified with the necessary updates, an RFPP is issued, an IGE prepared, and a proposal received and subsequently negotiated.

l. Review contracts clauses relevant to performance. During negotiation for a TO, it is recommended the government reviews the following contract requirements with the A-E firm and documents these discussions in the PNM:

(1) CPARS performance evaluation process (FAR 36.604, DFARS 236.604, and Chapter 9 of this pamphlet).

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

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

Chapter 7

Architect-Engineer Contract Administration and Management

7-1. Introduction

This chapter addresses many, but not all, aspects of A-E contract administration and management applicable to TOs and C-Type contracts. Chapter 9 and Chapter 10 address in detail two other very important aspects of A-E contract administration, performance evaluation and enforcing design responsibility, respectively.

7-2. Principles

A-E contracts are proactively managed to promote timely delivery of quality products and services. A-E firms are treated fairly and professionally. In general, A-E contract administration and management responsibilities include the following:

- a. Monitoring the A-E firm's performance, ensuring compliance with the contract, and enforcing the responsibility of the firm for the quality of its work.
- b. Ensuring the firm has an adequate QC process and reviewing the A-E products for conformance with the technical requirements of the contract.
- c. Evaluating the firm's performance every 12 months, at a minimum.
- d. Maintaining liaison and direct communications with the A-E firm and promptly resolving any questions and issues that may arise.
- e. Providing required government-furnished information and materials and arranging access to work areas.
- f. Paying the firm in a timely manner for satisfactorily completed work.
- g. Modifying the contract, as required, to accommodate changes in requirements.
- h. Closing out the contract.

7-3. Contracting Officer's Representative

a. The appointment and responsibilities of a COR are described in DFARS 201.602-2. A COR assists the KO with technical monitoring and administration of the TO or C-Type contract. A COR must be a U.S. Government employee, a foreign government employee, or a North Atlantic Treaty Organization/coalition partner and must be qualified by training, credentials, and experience prior to being designated for contract oversight responsibilities. In no case will contractor personnel serve as CORs.

b. The A-E COR must possess a combination of education, training, license, and experience that demonstrates the USACE team member is on a professional level comparable with that of an A-E firm. There is no regulation that precludes a government

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

c. Technical monitoring and administration of A-E contracts as the COR is a function that is managed by a USACE team member who is a registered/licensed professional engineer/architect. In special cases, the Chief of Engineering (or duly assigned representative) may coordinate with the appropriate organization with the closest oversight of the actual work being performed to obtain a qualified COR nominee. This may be in another division, in the District, or with another District or Center. See the following examples:

(1) A technical team member from a Center of Expertise may be better suited as an A-E COR.

(2) For surveying or mapping contracts, the COR may be a professionally licensed surveyor.

(3) For geographic information system (GIS) contracts, the interdisciplinary nature of the work (geographers, cartographers, physical scientists) provides that GIS Professional (GISP)-certified individuals may be fully capable of providing COR duties on technically appropriate contracts.

7-4. Contracting Officer's Representative nominations

As contracting and engineering professionals, USACE's responsibility is to ensure qualified personnel are nominated, trained, and appointed as CORs who consistently perform their oversight responsibility effectively, according to their appointment. A COR for an A-E contract or TO will establish a COR C-Type profile in the PIEE that demonstrates the required credentials and up-to-date trainings. Once approved, self-nomination for COR assignments takes place in the Joint Appointment Module (JAM). The COR nomination is electronically approved by the supervisor and the PCO. CORs are not assigned at the base contract level for IDCs.

7-5. Architect-Engineer Contracting Officer's Representative training

a. CORs are required to know the type of contract actions they oversee and know the technical requirements of the work being performed (UAI 5101.604-100 and UDG 5101.604). COR certification requirements, initial training, annual training, and refresher training are specified for three different COR levels, and are detailed in the UDG at Attachment 2, COR Certification and Training Standards.

b. For A-E TOs, a Type C COR designation is required due to the professional qualifications and complex nature of A-E services, which require oversight by registered engineers or architects. The specialized requirements inherent in A-E contracts and the expectation of professional expertise, licensure, and registration from the A-E firm make it necessary for the A-E COR to possess comparable qualifications and credentials.

This translates to a higher level of education, licensure, training, and experience beyond what is typically required for a Type B COR.

c. COR nominations, terminations, and appointments are initiated, reviewed, and approved in the JAM within the PIEE at <https://wawf.eb.mil>. CORs are required to submit a monthly status report using the Surveillance and Performance Monitoring (SPM) module in PIEE. For A-E contract CORs, the following courses are required for initial training/refresher training, in addition to those listed for C-Type in Attachment 2 of the UDG:

(1) DAU Continuous Learning Contract (CLC) 222, Contracting Officer's Representative (COR) Online Training (32 hours, web based), initial training and every 3 years as refresher training. (<https://icatalog.dau.edu/onlinecatalog/tabnavlas.aspx>).

(2) DAU Continuous Learning Acquisition Management (ACQ) 0030, Overview of Acquisition Ethics (2 hours, web based), initial training and every 3 years as refresher training. (<https://icatalog.dau.edu/onlinecatalog/tabnavlas.aspx>).

(3) PROSPECT Course Number 004 A-E Contracting in USACE (<https://ulc.usace.army.mil/>) (36 hours, resident or online) offered by the USACE Learning Center is required as part of initial training and need only be taken once, though taking this course every 8–10 years is recommended.

(4) Sources for optional training to meet the remaining initial and refresher training hour requirements are available at the DAU (<https://icatalog.dau.edu>), the Army Logistics University (<https://alu.army.mil>), and the USACE Learning Center (<https://ulc.usace.army.mil>).

(5) Refresher training is in contracting and/or topics related to COR duties. For example, the DAU CLC 011 Contracting for the Rest of Us course is relevant to help fulfill COR refresher training hours.

7–6. Contracting Officer's Representatives on construction phase services support task order/C-Type

a. For CPS, it is recommended that the A-E COR on the design TO remain as the A-E COR for CPS if the A-E providing the CPS is also the DOR. For CPS not associated with a DOR, the engineering team member who puts the CPS TO/contract together should serve as the COR, provided the required credentials and training for serving as an A-E COR are met.

b. The A-E COR on the CPS contract coordinates with the construction field office to obtain performance-related information to be used for drafting an evaluation in CPARS. The overall responsibility for the technical management and monitoring of the A-E CPS TO/contract is an engineering function. Designating the engineer directly managing the TO as the A-E COR is a best practice, fostering efficiency by streamlining technical expertise and contract administration within a single role.

7-7. Quality management on Architect-Engineer task orders/contracts

a. The quality management procedures, practices, and tools for Military Programs is provided in ER 1110-3-12. Quality practices for CW is addressed in ER 1165-2-217 and ER 1110-2-1150. These will be used by Engineering to confirm the A-E firm provides excellent engineering and design services and delivers quality products to the customer on schedule and within budget.

b. The DOR has obligations after construction award, and it is important to not confuse management and oversight of those inherent DOR responsibilities (quality, technical accuracy, coordination of drawings and specs) with responsibilities associated with CPS support.

(1) CPS are services provided by an A-E firm, after construction is awarded, that are beyond those responsibilities of the DOR. DOR responsibilities are design-related and are addressed by the DOR at no extra cost to the government. CPS does not include responding to design clarification RFIs or addressing design errors or omissions that are inherent to the design quality and liability of the DOR.

(2) If the DOR is asked to perform duties in addition to those directly related to the signed and sealed design, then those are negotiated as a separate option contract line item number (CLIN) on the A-E contract, exercised after construction awards and managed accordingly. See Chapter 8 for additional discussion about CPS.

c. When DB RFPs are prepared by an A-E firm, it is the responsibility of the A-E firm to respond to contractor RFIs and requests relating to the interpretation or clarification of design intent or performance specifications in the solicitation documents. Communication back to the A-E firm who prepared the DB RFP and to the point of contact in the A-E contract is initiated by the USACE construction manager. The DB construction contractor is not to contact the DB RFP preparer directly. Discrepancies are brought to the construction COR, who, in turn, coordinates with the A-E COR.

7-8. Architect-Engineer payments

a. *Payment clause.* FAR 52.232-10 is the payment clause for A-E contracts. The payment clause and process should be discussed with an A-E firm during negotiations. The clause requires monthly progress payments. The contract (typically under Section G, Contract Administration Data) should specify the format of the payment request and any required supporting data, such as a written description of the work completed in the payment period, a bar chart of work progress, and/or spreadsheet of completed actions.

b. *Payment using Engineer Form 93.* Usually ENG Form 93 (Payment Estimate – Contract Performance) is used. Payments are by electronic funds transfer according to the Debt Collection Act of 1996 (PL 104-134) and must be made promptly, consistent with FAR 52.232-26. The due date for making invoice payments for work or services completed acceptably by the Contractor is the later of the following dates:

(1) The 30th day after the designated billing office receives a proper invoice from the contractor.

(2) The 30th day after government acceptance of the work or services completed by the contractor.

(3) If the designated billing office fails to annotate the invoice or payment request with the actual date of receipt at the time of receipt, the payment due date is the 30th day after the date of the contractor's invoice or payment request, provided the designated billing office receives a proper invoice or payment request and there is no disagreement over quantity, quality, or contractor compliance with contract requirements.

c. Retainage. The payment clause allows up to 10% of an approved progress payment to be retained provided the KO determines the withholding is necessary to protect the interests of the government. Retainage is not automatically withheld from each payment (no blanket retainage applied to every progress payment) unless the COR has notified the KO for the need to retain.

(1) Typically, the amount to be withheld (up to 10%) happens when some portion of work or deliverable is not in compliance with the contract requirement or the product delivered is incomplete. Alternatively, the invoice can also be rejected for noncompliance or unsatisfactory delivery and resubmitted after coordination with the A-E COR.

(2) Retainage is not held in an amount greater than, or for a period longer than, absolutely needed to protect the government. All retainage is paid when those discrete phases of the project are satisfactorily completed. Retainage is never to be applied in a punitive manner nor held to simply keep a TO open.

(3) The COR and/or other technical staff may also visit the A-E firm's office to verify progress. The COR will reduce the payment estimate, if warranted, to conform to the actual satisfactory progress and promptly notify the A-E firm consistent with the prompt payment clause (FAR 52.232-26).

d. Approvals. Typically, the KO delegates the authority to approve progress payments to the A-E COR. The A-E COR may also process the final pay estimate in the Corps of Engineers Financial Management System (CEFMS) upon receiving approval notification from the KO. Final payment hinges on the KO's receipt of the release of claims, as required by FAR 52.232-10(c), and notification to the A-E COR. To enable proper procedure and mitigate potential issues related to the release of claims, some Districts/Centers have implemented local policies requiring the KO's signature on the final pay estimate after the A-E COR confirms satisfactory work completion.

7-9. Architect-Engineer contract closeout

FAR 4.804 provides general procedures for contract closeout. All A-E contracts must be closed out promptly after satisfactory completion and delivery of all services and

products required by the awarded contact and any subsequent modifications thereto. For an A-E contract, the following additional actions are required and are managed by the KO:

- a. All liability actions resolved, to include any modifications required.
- b. Final performance evaluation completed.
- c. Return of all government-furnished materials.
- d. Release of claims executed so final pay estimate can process.

7–10. General management of Architect-Engineer indefinite delivery contracts

a. *Management of contract capacity and obligations.* An IDC, whether part of a MATOC or being a SATOC, may be used by more than one organizational unit. A process must be established for all IDCs to reserve an estimated amount of capacity for a planned TO and to track the actual prices of orders to prevent the dollar limit for the base contract or contract period (if applicable) from being exceeded. The Total Report of Acquisition Capacity (TRAC) is the enterprise tool MSCs and Centers are required to use to share and document available capacity and is available at <https://trac.usace.army.mil>.

b. *Contract limitations.* See UAI 5136.601-3-90-100 regarding limitations on awarding TOs if a TO can be issued under more than one available IDC. Until such time the UAI/UDG is updated, the Director's memorandum with Subject: Updated Procedures for the Selection of Task Orders on A-E Indefinite Delivery Contracts, dated 1 April 2025, takes precedence. SATOC and MATOC IDCs are qualifications-based selections; TO awards under an A-E MATOC must also follow qualifications-based selection.

c. *Use of negotiated rates.* See FAR 16.5 for general guidance for IDCs and Chapter 4 of this EP for the minimum guarantee. Question pertaining to the IDC negotiated rates and applicable use thereof are addressed through FAR 52.233-1 and not through FAR 52.216-4.

d. *Annual updates to Standard Form 330 Part I and Part II.*

(1) Consistent with FAR 36.606(e), annual updates to A-E firm qualifications on the SF 330 Part II is encouraged by FAR 36.603(d)(1), and is also encouraged by USACE for the SF 330 Part I to facilitate efficiency of the TO evaluation processes (TORN) referenced in UAI 5136.601-3-90-100 and lower use of the RSI TORN. It is recommended this be done on or near the yearly anniversary award date of the MATOC award. A-E firms holding IDC contracts in the MATOC can submit updates to the SF 330 on file to the KO at any time outside the annual update cycle, if needed, but it is preferred for updates to take place during the annual update cycle. Chapter 4 provides additional information regarding the annual update process.

(2) The annual update is a substitution process and not an additive one. Firms cannot unilaterally add example projects beyond what was required as part of the original SF 330 submission, nor add to the number of key personnel. After each update, the SF 330 remains consistent with the original requirements in the synopsis from which the firms were selected (with potential adjustment allowed for example project dates) and demonstrates the firm has maintained its qualifications as an MHQ firm to provide the services described in the contract. This precludes firms from enhancing their original qualifications and skewing the MATOC TO evaluation process on criteria such as, but not limited to, capacity, SB, professional qualifications, and experience (excessive example projects).

(a) The KO may, on occasion and as a best practice, allow a predetermined increase in the number of example projects, not to exceed 10 additional example projects, as part of the annual update. This change provides additional information for A-E TO boards to use during evaluation, thereby reducing the need for supplemental information (such as use of the RSI TORN). The additional example projects also provide Districts/Centers the choice to include project types in the annual update notification, which could facilitate receiving project-specific information from A-E firms more closely aligned with forecasted workload. It also provides A-E firms greater flexibility to decide which example projects to change and not change in their annual SF 330 submission.

(b) For example, if the synopsis required 10 example projects, then after the update there should still be 10 example projects unless the KO authorized an increase for the entire MATOC pool. If the KO allowed an increase in the number of example projects beyond what was required in the original submission, then the updated SF 330 should not exceed the new maximum stated. However, the number of key disciplines cannot change during the annual update. For example, if the synopsis required three licensed civil engineers, after the update there should still be three licensed civil engineers (not more, and certainly not less). The typical areas where updates are anticipated annually are Key Personnel and Example Projects.

(3) The government does not expect frequent changes to the teaming arrangement in the SF 330, as this is the team the firm or the JV selected based on their qualifications. The contractor must obtain the KO's approval before making a substitution to subcontractors or key personnel. Performance of services provided by an A-E firm are limited to those individuals or firms that were specifically identified and agreed to during negotiations of the original base contract. Any changes to previously negotiated arrangements must be approved (FAR 52.244-4) prior to use.

7-11. Resolving performance problems

a. *Oversight.* Proactive, day-to-day oversight of an A-E TO (or C-Type contract) by the A-E COR and Engineering lead includes frequent communications with the firm to help prevent most A-E performance problems. Early communication is key to resolving performance issues and minimizing long-term impacts. The A-E COR monthly status report documents the early signs of performance issues and tracks the steps taken and

progress made to resolving those issues. The A-E COR is responsible for coordinating performance issue resolution through the KO. The A-E firm must be promptly advised whenever its performance is falling behind and there is the potential that a “marginal” or “unsatisfactory” rating on an evaluation area may result. If performance continues to be marginal or unsatisfactory, then the government will take stronger action to improve the firm’s performance.

b. Methods of oversight. The following methods (items (1) through (11)), in general order of increasing impact and severity, should be used to resolve A-E performance problems. If the A-E firm remedies the issues identified, then evaluation of any future performance problems and the method to be used is at the KO’s discretion.

(1) Verbal notice to the firm by the COR. Document this verbal notice in the COR’s file and official contract file. The COR should keep the KO informed on any corrective action.

(2) Letter to the firm from the COR citing specific deficiencies and required corrective action according to the terms and conditions of the contract.

(3) Meeting between the firm and the COR, Engineering Division representative (typically the A-E DM/TL), KO, and possibly Project Manager (PM). Document the meeting in the COR file and official contract file.

(4) A letter from the KO referencing the COR letter and required corrective action and lack of progress with required corrective action. This letter should also establish a first meeting among the firm, the KO, the COR, the appointed engineering representative (A-E DM), and possibly the PM and OC. Document the meeting in the COR file and official contract file. At this meeting, inform the firm that an interim marginal or unsatisfactory performance evaluation will be prepared if its performance does not promptly improve, and that this evaluation could affect its selection for other contracts. Document this meeting in the COR file and official contract file.

(5) Issue an interim marginal or unsatisfactory performance evaluation according to procedures in Chapter 9.

(6) Meeting between the firm and the KO and COR, Chief of Engineering Division, engineering representative (A-E DM), and PM. Document this meeting in the COR file and official contact file.

(7) Issue a “cure” notice to the firm from the KO (FAR 49.402-3(c) and (d)). The cure notice must cite the specific deficiencies, required corrective actions, and suspense date.

(8) Issue a “show cause” notice to the firm from the KO (FAR 49.402-3(e)) notifying the firm of the possibility of termination.

(9) Issue a final marginal or unsatisfactory performance evaluation.

(10) Termination for default (FAR 49.4), which will always be accompanied by a final unsatisfactory performance evaluation.

(11) Also, see Chapter 10 of this EP regarding an A-E firm's responsibility for errors or deficiencies in design or other services discovered after completion of the contract work.

7–12. Use of Architect-Engine contractor support (nongovernment advisors) in construction selection boards

a. Use of A-E contractor support (nongovernment advisors) in a source selection for construction award must follow requirements and procedures in FAR 37.203, FAR 37.204, AFARS 5137.204, and UAI 5137.204. A determination and findings for authority to use nongovernment advisors requires SCO approval prior to release of the construction solicitation.

(1) The written determination identifies that neither personnel from USACE, the requesting federal agency, the federal customer, nor another federal agency, have adequate training and capabilities to perform the required evaluations. The firm providing this support is strictly in an advisory capacity; they are not a voting member of the source selection evaluation board and do not have access to past performance or price information.

(2) The firm will have access only to those portions of the evaluation criteria for which governmental personnel with the requisite training and capability are not available to evaluate. The KO will confirm there is no organizational conflict of interest and none of the functions to be performed are inherently governmental (FAR 7.503, FAR 9.505, DFARS 207.503 (S-70) (1)).

b. The construction solicitation must contain information to advise potential offerors of the support contractor (A-E firm) participation as a nongovernment participant. Although these support contractors (A-E firms) may be used to evaluate or analyze any specific aspect of a construction proposal, their function is advisory only and they may not be voting members or participate in rating proposals or recommending a selection. In addition, these support contractors may only have access to those portions of the proposal and selection information that they need to perform their specific duties. The support contract personnel (A-E firm) may not have access to past performance or price information. The KO will confirm there is no organizational conflict of interest and none of the functions to be performed are inherently governmental.

Chapter 8

Construction Phase Services Support

8–1. Introduction

This chapter addresses CPS and the following activities and services associated with post-construction award.

8–2. General

- a. The administration and management of a construction contract includes functions that are inherently governmental and are reserved from being contracted (FAR 7.300).
- b. Services that interpret contract requirements, technical provisions, and are extensions of design or variations thereto, are considered A-E. Services that observe, monitor, track, review, and document are considered non-A-E.
- c. Title 40 of the United States Code, Chapter 11, Section 1102, provides the following: “The term ‘architectural and engineering services’ means ‘other professional services of an architectural or engineering nature, or incidental services, which members of the architectural and engineering professions (and individuals in their employ) may logically or justifiably perform, including ... construction phase services.’” FAR 36.601-4(a)(3) further instructs KOs to consider CPS to be A-E services.
- d. ER 37-1-30 and ER 415-1-6 describe activities that are considered design during construction (DDC), which are provided by or supervised by a licensed/registered professional (or professional having comparable education and experience that is associated with the engineering or architecture communities of practice).
- e. The DOR retains responsibility to address design errors, omissions, and provide responses to design clarification RFIs on full designs. The CPS firm cannot make changes to stamped drawings unless the CPS firm is also the DOR or unless the government agrees to assume liability of the design. Responding to routine RFIs and clarifications on plans and specs not related to prescriptive contract performance is not a DOR-specific, post-construction award activity. The DOR-specific design contract responsibilities are design-related clarifications and corrections due to errors and/or omissions in the stamped design documents awarded for construction.
- f. In-house designs that need additional support during construction can utilize an A-E contract for CPS support. Reviews and recommendations for changes or modifications to designs provided to the in-house designer for final decision and incorporation into the design; however, the CPS A-E firm cannot make official changes to the in-house, prepared design documents. Any design changes must be made by the in-house design team.

8–3. Principles

a. In post-award construction management, there are two types of services: CPS and Construction Management Services (CMS).

(1) CPS are considered A-E services, which must be acquired using the A-E Statute and FAR Part 36.6. These services utilize the professional judgment, supervision, and/or review of registered engineers. Services and activities requiring engineering education and knowledge associated with the A-E profession, but not licensure or registration, are also considered A-E services. CPS includes a variety of activities by an A-E firm during the construction stage of a project, where the CPS contractor monitors various aspects of the construction contractor's performance to confirm the project's compliance with design elements and design-related quality standards of the plans and specs. See paragraph 8–9 for a list of activities and services that are considered CPS.

(2) CMS are non-A-E services acquired following FAR Parts 13 or 15. These services, if needed, may need to be procured using a separate contract from the A-E design and/or A-E CPS services.

(a) CMS services include those activities that do not require engineering education, licensure, or registration associated with the A-E profession. These services are similar to Quality Assurance Representatives, Project Engineers, and Quality Surveillance representatives in USACE that do not require a formal engineering degree or licensure to perform (see paragraph 8–10).

(b) CMS includes a variety of activities by a non-A-E firm during the construction stage of a project where the CMS contractor provides surveillance, inspection, and observation to assure projects are constructed according to the construction contract documents, which includes monitoring for wage and labor compliance, safety compliance, proper use of materials and methods, quality standards, review of progress pay estimates, and scheduled timelines.

b. A-E firms are responsible for the hiring, management, supervision, and approval of their employees' activities and judgements rendered during the surveillance of construction. The day-to-day surveillance and administration of employees in a CPS firm may be performed by unlicensed, professionally qualified individuals; however, the supervision and review of those services are considered a responsibility appropriate for a licensed engineer/architect.

c. Contracts and TOs that are a combination of A-E services and non-A-E services should be considered A-E services if the SOW, substantially or to a dominant extent, specifies performance, approval, and/or oversight by a registered or licensed architect or engineer (FAR 36.601-3(c)). When using an option for CPS services, the work in the option must, by itself, be substantially A-E services and not predominantly CMS. A-E activities and services cannot be performed on a non-A-E contract/TO even if those services appear to be incidental to the CMS services required.

d. Post-construction award activities are an essential part of the delivery of a quality project. Clear definition of the scope of work, to include the activities and projects that will be served by the CPS contract, is essential to avoid the appearance of personal services (FAR 37.104) and ensuring that inherently governmental work is not being performed by the contractor (see paragraph 8–5). A clearly defined scope of work identifies the needed services and activities, by project, with deliverable time frames. CPS support is scoped by specific projects and not by locality (such as a project or resident office).

e. The government does not review resumes of individuals when selecting the CPS firm. It is the responsibility of the firm to provide qualified individuals that meet or exceed the qualifications stated in the base contract for the disciplines required in the SOW.

(1) The CPS personnel will be furnished and managed by the firm providing the services, not selected or managed by the Area, Project, or Resident Office. USACE will only verify that the defined contract deliverables and services are performed to the expected level of quality and on a timely basis.

(2) The A-E firm, not the government, is responsible for the management, oversight, and QC actions to meet the terms and conditions of the CPS TO (or C-Type contract). The assessing official (AO) on the A-E contract will provide the CPARS evaluation with input from the construction field office. For A-E contracts/TOs, the AO is the KO. The KO may assign the A-E COR the role of assessing official representative (AOR).

8–4. Funding for construction phase services

The appropriate funds type must be used to award CPS. The level of effort and support needed post-construction award is coordinated with the PM. Project funds dedicated to support those engineering services and site visits needed post-construction award are typically provided in addition to those funds provided for design.

a. For military programs, DDC and supervision and administration (S&A) funds may be used when appropriate, according to ER 37-1-30 and ER 415-1-16. For MILCON, planning and design (P&D) funds are used for pre-award activities up to and including award of the construction contract.

b. For CW, the construction account typically funds the post-award construction services needed and not the investigation account used for studies or planning, engineering, and design. Refer to ER 1110-2-1150 for additional funds utilization on CW projects and ER 37-1-30 for CW cost-accounting procedures.

c. For the DOR on a full DBB construction award, any post-construction award activity that is in response to an error or omission from the A-E's original design contract or that requires response to an RFI for a design clarification, is part of that original design requirement and will not be funded for CPS effort. It is important to note that

errors and omissions may also qualify for further investigation as part of the A-E Responsibility Management Program (AERMP); more detail is outlined in Chapter 10.

8–5. Inherently governmental functions that may not be contracted

The CPS scope of work must not restrict the discretionary authority and decision-making responsibility of the government employee. The following is a brief list of services to avoid when developing the scope of work for a CPS contractor:

- a. Providing required COR duties (signing/approval of pay requests, initiating and completing CPARS reviews, etc.).
- b. Providing PCO or Administrative Contracting Officer (ACO) duties.
- c. Making decisions on behalf of the government that affect another Contractor's payment, performance ratings, or award of work.
- d. Preparing IGEs; quantities, costs, materials, and/or labor requirements may be estimated by the A-E, but the final product must be collated, reviewed, and approved by the government.
- e. Fiscal management including budget analysis, expense reporting, labor code management, and military S&A account financial transactions.

8–6. Contracting methods for construction phase services

CPS support may be acquired as a stand-alone (C-Type) contract, an IDC against which TOs may be placed or negotiated options. Note that if using options on a TO, it is necessary to confirm there is no conflict with DFARS 217.204(e)(iii) limits on performance durations when exercising the option.

8–7. Quality management

The quality management procedures, practices, and tools in ER 1110-3-12, ER 1165-2-217, and ER 1110-2-1150 will be used to verify that the A-E firm delivers excellent engineering services to the customer on schedule and within budget.

8–8. Designer of Record access for construction phase services support and design changes during construction

a. *Background.* The DOR has inherent designer responsibilities (and associated liability with that design) after construction award separate from supplemental CPS support. CPS are services provided by an A-E firm after construction is awarded that are beyond those responsibilities of the DOR. CPS does not include responding to design clarification RFIs or addressing errors or omissions that are inherent to the design liability of the DOR. Responses by the DOR to design clarifications, errors, or omissions is part of the negotiated award price to produce the DBB package and does not warrant additional compensation.

b. Procurement.

(1) To retain the DOR for DOR-related services throughout construction, it is recommended to have a POP in the DOR contract that continues throughout the anticipated construction POP. This recommendation is regardless of whether the government also uses the DOR for CPS. Considerations include the following:

(a) Keeping a task or contract POP ongoing beyond the solicitation period for the construction award and through construction completion provides benefits such as:

1. Quick access to the DOR for design issues during construction, early resolution to potential A-E liability issues, and keeping the DOR responsive to design-related clarifications, errors, or omissions. This also helps minimize construction schedule delays when the government needs access to the DOR for official changes to signed and sealed (stamped) drawings and specs due to situations like differing site conditions, user-requested changes, value engineering change proposals (VECPs), or variances.

2. Monitoring DOR design quality with greater accuracy for CPARS evaluations. Ensuring the POP through construction facilitates compliance with DFARS 236.604, which requires performance evaluations on DOR design quality during construction with a final evaluation due when construction is substantially complete. If the DOR POP ends sooner, CPARS will require a final evaluation that, if not completed, will remain as a reportable delinquent CPARS action. An addendum could be completed at a later date if the TO was closed; however, there is a high risk this is not completed due to changes in staffing and the amount of time before construction is substantially complete.

(b) It is recommended to have a low-cost, monthly deliverable documenting DOR-related responsibilities throughout the construction POP, which include responding to design clarification RFIs, errors, or omissions. For example, the DOR deliverable may document the number of design-related RFIs responded to and any responses to perceived discrepancies due to errors or omissions in the design. It is anticipated that the deliverables will be low-cost monthly because the compensation is not for the actual level of effort put into answering design RFIs or responding to errors and omissions, but for the level of effort the DOR expends to prepare the report. This is because the level of effort for answering the RFIs and error/omission responses is already captured in the DOR's inherent responsibility to provide a fully coordinated and technically sound design. See FAR 36.609-2.

(2) If CPS support may be required and the services are not directly related to the design intent or design interpretation, such as nondesign-related submittal reviews, site visits, and commissioning, then the DOR firm must be additionally compensated.

(a) Payment for such services is generally procured as a separate option CLIN in the original contract or TO. The CLIN price is negotiated as a level of effort based on an estimated quantity of items or types of services (number of meetings, submittal reviews, etc.) to be provided. The CPS option CLIN cannot be exercised prior to award of the

construction project. Negotiating CPS as options at the time of the original, full-design DBB TO award has the distinct advantage that these can be exercised even if the base IDC ordering periods have expired.

(b) If CPS is not included as an option and it is desired to obtain CPS from the original DOR, then those CPS need to be acquired using the A-E Statute (which includes the TORN process) or using a separate, sole-source justification. Note that when seeking to add CPS to the DOR's contract or TO, the out-of-scope modification is appropriate only if the DOR's original design contract/TO is still open, the base IDC ordering period is not expired, and it will not improperly extend the duration of services beyond 11 years consistent with DFARS 217.204(e)(iii).

c. *Unliquidated obligation reporting and retainage.*

(1) Withholding earned payment from a firm just to keep the contract open to have access to the DOR is to be avoided. This can create noncompliance issues with the quarterly unliquidated obligation (ULO) reporting provided to Resource Management (RM) due to lack of movement on expenditure of funds.

(2) For those situations where CPS is not being considered, having a low-cost deliverable (mentioned above) facilitates compliance with ULO reporting, DFARS 236.604, and maintains flexibility for timely access to the DOR for construction changes, should the need arise.

8–9. Construction phase services are services of an architectural or engineering nature

a. Items in paragraphs (1) through (39) constitute a list of activities/services that are considered A-E in nature associated with CPS, either for the base work or the options for these activities/services, and should be a predominant part of the work.

(1) Review of design QC plan.

(2) Initial design conference.

(3) Design review conferences.

(4) Coordination of design issues among construction contractor, COR, user, USACE A-E DM, and PM.

(5) Designs to correct errors and omissions in RFP criteria prepared by USACE.

(6) Set up and manage DrChecks (ProjNet) design review comments.

(7) Design reviews (functional, technical, code compliance).

(8) Design-related permit coordination among permitting agency, user, and construction contractor.

(9) Designs for contract changes and user-requested changes, including changes to government-furnished property, or unknown site conditions that could not have been discovered under normal and prudent site inspection or testing.

(10) Verify/document design-related Leadership in Energy and Environmental Design (LEED) strategies.

(11) Contract modifications associated with design or customer changes.

(12) Technical reviews of submittals considered to be an extension of design.

(13) Code compliance reviews.

(14) Shop drawing reviews marked for government approval (GA), design variances, or extensions/deviations to design.

(15) Correction of errors/omissions in documents prepared by in-house staff.

(16) Responding to RFIs and similar contractor requests for information relating to the interpretation or clarification of prescriptive or performance specifications in a solicitation prepared in-house.

(17) Mandatory design reviews by Centers of Expertise.

(18) Testing and commissioning efforts by the government in excess of those specified in the Unified Facilities Guide Specifications (UFGS) technical provision.

(19) Review of contractor submittals by the designer to verify design assumptions (such as fire-protection shop drawings).

(20) Post-award value engineering costs that are not offset by savings (VECP).

(21) Design-related visits to the jobsite by DOR personnel.

(22) Review of engineering and design effort by the construction contractor where specifications are expressed in terms of performance standards with certain design details left to the contractor.

(23) Review of contractor submittal (shop drawings) labeled "for Government Approval."

(24) Post-award commissioning and testing exceeding normal requirements in the UFGS.

(25) Modifications to plans and specifications.

(26) Preparation of engineering considerations and instructions to field personnel.

(27) Prepare engineering reports (foundation reports, concrete reports, etc.).

(28) Critical material submittal reviews.

(29) Review of contractor-proposed variations or deviations that vary from the construction contract.

(30) Extensions of design, plans.

(31) Review as-built drawings.

(32) Review of compatibility requirement for equipment.

(33) QA functions on installation of specialized systems (cathodic protection, fire protection, etc.).

(34) Initial investigation of unknown site conditions, including differing site conditions to determine appropriate courses of action.

(35) Review/preparation/development of O&M manuals or operation, maintenance, repair, replacement, and rehabilitation (OMRR&R) manuals and water control manuals.

(36) Modify or revise submittal register and determine Government Approval/For Information Only/Cost Reimbursement (GA/FIO/CR).

(37) Meetings on design-related issues.

(38) Review of as-built drawings.

(39) Respond to differing site conditions and document findings.

b. Table 8–1 provides a list of disciplines that are typically negotiated as part of a CPS support contract due to requiring engineering education, license, and/or registration.

Table 8–1
List of disciplines typical of construction phase services support

Archeologist	Environmental Engineer Sr	Mechanical Engineer Sr
Architect Sr	Environmental Engineer Jr	Mechanical Engineer Jr
Architect Jr	Fire Protection Engineer	Project Engineer
Civil Engineer Sr	Geologist	Project Manager
Civil Engineer Jr	Geotechnical Engineer	Structural Engineer Sr
Electrical Engineer Sr	Hydraulic Engineer	Structural Engineer Jr
Electrical Engineer Jr	Hydrologist	Surveyor
–	Landscape Architect	–

8–10. Construction management services are not services of an architectural or engineering nature

a. Items in paragraphs (1) through (63) below constitute a list of activities/services that are not considered A-E in nature and are typically associated with CMS. If the work is associated with these types of activities/services, then the contract or TO is to be procured consistent with FAR 12,13 or 15. A-E work cannot be performed on a contract that was not procured using the A-E Statute, even if the A-E work is perceived to be incidental to the volume of CMS needed. If the CMS work is only incidental to the needed CPS work, then the CMS may be included as part of an A-E contract/TO/option because non-A-E work that is incidental to the overall A-E needed services may be procured according to the A-E Statute. However, if the A-E work is incidental to the overall need for CMS support, then procurement of the services is likely required on two separate contract/TO actions.

b. Note that when contracting for CMS, the scope of work may be negotiated in advance, but it may not be awarded until the construction contract that the CMS supports has been awarded. When a CMS contract or TO supports multiple projects, all projects must be identified in the scope of work, and the contracts for all projects identified in the CMS scope of work must be awarded prior to CMS contract award. If a CMS contract or TO supports more than one project and contains options to cover the different projects, each project must be scoped and negotiated as a separate option to be exercised after the relevant, specific construction project awards. CMS as an option may not be awarded in advance of the construction award. NAICS 541618 is recommended for CMS acquisitions.

- (1) Cost estimates for contract changes.
- (2) Reviews to confirm compliance with the solicitation and accepted (construction) proposal.
- (3) Review contract claims.
- (4) Preparation of cost estimates for change orders.
- (5) Review and/or prepare construction phase reports and plans.
- (6) BIM reviews of contractor drawing updates.
- (7) Review of catalog cutsheets.
- (8) Shop drawings that are not extensions of designs.
- (9) Shop drawings that do not contain variations from the specified design.
- (10) Review of material samples for noncritical materials.
- (11) Administrative support.

- (12) Photography/videos for progress reports.
- (13) Construction materials control testing and reporting.
- (14) Material quantity verification.
- (15) Estimating quantities of project changes or change orders.
- (16) Review contractor payrolls and perform labor standards interviews in the field.
- (17) Prepare observations for CPARS.
- (18) Monitor contractor's accident prevention plan.
- (19) Conduct a mutual understanding meeting with the contractor on safety.
- (20) Review contractor's QC plan prior to allowing work to begin.
- (21) Conduct a coordination meeting with the contractor on QC prior to allowing work to begin.
- (22) Submittal reviews that are for information only (FIO).
- (23) Submittal and shop drawing reviews (not considered to be an extension of design, those for which government approval is not required).
- (24) Monitor submittal register (timely submittals, approval of equipment/material, complete list).
- (25) Review contractor schedule for accuracy with submittal register (review project schedule updates).
- (26) Verify all warranties have been received.
- (27) Review/verify QC test result reports.
- (28) Review contractor daily QC reports.
- (29) QA participation in three-phase inspections.
- (30) QA minimum 5% verification testing (concrete, soils, etc.).
- (31) QA observation of 10% of contractor QC tests.
- (32) Monitor contractor deficiency log to confirm acceptable corrective actions.
- (33) Perform field observations to confirm that contractor payments do not include nonconforming work.

- (34) Prepare QA reports for each day the job is visited.
- (35) Off-site inspection of fabricated items.
- (36) Pre-final completion inspections for government acceptance (not final inspection for acceptance).
- (37) Review of contractor insurance certificates and bonding.
- (38) Contractor schedule review and monitoring.
- (39) Weekly coordination meetings on nondesign-related issues (quality, safety, schedule, contract admin).
- (40) CMS (import/export, Quality Control System (QCS) training, etc.).
- (41) RFI response to contractor requests for routine clarifications on contract requirements (not design clarifications).
- (42) Review of O&M manuals.
- (43) Warranty response and enforcement.
- (44) Attend partnering meetings with contractors.
- (45) Evaluate/review unusually severe weather delays (monthly).
- (46) Review and prepare accident reports.
- (47) Document and report high-hazard activities (near miss reporting).
- (48) Document SB subcontracting plan compliance monitoring.
- (49) Contractor Personnel Identity Verification Presidential Directive (Homeland Security Presidential Directive 12).
- (50) Attend post-award conference/preconstruction conference.
- (51) Preparation of QA plans and execution of QA plans.
- (52) Train contractors in QCS system.
- (53) Review safety plan.
- (54) Construction-related permit coordination among permitting agency, user, and contractor.
- (55) Process/manage routine correspondence.

(56) Filing/logging/mailing.

(57) Review/coordinate site layout plans.

(58) Review/coordinate temporary power plans.

(59) Review, submission, and monitoring of SF 1413 submissions.

(60) Review construction QC plan.

(61) Review environmental protection plan.

(62) Estimates of materials or work quantities, including any required measurement or calculation.

(63) Reviews of insurance certificates submitted by the prime contractor on behalf of subcontractors.

c. Table 8–2 provides a list of disciplines that are typically negotiated as part of a CMS Support contract.

Table 8–2
List of disciplines typical of construction management services support

Admin Support	Engineering Technician Level IV Civil
Civil Engineer Technician	Engineering Technician Level IV Electrical
Construction Representative Sr	Engineering Technician Level IV Mechanical
Construction Representative Jr	Environmental Specialist
Cost Estimator	Industrial Hygienist
Draftsman/Computer-Aided Design/Drafting (CADD)	Project Scheduler
Engineering Technician (Materials)	Quality Assurance Rep
Engineering Technician Level III Civil	Site safety and security manager
Engineering Technician Level III Electrical	Technical Writer
Engineering Technician Level III Mechanical	Material Engineer Technician II

Chapter 9 Architect-Engineer Contractor Performance Evaluation

9–1. Principles

- a. Accurate and timely A-E contractor performance evaluations support the USACE objective of continuously improving the quality of A-E services and products (FAR 36.604 and FAR 42.1502).
- b. The performance of A-E firms must be evaluated fairly and objectively (FAR 42.1503). Rating and narratives should be consistent with definitions provided for in Table 42-1 in FAR 42.1503. Ratings are ultimately the decision of the government and will not be subject to negotiation with A-E firms. However, any rating, and especially a marginal or unsatisfactory rating, can include written comments that may be included by A-E firms according to the procedures described in the guidance for the CPARS and the CPARS User Manual (<https://www.CPARS.gov>).
- c. A-E firms must be kept apprised of the quality of their work throughout contract performance and must be notified promptly of completed performance evaluations through the CPARS.

9–2. Responsibilities

- a. *Reviewing Official.* The Reviewing Official (RO) is responsible for the overall A-E performance evaluation process in the District or Center. The RO assigned for A-E performance evaluations will be one level above the AO in the contracting chain of command, typically the Branch Chief in Contracting to the AO responsible for the A-E action. The RO responsibility includes facilitating timely review of performance evaluations, addressing disagreement between the AO and contractor comments, and signing the evaluation. The RO works with the engineering technical function and A-E COR when disputes arise from performance assessments during the study phases, design phases, and assessments when construction is substantially complete (DFARS 236.604).
- b. *Contracting Officer.* The KO verifies that procedures required by FAR 42.1502, the guidance for the CPARS, and other applicable policies are in place and followed for assigned contracts. The KO is the AO on A-E contracts (AFARS 5142.1503-90).
- c. *Assessing Official.* The AO is the person responsible for evaluating contractor performance. The AO is assigned consistent with AFARS 5142.1503-90. The AO has overall responsibility for preparing, reviewing, signing, and processing the evaluation. This includes reviewing input from the PDT and responses from the contractor. Only the AO has the functional ability in CPARS to sign and forward the evaluation to the contractor and the RO.
 - (1) The KO is the default AO on A-E contracts, a function that is not delegable. The KO may assign the A-E COR the role of AOR in CPARS (AFARS 5142.1503). AORs are often the COR on the A-E contract/TO. The AO may also assign an AOR to assist in

the preparation, coordination, and documentation of performance evaluations. Even though the AO assigns the AOR, only the Focal Point (FP) can appoint the AOR within the CPARS system. For highly complex projects, the AO may assign more than one AOR for the same phase of work, or the AO may assign another AOR as the phase of work changes. This procedure is a means of assuring workload distribution and assuring evaluations are accurate and can logistically be performed in a timely manner.

(2) For contract/TOs involving full designs, it is recommended the AO for the DOR on the design phase is also the AO for the DOR during the construction phase (DFARS 236.604) with consideration of an AOR from the construction office being assigned. In most instances, the construction office communicates with the A-E COR on the A-E contract who retains the AOR responsibility for preparing the draft assessment for the AO review for the A-E DOR (interims, interim when DBB package/design is complete, and the final CPARS, including the final CPARS when construction is substantially complete, if awarded).

d. Focal Point. The FP is responsible for the collection, distribution, and control of evaluations according to CPARS Guidance. The FP for A-E contracts should generally be within the technical division overseeing A-E contracts. The FP confirms that contracts meeting the applicable thresholds are registered within the suspense indicated in the CPARS guidance and that contracts are auto-registered to the maximum extent possible. The FP assigns roles and assists the AO (and AORs) in implementing the automated CPARS process by confirming adequate training is provided and helping with administrative matters to verify evaluations are completed in a timely manner and are of high quality. The FP enters the assignments of roles (AOR, AO, RO, Contractor Rep) in the CPARS portal.

9-3. Background

a. Regulatory guidance. The following regulations provide regulatory guidance for A-E contractor performance evaluations:

(1) FAR 42.1503 provides procedures, evaluation factors, and evaluation rating factors to be used.

(2) FAR 36.603 (b) and (d) are used to maintain files of SF 330 Part II on firms wishing to be considered for government contracts; and Part I, when applicable.

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

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

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

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

(7) FAR 42.1502(f) is used to prepare a performance evaluation for each contract over \$35,000.

(8) FAR 42.1502(a) is used to prepare performance evaluations to be entered into CPARS.

(9) DFARS 236.604 requires a separate performance evaluation of the A-E DOR after completion of construction.

(10) DFARS PGI 236.602-1(a)(4) directs that A-E evaluation boards use performance evaluations.

(11) FAR 42.1502 (g)(1) addresses performance and efforts to achieve goals in the SB subcontracting plan (12) UAI 5142.15 Contractor Performance Information.

b. Best practices. The following sources provide best practice guidance for A-E contractor performance evaluations:

(1) Guidance for the CPARS, July 2025, and supplements thereto. (<https://www.cpars.gov/cparsweb/assets/documents/CPARS-Guidance.pdf>).

(2) CPARS User Manual, July 2025, or supplements to. ([https://www.cpars.gov/cparsweb/assets/documents/CPARS User Manual.pdf](https://www.cpars.gov/cparsweb/assets/documents/CPARS_User_Manual.pdf)).

(3) The COR on A-E contracts/TOs is recommended as the AOR.

9–4. General procedures

a. Implementation.

(1) Interim and final performance evaluations, including any out-of-cycle and addendum evaluations, are limited to the A-E firm's performance occurring after the preceding evaluation. The final evaluation does not include cumulative information.

(2) Per FAR 9.104-3(b), past performance evaluations are significant because the evaluations establish whether a prospective A-E firm is responsible or nonresponsible. Additionally, the quality of the firm's past performance is important in determining their ability to respond to government requirements for future A-E services. USACE implements the requirements of FAR 42.1502(f) and FAR 42.1503(a) by designating that the RO be an individual who is functionally responsible for engineering services of the District or Center obtained via an A-E contract.

(3) The RO will follow written procedures in the CPARS guidance and develop an internal QC tracking system to confirm the timely preparation, approval, and distribution of all required A-E evaluations consistent with this pamphlet. A-E annual interim

evaluations must be scheduled events in the management plan for a project and completed within 120 calendar days. Final evaluations are due within 120 calendar days of the negotiated A-E contract completion date. The KO has overall responsibility assuring the procedures are proper, fair, and performance is recorded in a timely manner.

b. Contractor performance evaluations. CPARS evaluations must be prepared for all contracts that meet the thresholds of FAR 42.1502(f), including TOs. Base contract IDCs for A-E services are not evaluated, as it is the TOs issued under those contracts that get the performance evaluation.

c. Design-build request for proposal packages. A-E services that produced a DB RFP package for construction award are not given a separate A-E performance evaluation when construction is substantially complete. A final CPARS is completed when the construction project is awarded, or if there is no award, when the DB RFP is fully accepted by the government. The quality of the design services by an A-E firm who prepared the DB RFP is addressed in CPARS.

d. Full design-bid-build packages. After construction awards from a full design DBB package prepared by an A-E firm, a performance evaluation on the design prepared by the A-E (who is the DOR) must be prepared by the AO with input from the engineers, architects, and other technical personnel who reviewed and accepted the A-E firm's work. Note that this evaluation on the design is not a final CPARS, it is still an interim evaluation; however, it may be slightly off cycle from the annual interim required. After construction completion (beneficial occupancy or substantial physical completion) of USACE-managed DBB construction projects, a final CPARS must then be prepared (DFARS 236.604) by the AO with input from the construction office (Area Engineer (AE) or Resident Engineer (RE)).

(1) If the design-phase CPARS evaluation was entered as a final CPARS (meaning the A-E contract/TO with the DOR was closed after the construction project awarded) the CPARS evaluation required when construction is substantially complete can be implemented through an addendum evaluation process following CPARS guidance.

(a) However, it is a best practice to keep the A-E DOR TO open during construction to provide accurate and timely CPARS reporting on the quality of the design during construction build out, as required by DFARS 236.604. Otherwise, there is a high risk this part is not completed, and future A-E selection boards will not have performance data from the construction phase.

(b) This evaluation is based on the DOR's responsibility to provide a quality design, be responsive to RFIs for design clarifications, and cooperate with correction of errors and omissions, if any, during construction. This is not an evaluation of CPS support (see paragraph 9-4.d(3) below).

(2) If the POP of the A-E contract/TO with the DOR is kept open during the construction phase (implying the design-phase CPARS was an interim and not a final

evaluation), the CPARS evaluation prepared when construction is substantially complete is considered the final CPARS. This is not an evaluation based on CPS support (see paragraph 9–4.d(3) below).

(3) The evaluations on the DOR for when design is completed and construction is substantially complete are based on the DOR’s responsibility to provide a professional work product that is technically accurate and fully coordinated across disciplines, addresses the firm’s responsiveness to design clarification RFIs during construction, and the firm’s cooperation and responsiveness to correct any errors or deficiencies in the design during construction build out, if any. This is not an evaluation based on CPS services that are additional services paid under a separate CLIN, in addition to the inherent role and responsibility of the DOR. If the DOR also provides CPS, then the performance of both of these contractual responsibilities is in the evaluation. CPS is evaluated in the optional evaluation area titled “Other Areas” in CPARS.

e. Final contractor performance evaluations. If construction does not award, the AO must prepare a Final CPARS on the performance of the A-E (DOR) work products with input from the engineers, architects and other technical personnel who reviewed and accepted the A-E firm’s work, considering the volume and type of bidder inquiries, if applicable.

9–5. Preparation of Contractor Performance Assessment Reporting System evaluations

a. Timeline. A performance evaluation is prepared by the AO with input from government engineers, architects, and other technical personnel who reviewed and accepted the A-E firm’s work, as recommended by FAR 42.1503. Sufficient effort must be devoted to this function so that thorough and fair evaluations are completed in a timely manner. Additional guidance is available in the guidance for CPARS documents located on the CPARS web site.

b. Evaluation. Performance evaluations (including marginal or unsatisfactory) must be completed as interim evaluations every 12 months, at a minimum, but can be completed more often if determined relevant and necessary for documenting A-E performance. A final CPARS must be completed within 120 days after the end of the contract performance period or completion of the construction contract. A detailed timeline and workflow for addressing contractor review comments is provided in the guidance for the CPARS document. Do not wait for fiscal close-out of the contract to do the evaluation.

c. Procedures.

(1) Performance evaluations must be prepared in CPARS. The FP will have the following individuals promptly assigned at a minimum, for each contract: AO, RO, and contractor representative from the A-E firm.

(2) CPARS must be completed consistent with FAR 42.1503 and the timeline provided for in the CPARS guidance.

d. Rating. There is no overall rating for a CPARS; however, each of the key factors listed in FAR 42.1503(b)(2) must be rated (technical quality, schedule, cost control management, utilization of SB, regulatory compliance, and other relevant evaluation areas that contribute to the summary conclusion of whether the A-E is recommended for additional work. (Note that the cost control element is not necessary for FFP or fixed price with economic price adjustment). Up to three additional factors can be evaluated in the “Other Areas” section. It is recommended two of these be CPS (if part of the contract or TO) and Design within Funding Limitations. All ratings must comply with the five-scale rating system definitions in FAR 42.1503, Table 42-1; for evaluating the subcontracting plan use definitions in Table 42-2.

e. Evaluation remarks.

(1) The AO write-up should contain sufficient detail to provide future Source Selection Officials with a clear understanding of basis for the ratings and all major events that occurred during the life of the contract. A rating of marginal or unsatisfactory must be fully explained in the AO’s remarks. The remarks should not suggest that the firm really did marginal work when the rating is satisfactory. The Remarks section contains narrative by the AO, the AOR, and the RO.

(2) For any rating better than or less than satisfactory, narratives should include specific documentation that identifies (1) the contract or performance requirement, (2) a factual account of what happened, including citations to documentation and correspondence, (3) how what happened exceeded or failed to meet the requirement, and (4) the benefit or damage to the government. Generally, performance is still considered satisfactory if the A-E firm meets the requirements of the contract.

(3) There should be significant additional benefit to the government above and beyond the requirements of the contract to receive a rating greater than satisfactory and significant damage to the government to receive a rating less than satisfactory (see notes from Table 42-1 in FAR 42.1503) and be supported by monthly COR reporting in PIEE (SPM module).

f. Small Business Subcontracting Plan. The CPARS evaluation contains a rating element for “Implementation of Small Business Subcontracting Plan.” This element is used to assess compliance with all terms and conditions in the contract relating to SB participation, including achievement on each individual goal stated in the contract or subcontracting plan. Subcontracting plans are required for the base award on IDCs. Subsequent TOs do not require subcontracting plans, but the contractor’s performance on subcontracting must be monitored and discussed, as appropriate. See Chapter 3 for additional details.

g. Safeguarding evaluations. CPARS are source selection-sensitive and should be handled as such and marked “CUI.”

h. Contract negotiation. The performance evaluation form and procedures must be discussed with an A-E firm during contract negotiations. The government will clearly

describe its performance expectations and stress the importance of the performance evaluation in future selections. The PNM will indicate that this performance expectations discussion took place. It is important at the award phase of the contract that the government discusses and obtains the names and email addresses of one or more contractor representatives for the CPARS performance evaluation process. FP personnel need to be informed of these contractor individuals at this time. The names of these individuals should be documented in the PNM text.

i. Responsible command. When more than one command is involved in the execution of a project, the command having KO authority for the contract, unless the contract administration of the A-E contract is delegated in writing to another office or command and the delegation includes past performance evaluations per FAR 42.302(b)(11), is responsible for ensuring a complete A-E performance evaluation is prepared. The responsibility for the A-E performance evaluation must be included in the overall management plan for the project (see ER 5-1-11).

9-6. Monitoring performance

a. The quality of an A-E firm's products and services must be adequately documented throughout the performance of the contract and the firm kept apprised of the quality of its work. The A-E COR prepares monthly status reports in PIEE (SPM module) as a rolling assessment and situational awareness on A-E performance that later supports the interim and final evaluations. The A-E firm will be contacted immediately upon notification of marginal or unsatisfactory performance evaluation areas through the CPARS.

b. CPARS keeps interim and final evaluations for 6 years, thereby essentially maintaining the cumulative contract performance of the A-E firm in 12-month increments, as the minimum. Annual interim evaluations and out-of-cycle interim evaluations allow the government the opportunity to document a performance issue, if necessary. This provides the A-E firm a chance to improve and get past an issue that may have been documented in one interim evaluation and then not be carried over into subsequent future interim evaluations. If performance improves sufficiently, a new interim evaluation should be issued. New interims do not overwrite previous interim performance evaluations.

c. Districts/Centers must establish procedures to appraise the quality of each A-E submittal using the disciplines involved in the contract. The appraisals will be supplemented, as appropriate, with narrative that helps support the AO rating and will assist the A-E DM/ETL and COR in communications with managing the A-E on submittal quality. These appraisals will be made by each of the pertinent disciplines. It is particularly important to adequately document any area of unsatisfactory or exceptional performance. These appraisals constitute the basis for interim and final performance evaluations prepared by the AO.

9–7. Interim evaluations

a. General. A performance evaluation is prepared at least annually by the AO for services, designs, and construction phase support (studies, assessments, DB RFP, DBB packages, CPS)(FAR 42.1502).

(1) An interim evaluation is prepared at least every 12 months throughout the entire POP of the contract (annual interim) for a TO contract or a fixed-price or cost-reimbursable contract with a performance period anticipated to exceed 12 months.

(2) An interim evaluation will be prepared whenever a project is deferred for more than 3 months if a substantial portion of the work has been completed or if a suspension of work has been issued for greater than 6 months.

(3) An out-of-cycle performance evaluation can be prepared at other times, at the government's discretion. This should be considered when a firm's performance remains marginal or unsatisfactory after reasonable steps have been taken by the government to improve the firm's performance. This out-of-cycle interim evaluation formally puts a firm on notice that its performance is inadequate, encourages improvement, and makes the information on the firm's performance available to other contracting offices and selection officials in a timely manner.

(4) An interim evaluation can be prepared at any other time considered appropriate by the government. The annual interim, or an out-of-cycle interim, are not cumulative; these are limited to the period of contract performance occurring after the preceding evaluation. New interims do not overwrite previous interim performance evaluations.

b. Approval and distribution of interim evaluations. All evaluations prepared in the CPARS by the AO are automatically routed to the firm for inclusion of their remarks, concurrence, or rebuttal. The basis for an interim marginal or unsatisfactory evaluation must be well documented prior to notification to the A-E firm in CPARS. An interim marginal or unsatisfactory evaluation is subject to the rebuttal process described in the CPARS guidance.

9–8. Final evaluations

a. General. A final evaluation is prepared for services, designs, and construction phase (studies, assessments, DB RFPs, DBB packages, CPS) at the time when the work under the contract or TO is completed. The completion timelines are described below, per type of A-E services ordered. A final evaluation is done when the POP ends on an A-E contract or TO, the delivered products are acceptable, and the contracted services are completed to the government (FAR 42.1502). If the POP of the contract for the A-E contract is over prior to the completion of the construction, an addendum evaluation must be completed after construction is completed consistent with DFARS 236.604. The final evaluation does not include cumulative information.

b. *When a design-build request for proposal is produced.* A final performance evaluation in CPARS on the DB RFP product is prepared after award of the construction contract. If the project is not to be advertised, then a final evaluation is prepared when the government accepts the final work product. It is uncommon for the A-E who prepared the DB RFP to also perform CPS, but there can be circumstances where a highly complex construction project is awarded under a DB arrangement and may warrant the knowledge of the DB RFP preparer. In this instance, the TO POP should include some of the construction duration, an interim CPARS should be prepared on the DB RFP deliverable, and a final CPARS should be prepared when CPS services are no longer needed.

c. *When a design-bid-build package (full design) is produced.* A final performance evaluation in CPARS is required when construction is substantially complete (DFARS 236.604). There are three ways to accomplish this.

(1) If CPS is awarded to the DOR (on a separate CLIN after construction awards), prepare an interim CPARS on the awarded design inclusive of the quality and performance during solicitation, monitor the A-E's performance on the CPS support, prepare a Final CPARS when construction is substantially complete addressing both the A-E firm's CPS performance and the quality of the design during construction build out.

(2) If CPS is not awarded, still have the A-E contract or TO's POP extend into the construction phase and have the DOR submit a monthly status log. This keeps the contract or TO open to allow quick access to the DOR for variances and design changes during construction by having the A-E submit a monthly status report on DOR-related RFIs and design clarifications.

(a) Then, complete an interim evaluation on the completed design (including performance during solicitation) and every 12 months considering the monthly log information. Prepare the final CPARS when construction is substantially complete.

(b) The volume of design clarifications and number of corrections for omissions, errors, or deficiencies being tracked monthly help log the quality of the DOR's design and responsiveness during construction. This, in turn, provides supporting information for the AO's interim and final evaluations in CPARS.

(3) If the design TO (DBB package) closes after construction awards, prepare a final CPARS that reflects DOR quality and services through solicitation to construction award. Later, at substantial construction completion, do an addendum to the final evaluation in CPARS when construction is substantially complete according to the instructions in the CPARS guidance document. There is a risk with this approach, as this final step can be overlooked due to the time for construction to complete and the loss of visibility on the A-E contract by the A-E COR and/or AO since the contract is closed. Moreover, the A-E contract or TO should normally remain open to account for RFIs and design deficiencies.

d. Termination. A performance evaluation must be prepared for a TO, a fixed price, or cost-reimbursable contract terminated for any reason prior to completion of the work if the value of services completed at termination exceeds the thresholds in FAR 42.1502, or at any value if the contract was terminated for default.

9–9. Review of Architect-Engineer liability

The COR will obtain the A-E liability information from the A-E Responsibility Coordinator (AERC) (see Chapter 10) and coordinate with the AO on the A-E contract. An addendum evaluation will be prepared in CPARS by the AO if there is a change necessary due to findings from the A-E liability assessment or information received after a final performance evaluation has been prepared. A contract file will not be closed if the contract is in litigation (FAR 4.804).

9–10. Approval, distribution, and revision of evaluations

a. Approval. The AO completes the evaluation if there is no discrepancy between the AO's write-up and the contractor's review comments. The AO forwards evaluations to the RO for final approval when there is disagreement with the AO's evaluation, or a request is made by the contractor's representative. The RO notifies and coordinates with the KO on unsatisfactory ratings in any of the evaluation areas. The RO must review and sign if the contractor indicates nonconcurrency with the evaluation or if the proposed marginal or unsatisfactory evaluation is rebutted. The RO will review the performance evaluation and the supporting documentation to assure that the ratings are justified. The date of the RO's electronic signature in CPARS is the official date of the evaluation.

b. Revisions and corrections. Revisions and corrections of the CPARS evaluation should only occur during the draft evaluation process. Prior to forwarding the evaluation to the contractor, the AO coordinates input to the evaluation. The contractor will review the draft evaluation, which is delivered via automatic notification, add their comments, sign, and return the evaluation to the AO for final signature and completion. The AO may modify their evaluation after receipt of the contractor's comments if the AO deems it appropriate. However, the AO must notify the RO of any A-E contractor rebuttals and assist with resolution of these with the RO. The RO enters remarks that may discuss various aspects of the evaluation, but the RO cannot change the AO evaluation.

(1) *Revisions.* Revisions to an evaluation after the AO forwards it to the RO can be cumbersome and, although it can be accomplished, it is not a recommended course of action. Early notification and communication between the AO and RO should be done prior to the AO submitting the evaluation to the A-E firm when it is highly likely the firm will disagree, especially when the AO prepares to submit a marginal or unsatisfactory on any of the evaluation areas.

(2) *Addendum.* A completed final evaluation may be updated to change information. If the update cannot be accomplished through an addendum, the CPARS customer support desk can assist (webptsmh@navy.mil).

9–11. Marginal and unsatisfactory performance

a. Documentation.

(1) Documentation of marginal or unsatisfactory performance in an evaluation area must be adequate to support the rating. An interim performance evaluation with an unsatisfactory rating of an individual evaluation area usually occurs after a significant period of documented unsatisfactory performance in that evaluation area. It is expected that indications of unsatisfactory performance will be included in each monthly COR report to the KO for those time periods where less than satisfactory performance occurs.

(2) It is very important to document the steps taken by the government to get the A-E firm to improve performance and the A-E firm's responses. Records should be made of all telephone conversations and meetings with the A-E firm concerning performance. The monthly COR reports should note problems with the firm's performance.

b. Preparation and notification.

(1) A performance evaluation must be prepared in the CPARS system to document the marginal or unsatisfactory performance. If the AO intends to rate any of the evaluation areas with a marginal or unsatisfactory, the AO will draft the interim performance evaluation and notify the RO prior to sending. For unsatisfactory ratings, the KO will also be notified prior to release.

(2) CPARS automatically notifies, via e-mail, the contractor representative that the AO has sent them a draft evaluation and that they have 60 days to respond. However, the AO preparing the marginal or unsatisfactory evaluation must also manually (telephone call, face-to-face meeting) notify the contractor representative that the draft evaluation has been prepared and they have 60 days to respond, during which time they may either rebut the rating or add their remarks electronically to the evaluation.

(a) Within 14 days, the evaluation will be visible in CPARS to source selection officials. An interim or final marginal or unsatisfactory evaluation must have been previously discussed with the A-E firm prior to sending via CPARS.

(b) Since such an evaluation may dramatically affect the A-E firm, it is in the best interest of the government that poor performance and contract problems leading to a below satisfactory rating be communicated early and clearly so the A-E firm has opportunity to improve.

(3) If the A-E firm does not respond by entering their remarks in CPARS or by notifying the government that they intend to nonconcur with the rating within the allotted time, the evaluation will be finalized by the AO in coordination with the RO.

c. *Nonconcur process.* If an A-E nonconcur, the AO coordinates with the RO to address any concerns and the merit of the response in advance of the RO finalizing the evaluation, which may include some modification to the original AO evaluation. The RO summarizes the discussion regarding the review of the response, addresses whether the Contractor's response had merit, and finalizes the evaluation.

Chapter 10

Architect-Engineer Responsibility Management Program

10–1. Introduction

This chapter addresses actions to be taken from the discovery of an A-E error or omission until the issuance of a KO's final decision (COFD) against the A-E firm under FAR 52.233-1, the contract "Disputes" clause. Subsequent action is covered by FAR 33.2.

10–2. Principles

a. Consistent with FAR clause 52.236-23, an A-E firm is responsible for the quality of its products and services and is liable for damages to the government caused by its negligence or breach of contractual duty. An A-E's liability includes professional quality; technical accuracy; coordination of all designs, drawings, and specifications; and other services furnished by the A-E firm under the contract. The AERMP is a formal process for holding A-E firms accountable for their work and recovering damages to the government caused by A-E firms.

b. The goals of the AERMP are to:

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

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

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

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

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

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

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

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

10–3. Responsibilities

a. *Division Commanders.* Commanders are responsible for overseeing the AERMP in their subordinate Districts to promote timeliness, cost effectiveness, and compliance with this EP. MSC Commanders will appoint an MSC-wide AERC (MSCAERC). The MSCAERC will provide day-to-day oversight of the AERMP for the region and be the point of contact with the Districts and HQUSACE.

b. *Districts, Centers, or laboratories.*

(1) *A-E Responsibility Administrator.* The Chief or Deputy Chief of Engineering (or comparable position) will be the District, Center, or laboratory A-E Responsibility Administrator (AERA). The AERA is responsible for the timeliness, cost effectiveness, reasonableness, and fairness of the AERMP, and compliance with this EP. The AERA will appoint a District, Center, or laboratory AERC from the engineering organization primarily responsible for A-E management. The AERC will be a very experienced engineer or architect who has extensive experience with A-E contract acquisitions and execution. The AERC will be responsible for the day-to-day management of the AERMP and be the point of contact for the program within their organization.

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

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

10–4. Legal and regulatory background

a. All FFP contracts and SATOC/MATOC IDCs with FFP TOs for A-E services must incorporate FAR clause 52.236-23, which stipulates that (summarized):

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

(2) The A-E firm will, without additional compensation, correct or revise any errors or deficiencies in its work (designs, drawings, specifications, and other services as contracted).

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

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

b. Typical examples of A-E liability are when, due to an A-E design error or deficiency, modification of an ongoing construction contract is required or there is a design-related failure after construction. These are referred to as design deficiencies. An A-E firm may also be liable for government damages arising from failure to design within the funding limitations (FAR 36.609-1 and FAR 52.236-22) or to comply with the contract schedule or technical provisions.

c. In all such instances, FAR 36.608 directs the KO to "consider the extent to which the A-E contractor may be reasonably liable," and to "enforce the liability and collect the amount due, if the recoverable cost will exceed the administrative cost involved, or is otherwise in the government's interest." The KO must include in the contract file a written statement of the reasons for the decision to recover or not to recover the costs from the firm in every case.

d. The A-E COR will have the responsibility to provide an initial assessment of the potential for liability due to a concern raised about an A-E error and/or omission. A-E DMs and engineering TLs often assist the A-E COR with the preliminary analysis and initial assessment. Each of the following three questions must be answered affirmatively for an A-E firm to be liable for damages:

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

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

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

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

(1) *Negligence.* Negligence is the failure to meet the standard of professional care, skill, and diligence that someone in the A-E profession practicing in the same or similar locality would ordinarily exercise under the same or similar circumstances.

(2) *Burden of proof.* For the government to prevail in a claim against an A-E firm, it must be able to prove that the firm was negligent and the government suffered damages, and that the error or omission by the A-E firm was the cause of the damages.

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

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

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

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

g. FAR 36.608 allows economic factors to be considered when deciding whether to initiate an A-E liability case. However, it may not be in the government's interest to initiate a case where the administrative costs could exceed the anticipated recovery, such as a small claim arising from a serious error that could have resulted in much larger monetary damages or personal injury. All the circumstances of each case must be considered when deciding whether to pursue A-E liability.

h. Upon determining a strong assessment that the A-E may be at fault, the A-E COR will coordinate with the KO and OC and notify the AERC to activate the AERRB to organize senior leadership for consensus to pursue official liability. Steps to follow are outlined in the following paragraphs.

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

j. FAR 33.206(b) sets the federal statute of limitations for a government claim initiated against a contractor be within 6 years after the claim has accrued. Accrual of a claim means the date when all events that fix the alleged liability of either the government or the contractor and permit assertion of the claim were known or should have been known. For liability to be fixed, some injury must have occurred. However, monetary damages need not have been incurred (41 USC 7103(a)(4), 48 CFR 33.201). Either Office of Counsel or the KO must decide the validity of a claim based on these guidelines.

10–5. Implementation

a. *Command implementation.* Each USACE command (Division, District, Center, laboratory) will identify team members with roles and responsibilities for the AERMP consistent with this chapter.

b. *Work for others.* The USACE KO retains responsibility for the administration of A-E contracts awarded for use by interagency partners, including the investigation and enforcement of liability and resolution of contract disputes.

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

10–6. Funding

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

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

c. General administration of the AERMP, such as AERRB meetings and reporting not convened or related to a specific case, will be funded by the respective departmental overhead accounts of the personnel involved.

d. Planning and design funds for MILCON projects, and appropriate project funds for all other types of projects, will be used to investigate and pursue A-E liability actions that occur during planning or design. Project funds mean the appropriation that funded the project, including for CW and interagency (work for others) projects.

e. Initial investigation and documentation of potential A-E responsibility, liability, and damages after construction award will be charged to the appropriate accounts. For military projects, S&A funds are used (ER 37-1-30, Appendix H). For Civil and interagency projects, post-construction award administration funds are used. Thereafter, follow-on costs incurred by the government in pursuit of A-E liability for damages on projects must be funded by external stakeholder funds, project funds, or contingencies consistent with their applicable procedures. These funds must be tracked separately regardless of the funding sources. This provides an audit trail and accounting for possible recovery of costs from the A-E.

f. During the design or construction of a project, the AERC will request additional project funds from the PM, when necessary, to investigate or pursue A-E liability. The request will explain the design deficiencies and damages, breakdown of estimated costs, discussion of likelihood of recovery, and expected amount of recovery.

g. The PM will request additional funds from the external stakeholder, if applicable and warranted. The decision to request and expend project funds to pursue A-E liability will consider the amount of the damages, the likelihood of recovery, whether the settlement will be received in time to benefit the project or program, and the stakeholder's willingness to provide the funding. Only the KO can finally decide not to pursue A-E liability (FAR 36.608) due to funding constraints, and that decision is required to be documented in writing.

10-7. Notification, investigation, and recovery procedures

Appendix G is a graphic depiction of the A-E liability process. Each step is discussed below.

a. Notification and corrective design.

(1) The first step is to notify the A-E COR and provide the A-E firm an RFI about a potential design error, omission, or technical deficiency. The A-E firm is given the opportunity to review the circumstances and provide a response and corrective action to the issue identified in the RFI. The goal is to work through the situation expeditiously to minimize schedule delays and cost impacts. The A-E COR will document the contract file with the communications, success, or failure to achieve resolution and an analysis of potential liability, should resolution not be achieved to the government.

(2) The A-E firm will be promptly notified of an unresolved design deficiency, requested to provide a corrective design, and informed that it may be financially liable for any increases in construction or administrative costs. Initial notification of a design deficiency should be made by email immediately and formal notification will be made soon after in official correspondence. The AE/RE will also immediately coordinate directly with the Engineering Division (A-E DM/ETL and A-E contract COR) and the PM on significant design deficiencies discovered during construction. All contacts with an A-E firm will be fully documented. Generally, the A-E contract for the design will include terms and conditions that require the A-E to provide a response or technical solution to

an RFI or design deficiency within a certain period of time, at their cost. These terms must be strictly enforced by the KO.

(3) Notification to the A-E firm of a design deficiency will be made by a person identified in the A-E contract, usually the KO.

(4) There are instances where obtaining a corrective design from an A-E firm may not be necessary, such as when the correction is obvious and simple or the damages are minimal, provided the government is aware of the assumption of risk. The government assumption of risk for making changes to the DOR's signed and sealed design (stamped drawings) can relieve the A-E firm of its responsibility for design deficiencies. In such cases, the Chief of Engineering is notified prior to taking the action. Notification to the A-E firm is not required; however, the A-E firm must still receive an information copy of the construction contract modification.

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

b. Corrective design by the government. If the A-E firm is unresponsive or cannot furnish a corrective design within an acceptable time, the government may have to provide the redesign. See ER 1110-1-8152 regarding documenting design changes. If so, the A-E will be formally notified of its liability for the redesign cost and be kept informed of the government actions. The firm should be requested to concur in the corrective action taken by the government or should sign a release. A written statement will be prepared for the contract file consistent with FAR 36.609-2 if no action is taken against an A-E firm to recover the redesign and construction modification costs.

c. Implementation of corrective construction.

(1) An A-E firm will not be permitted to perform construction required to correct design deficiencies by any means, including the use of its or the government's contractors. If done, the government is not in control of the work and cannot verify that the government's requirements and interests are satisfied. This could void the construction warranty and generate construction contractor claims.

(2) The government may invite the A-E firm as an advisor to attend negotiations with the construction contractor on changes due to A-E design deficiencies, but only if the A-E and the construction contractor sign an agreement, prior to the start of any negotiations, where the construction contractor agrees in writing to provide access to its proprietary cost and price information. The KO must obtain a copy of that agreement between the A-E and construction contractor for the contract file. The government has no authority to release contractor-owned proprietary information without such an agreement and there are criminal penalties for any violation.

d. Documentation of deficiency.

(1) The discovery of a design deficiency and the early actions taken by the government will be promptly and adequately documented. The A-E COR on the design contract is notified when a construction modification is coded as a design deficiency. The BCD RMS Form 747 (Basic Change Document) summarizes the initial concern for potential A-E liability.

(2) The COR on the A-E design contract will evaluate each potential design error or deficiency by answering the questions in paragraph 10–4.c to determine if the firm is not liable or is potentially liable and document the contract accordingly. A thorough description of the deficiency, record of contacts with the A-E firm and its responses, the persons involved, actions taken, potential witnesses, and photographs and evidence, when appropriate, will be discussed and considered. The COR will forward all potential instances of A-E liability to the AERC for further investigation on completion of the initial assessment.

e. Determination of damages. If an A-E firm is potentially liable for a design error or deficiency, then the AE/RE and design contract COR will compute the initial estimate of damages. Damages are the additional costs necessary to correct the error, the diminished value or loss of use or function or useful life that the government has incurred or will incur, additional maintenance or other costs that may be required, the impact and delay costs, and any administrative costs due to an A-E firm's design errors or performance deficiencies. The damages will be revised, as needed.

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

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

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

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

g. Preparation of case document. If the investigation concludes that an A-E firm is liable (see the items in paragraphs (1) through (8) for small actions), the AERC will prepare a case document to include:

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

h. Letter of intent. After the case document is prepared, the AERC will prepare a letter from the KO to the A-E firm (with a copy to the design COR) indicating the AERC's intent to recommend formal review by the AERRB of the firm's liability for damages. The letter will include any documents supporting the government's position and a detailed statement of damages. The firm will be invited to present information on its position and to negotiate a settlement.

(1) A liability case is initiated when the letter of intent is sent. If an A-E settlement is made without the need for a letter of intent, a case report will still be prepared and the amount of the settlement included in the annual AERMP report. See paragraph 10–10 for reporting requirements.

(2) Interest is not assessable until, and if, a COFD is issued by the KO. In some instances, it may be appropriate to issue a demand letter at this stage.

i. Negotiation by Architect-Engineer Responsibility Coordinator. The AERC may directly discuss the potential liability settlement with an A-E firm prior to presenting the case to the AERRB and before the KO issues a demand letter or COFD, if the AERC has been previously authorized to do so by the KO. The KO may assign a CS to the negotiation team with the AERC. The AERC will then present the case and proposed settlement to the KO for approval, and to Office of Counsel and any other appropriate offices (which may include the AERRB) for concurrence. The settlement will be reported according to paragraph 10–8. If negotiation is unsuccessful, then the AERC will present the case to the AERRB.

j. Small errors or deficiencies. If there are no compelling noneconomic reasons, then the consideration of small errors or deficiencies (typically below \$5,000 to \$10,000, depending on the size of the contract) may be deferred until the total number and/or total damages warrants recovery. The AERC will periodically review the deferred liability actions on each contract to see if aggregate recovery is warranted and document these reviews. Any errors or deficiencies still held at the end of a construction contract that do

not warrant recovery will be presented collectively to the KO for approval to not pursue, with the concurrence of any other appropriate offices. The decision to not pursue will be documented in the contract file, as required by FAR 36.608.

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

l. Demand letter.

(1) The demand letter provides an opportunity for resolution of the matter without resorting to the Disputes clause and the procedures and effects that result. The demand letter is prepared by the Office of Counsel, with factual and technical input from the E&C Divisions and the PM, and will be signed by the KO.

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

(3) Consider when the demand letter should be issued on a case-by-case basis. For example, if the A-E liability is obvious and the damages are significant, a demand letter should be sent as soon as the AERC prepares the case document instead of sending a letter of intent. If the case is complicated or the A-E appears to have significant defenses, it may be more appropriate to continue discussions and less formal negotiations to attempt to reach a resolution.

m. Negotiation and Contracting Officer final decision.

(1) A reasonable effort will be made to resolve a liability case by negotiation. If negotiation is not successful, consider using other ADR techniques, as permitted by AFARS 5133.204. If the firm does not respond to a demand letter in a reasonable length of time, then the firm should be contacted and encouraged to present their view or position to government's charges or enter into negotiations. ADR is a range of techniques for the efficient and effective management of disputes without litigation (see AFARS 5133.090). The techniques include collaborative problem solving, mediation, facilitation, and third-party intervention.

(2) If the firm still does not respond, a COFD will be issued without delay. The COFD starts a defined process under the Disputes clause (UAI 5133). The firm must either concede the case or appeal to the appropriate board of contract appeals within 90 days, or the Court of Federal Claims within 1 year. The COFD formally notifies the A-E firm that the government is making a claim for the reasons stated, gives a detailed statement of damages, and lists the firm's options.

(3) The COFD will be issued a Demand for Payment per FAR 32.604. The Debt Collection Act of 1982 (PL 97-365) applies to a claim against an A-E firm when a COFD is issued. Interest charges, consistent with FAR 52.232-17, will accrue on the damages if the claim is not settled within 30 days (FAR 32.608-1 and FAR 32.608-2), and the damages will be adjusted for costs incurred by the government subsequent to the COFD. An appeal by the A-E of the affirmative claim outlined in the COFD by the government does not stop debt collection (FAR 32.607-2(a)(2)).

(4) Primary responsibility for a case passes from Engineering Division to Office of Counsel if a COFD must be issued. The KO, with support and advice from Office of Counsel, Engineering, and Construction, will prepare and issue the COFD. The COFD must be fully coordinated according to UAI procedures. Engineering Division remains responsible for monitoring the progress of the case, coordinating support, and reporting.

(5) The 6-year limitation on initiation of a government claim in FAR 33.206(b) is applicable to A-E liability cases. The 6-year period begins on the date when all events that fix the alleged liability of either the government or the contractor and permit assertion of the claim were known or should have been known. The demand letter or COFD must be issued within this timeframe or the government loses its right to assert the A-E liability claim.

n. Settlement. A liability case is closed when final payment is received from the A-E firm based on a judgment or settlement, or the government's case is officially dismissed by a judge or withdrawn in writing to the A-E by the KO. The A-E contract file must be properly documented upon settlement of a liability case to show the amount received and how the funds were dispersed. If the amount of the settlement is less than the amount of the assessed damages, the rationale for accepting the reduced amount must be documented.

10–8. Architect-Engineer liability collection, settlement, and reports

a. Collection of claims.

(1) The provisions of FAR 32.6 and its supplements apply to claims by the government against A-E firms. These regulations arise from the Debt Collection Act of 1982.

(2) A claim for payment of damages made in a demand letter to an A-E firm is not subject to the provisions of FAR 32.6 until a COFD has been issued. When a COFD is issued, the amount of the claim becomes a "receivable," and the handling of it must be consistent with the acquisition regulations. A copy of the COFD will be furnished to the local finance and accounting officer (FAO), and will include the information required by the DoD Financial Management Regulation (DoD FMR) 7000.14-R, Volume 16, Chapter 5, Collection of Debts owed by Contractors.

(3) The A-E firm will be notified in the COFD that it may submit a request for deferment of collection (FAR 32.607-2). This is pertinent if the A-E firm has not been paid in full for the contract under which the liability action is being taken or has other

active contracts, as the KO has authority to set off the claim against payments due the A-E firm. After 30 days of nonpayment or insufficient payment, the USACE Finance Center has increased authority to set off payments due under all USACE contracts. After 90–120 days, the Department of Treasury is assigned collection and can set off against all government receivables. Requests for deferment by the A-E firm and the requirement to for the KO to develop a recommendation of the deferral request to the Deciding Official are outlined in FAR 32.607-2 and the DoD FMR Vol. 16, Chapter 5. Collection of the debt continues up and until a deferment is approved.

(4) The FAO will be kept informed of the status of the resolution of a liability case and provided copies on all internal and external correspondence concerning the status of the claim. The AERC will support and coordinate the actions of the KO and FAO to comply with the regulations cited above.

b. Settlement options.

(1) Settlements can be made by cash payment or installment payments.

(2) Installment settlements will be reported as follows:

(a) The case will be reported as settled upon receipt of the first payment.

(b) Subsequent payments will increase the amount of recoveries reported, but not the number of cases reported as settled.

(c) Payments will be recorded and tracked until payment has been received in full.

(d) If the firm fails to complete an installment payment, the case will be referred to Office of Counsel for debt collection processing.

c. Disposition of monies recovered.

(1) The AERC will provide written guidance to the FAO for disposition of monies collected in liability case settlements, with advice from Office of Counsel and RM. A copy of the disposition document will be placed in the A-E contract file.

(2) In general, the monies recovered in A-E liability actions may be credited to the appropriation or account that bore the costs or loss. Generally, the loss is usually in the construction appropriations and/or S&A, even if the A-E design was actually paid for by design or planning funds. The recovery is usually then applied to project-funded accounts, flat-rate S&A accounts, and G&A overhead accounts. The amounts credited to these accounts cannot exceed the charges against them for the liability case. Interagency project recoveries, after deducting USACE administrative or additional supervision costs that may have been incurred, will be returned to the Requesting Agency to determine disposition of the funds and whether they may be credited to their appropriations.

(3) When the monies received cannot be credited to an account because the appropriation has closed, they will be returned to the Treasury of the United States as miscellaneous receipts.

10–9. Architect-Engineer performance evaluation and contract closeout

a. Liability arising during design is reflected on the A-E DOR performance evaluation prepared after completion of design (interim CPARS, if DBB). Similarly, liability related to the quality of the DDC is reflected on the A-E DOR interim performance evaluations during the construction POP and the final performance evaluation (all completed in CPARS) when construction is substantially complete. A revised evaluation using the addendum process in CPARS is followed if a liability case is settled after the final performance evaluation has been prepared.

b. The AO should be the person most familiar with the A-E contractor performance and DOR contract requirements (DFARS 236.604). It is recommended to keep A-E TOs open through the majority of the construction POP to allow the A-E COR on the design contract to provide as many interim CPARS evaluations as is necessary or required, per CPARS guidance, to reflect the quality of the DOR's DDC, as well as to prepare the final CPARS when construction is substantially complete.

c. Since DOR A-E performance evaluations are done in CPARS, not the Resident Management System (RMS), the A-E COR on the design contract/TO is typically better suited to prepare the DOR evaluations, which considers input from the AE/RE during the construction phase of the project (AFARS 5142.1503). The AE/RE should be contacted to find out whether there are construction problems attributable to DOR design deficiencies that have not been corrected by construction changes.

d. An A-E DOR contract/TO POP is planned to extend into the construction phase of the project, and CPARS interim performance evaluations are prepared until a final performance evaluation is due, which is after actual construction of the project when construction is substantially complete (DFARS 236.604). If there are ongoing liability actions, the A-E contract must not be closed (FAR 4.804(c)). Closeout of an A-E contract or a construction contract based on an A-E firm's design does not affect the government's right to pursue the recovery of damages resulting from performance deficiencies that later become apparent (see paragraph 10–7.m).

10–10. Reporting

a. Stakeholders will be regularly apprised of the status of A-E liability actions on their projects.

b. USACE Districts/Centers will track and report all A-E liability reviews quarterly to their Commander. This reporting provides the Commander, and USACE members having a need to know, with current status of any ongoing A-E liability claims and investigations in a nonpublic forum environment. Discretion of access to information and confidentiality of situational awareness is necessary. It should include the date the A-E was notified, letter of intent, any demand letters, COFD date, pending appeals,

construction damages, ancillary costs, investigation and recover costs, and total costs, as well as any settlement. If the initial determination is that it is not A-E liability, no reporting is required. The contract file is updated with the preliminary analysis by the COR.

Appendix A References

Unless otherwise indicated, Army and USACE publications are available at <https://armypubs.army.mil/> and <https://www.publications.usace.army.mil>. Federal Acquisition Regulations (FARs) are available at <https://www.acquisition.gov/browse/index/far>. Defense FAR Supplements (DFARS) are available at <https://www.acquisition.gov/dfars>. DFARS Policy, Guidance, and Instruction (PGI) Supplements are available at <https://www.acquisition.gov/dfarspgi>. Army FAR Supplements (AFARS) are available at <https://www.acquisition.gov/afars>. United States Codes (USC) are available at <https://uscode.house.gov/>. U.S. Code of Federal Regulations (CFR) are available at <https://www.ecfr.gov/>.

Section I

Required Publications

AFARS 5103

Improper Business Practices and Personal Conflicts of Interest

AFARS 5104

Administrative Matters

AFARS 5107

Acquisition Planning

AFARS 5115

Contracting by Negotiation

AFARS 5117

Special Contracting Methods

AFARS 5119

Small Business Programs

AFARS 5132

Contract Financing

AFARS 5133

Protests, Disputes, and Appeals

AFARS 5136

Construction and Architect-Engineer Contracts

AFARS 5137

Service Contracting

AFARS 5142

Contract Administration and Audit Services

American Society for Photogrammetry and Remote Sensing (ASPRS)

(Available at <https://www.asprs.org/certification>)

AR 215-4

Nonappropriated Fund Contracting (Available at https://www.armymwr.com/application/files/1415/0429/8490/AR_215_4_20NAF_Contracting.pdf)

AR 420-1

Army Facilities Management

Army Logistics University

(Available at <https://alu.army.mil>)

Army Pollution Prevention Program

RCS-1383 (Available at <https://apps.dtic.mil/sti/pdfs/ADA302526.pdf>)

Army Source Selection Supplement

(Available at

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Federal Acquisition Regulations System

DFARS 204

Administrative and Information Matters

DFARS 205

Publicizing Contract Actions

DFARS 207

Acquisition Plans

DFARS 215

Contracting by Negotiation

DFARS 216

Types of Contracts

DFARS 217

Special Contracting Methods

DFARS 219

Small Business Programs

DFARS 236

Construction and Architect-Engineer Contracts

DFARS 237

Service Contracting

DFARS 252

Solicitation Provisions and Contract Clauses

DFARS PGI 204

Administrative and Informative Matters

DFARS PGI 207

Acquisition Planning

DFARS PGI 215

Contracting by Negotiation

DFARS PGI 236

Construction and Architect-Engineer Contracts

DoD 7000.14-R

Financial Management Regulation (Available at

https://comptroller.defense.gov/Portals/45/documents/fmr/current/16/16_05.pdf)

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- c. Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), 1980
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- e. National Oil and Hazardous Substances Pollution Contingency Plan (NCP), 1968.
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ER 1110-2-1150

Engineering and Design for Civil Works

ER 1110-3-12

Quality Management

ER 11-1-321

Value Engineering

ER 1180-1-9

Design-Build Contracting

ER 37-1-30

Financial Administration, Accounting and Reporting

ER 415-1-16

Fiscal Management

ER 415-1-6

Fiscal Management

ER 5-1-11

USACE Business Process

ER 5-1-13

U.S. Army Corps of Engineers Policy on Regional Business Centers

ER 690-1-1212

Professional Registration as a Selective Placement Factor

ER 1165-2-217

Civil Works Review Policy

FAR 12

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(Available at <https://usace.dps.mil/sites/KMP->

[CTP/USACEAlerts/Forms/AllItems.aspx?viewid=45e8ab70%2D05f9%2D455e%2Dbfa1%2Dac4e669eb183&id=%2Fsites%2FKMP%2DCTP%2FUSACEAlerts%2FUtilization%20of%20DD%20Form%202579%20%28DD2579%29%20Small%20Business%20Coordination%20Record%2Epdf&parent=%2Fsites%2FKMP%2DCTP%2FUSACEAlerts](https://usace.dps.mil/sites/KMP-CTP/USACEAlerts/Forms/AllItems.aspx?viewid=45e8ab70%2D05f9%2D455e%2Dbfa1%2Dac4e669eb183&id=%2Fsites%2FKMP%2DCTP%2FUSACEAlerts%2FUtilization%20of%20DD%20Form%202579%20%28DD2579%29%20Small%20Business%20Coordination%20Record%2Epdf&parent=%2Fsites%2FKMP%2DCTP%2FUSACEAlerts))

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https://www.wto.org/english/tratop_e/gproc_e/gp_gpa_e.htm)

13 CFR 121, 121-201

Small Business Size Regulations

13 CFR 121.105

How does SBA define “business concern or concern”?

13 CFR 125.6

Prime Contractor Limitations on Subcontracting

40 CFR 144,

Protection of Environment

48 CFR 33.201

Definitions

10 USC 2801

Scope of Chapter; Definitions

10 USC 2855

Law Applicable to Contracts for Architectural and Engineering Services and construction Design

10 USC 2862

Turn-Key Selection Procedures

10 USC 7540

Architectural and Engineering Services

33 USC 569

Personal equipment for employees; use of funds for purpose

33 USC 2292

Navigation and Navigable Waters

40 USC Chapter 11 (Sections 1101–1104)

Selection of Architects And Engineers (“A-E Statute”)

41 USC 7103

Decision by Contracting Officer

42 USC 4901

Noise Control Act (Available at <https://www.epa.gov/laws-regulations/summary-noise-control-act>)

42 USC 9619

Response Action Contractors

Section II

Prescribed Forms

BCD RMS Form 747

Basic Change Document

DD Form 1155

Order for Supplies or Services

DD Form 2579

Small Business Coordination Record

ENG Form 93

Payment Estimate – Contract Performance

OGE Form 450

Confidential Financial Disclosure Report

SF 252

Architect-Engineer Contract

SF 30

Amendment of Solicitation/Modification of Contract

SF 330

Architect-Engineer Qualifications

Appendix B Environmental Services

B-1. Procurement of environmental services

a. USACE procures environmental services to support various stakeholders and regulatory frameworks (CW, military programs, federal agencies, Defense Environmental Restoration Program, Formerly Utilized Sites Remedial Action Program, Superfund, Brownfields, U.S. Department of Agriculture, Federal Emergency Management Agency Veterans Administration). These services fall under a wide range of environmental laws and regulations, including Resource Conservation and Recovery Act (RCRA), Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), Clean Water Act, Clean Air Act, National Contingency Plan (NCP), National Environmental Policy Act (NEPA), and state and local requirements. Many of these services and their resulting products fall under the category of A-E services.

b. This appendix provides examples of common environmental projects, services, and products that are typically A-E services, those that are not, and those that may be A-E services depending on the specific scope of work and final deliverables. Use this guidance, in conjunction with Appendix G, to determine whether to procure a particular environmental service contract as an A-E contract. Office of Counsel and Contracting can provide additional clarification and understanding when circumstances are unclear.

c. A key indicator of an A-E scope is the requirement for engineering analysis or technical judgment, as opposed to simply obtaining or reporting environmental information. Furthermore, many states require a professional engineer's stamp on remedial investigation plans or reports. This requirement may necessitate using an A-E contract for projects that need concurrence from specific state regulatory agencies. When procuring a contract for environmental services as A-E services, use NAICS code 541330. Otherwise, use NAICS code 541620 for environmental consulting services (see Chapter 2).

B-2. Hazardous, toxic, and radioactive waste

a. USACE uses FFP or CR contracts for acquiring HTRW services. The uncertain scope often associated with HTRW work makes CR contracts a valid contract type for consideration consistent with FAR 16.301 and its supplements. If determining a CR contract for the required services is necessary, the KO must document the rationale for selecting the contract type in the written acquisition plan and verify that the plan is approved and signed at least one level above the KO (see FAR 7.103U) and 7.105). This allows procuring a CR contract or permits TOs issued from an IDC to be either FFP or CR.

b. There are certain HTRW services that, when contracted for, must be acquired utilizing A-E selection procedures. See 42 USC 9619(f), providing that "response action contractors and subcontractors providing services such as program management, construction management, architectural and engineering, surveying and mapping and

related services must be chosen based on the procedures outlined in Title IX of the Federal Property and Administrative Services Act of 1949.” Note that the Title IX procedures may now be found at 40 USC, Chapter 11 Selection of Architect Engineers.² To the extent construction management or program management services may include performance of duties not typically categorized as professional services, as identified in Chapter 8 of this EP, CERCLA has otherwise mandated that these services when performed in support of a response action must be acquired using A-E selection procedures. Accordingly, a qualifications-based selection process is required when selecting response action contactors performing the services identified in 42 USC 9619(f).

(1) A response action addresses the release or threatened release of a hazardous substance into the environment. CERCLA Section 101(25), codified at 42 USC 9601(25), defines “response” and “respond” as “remove, removal, remedy, and remedial action,” including enforcement activities related to these actions. “Remove” and “Removal” refer to short-term actions necessary to address the immediate threat posed by a hazardous substance release (see 42 USC 9601(23)). “Remedy” and “Remedial action” refer to long-term, more permanent solutions for hazardous contamination (see 42 USC 9601(24)).

(2) Response actions may be divided and procured based on the CERCLA phase of work being performed (preliminary assessment (PA), site inspection (SI), remedial investigation (RI), feasibility study (FS), remedial design (RD), remedial action (RA-C), and long-term operation and maintenance (LTM)). A remedial action does not require A-E selection procedures for the construction services themselves. However, the A-E services that are integral up to the remedial action and the oversight of the construction process thereafter to ensure compliance with the design specifications do require procurement according to the A-E selection procedures. The CERCLA phases give a clear delineation of services to be performed, have logical end products, and allow selection of qualified A-E firms with expertise unique to the service being provided.

B-3. Architect-Engineer services definition

a. FAR 2.101 defines A-E services consistent with 40 USC 1102 and Chapter 2 of this EP and discusses acquisition planning of A-E services in greater detail. The A-E Statute’s applicability is highly dependent on the specific project facts and context.

b. The same type of service might demand significant engineering requirements for one project but not for another. Activities incidental to the primary A-E scope may be included in an A-E contract, provided they remain secondary to the overall A-E services

² The Federal Property and Administrative Services Act of 1949, June 30, 1949, Pub. L. 81-152, 63 Stat. 377, was amended on Oct. 27, 1972, by adding “Title IX – Selection of Architects and Engineers,” subsection 902 via Pub. L. 92-582, 86 Stat. 1279 (thereafter codified at 40 USC 542)). On Aug. 21, 2002, The Selection of Architects and Engineer procedures were moved to a new section of the United States Code, 40 USC 1101, via Pub. L. 107-217, 116 Stat 1062.

and deliverables. The key factors to consider are whether the service is a substantial or dominant portion of the contract and is:

- (1) Defined as A-E by applicable state law where a person who is licensed, registered, or certified is required to provide those services;
- (2) Associated with research, planning, development, design, construction, alteration, or repair of real property; or
- (3) A service that is logically or justifiably performed by members of an architectural or engineering profession, or individuals in their employ.

B-4. Project types considered Architect-Engineer services

An exhaustive list of all environmental projects that are considered A-E services or are not covered under the A-E Statute is not possible to provide here. The following lists include most environmental projects procured by USACE, including HTRW projects, and whether they are typically considered an A-E service, are not considered an A-E service, or a service that may fall under both categories, depending on the specific project's requirements. For the purposes of this appendix and the examples below, "technical engineering" should be interpreted as a range of services within the engineering profession that satisfy the A-E Statute to be logically or justifiably performed by a member of the engineering profession.

a. Items in paragraphs (1) through (37) constitute a list of environmental professional services applicable to the A-E Statute.

- (1) Conceptual designs.
- (2) Preparation of construction plans and specifications (including for facility support contracts, guide specifications, CERCLA Remedial Design, or RCRA Corrective Actions).
- (3) Value engineering studies and analyses.
- (4) Post-construction or post-remedial action contract award design services.
- (5) Preparation of record drawings ("as-built" drawings).
- (6) Master planning and comprehensive master plans.
- (7) Environmental engineering reports and environmental impact assessments (when they include technical engineering considerations).
- (8) Land surveying and mapping.
- (9) Professional engineering inspection services.
- (10) Engineering studies or consultations if licensure required.

- (11) Field investigations requiring technical engineering evaluation or analysis.
- (12) Material sample analysis, which includes interpretation of results and provides recommendations.
- (13) System safety or other safety analyses.
- (14) Soils engineering and geotechnical analysis.
- (15) Preparation of technical engineering manuals.
- (16) Expert architectural or engineering witness service.
- (17) Studies addressing wetlands delineation, habitat mitigation and pollution prevention (if they require significant engineering analysis and design recommendations).
- (18) RCRA Facility Investigation, Corrective Measures Study.
- (19) RCRA Corrective Measures Design.
- (20) Preparation of CERCLA RI and FS (including predesign or incidental services such as site inspections, subsurface exploration, chemical sampling/testing/analysis, groundwater and other modeling, contaminant fate and transport analysis, archeological investigations/mitigation, community relations).
- (21) HTRW-related treatability studies.
- (22) Preparation of plans, specifications, and designs (including HTRW remedial designs).
- (23) Support during construction related to designed features (if it involves interpretation of design or technical problem solving).
- (24) Air quality corrective action plans and projects, such as for stationary and mobile sources, asbestos, radon, chlorofluorocarbons (CFCs), and halon.
- (25) Water resources corrective action plans and projects, such as for drinking water, wastewater, point sources and nonpoint sources, discharges, and stormwater discharges.
- (26) Preservation surveys, management plans, and restoration designs for historic structures.
- (27) Preparation of spill prevention, control, and countermeasures plans under the NCP.
- (28) Development of stormwater pollution prevention plans, which include the design of appropriate diversion structures.

(29) Design of repair, removal, and/or replacement of underground storage tanks (UST) and design of leak detection systems for UST.

(30) Design of boiler replacement or upgrade projects, such as installation of low nitrogen oxide systems.

(31) Design of a new or upgraded RCRA Part B permitted hazardous waste management unit.

(32) Closure procedures, documentation, and certification for RCRA Part B permitted hazardous waste management unit.

(33) Design of a new or upgraded solid waste, land-based unit.

(34) Design of support systems under the excavation standards of the Occupational Safety and Health Act for excavations greater than 20 feet.

(35) Monitoring and certification of injection wells closure consistent with 40 CFR 144.

(36) Preparation, evaluation, and certification of sustainability compliant designs, construction, and facility operations.

(37) CERCLA site inspection.

b. Items in paragraphs (1) through (36) constitute a list of example services that are not typically A-E services.

(1) Studies having minimal need for engineering interpretation and primarily requiring counting, tabulating, inventorying, cataloging, organizing, indexing, and collating.

(2) Environmental impact assessments and studies that are primarily free of technical engineering considerations.

(3) Studies regarding business or financial considerations.

(4) Studies involving purely social, economic, or psychological phenomena.

(5) Personnel analyses.

(6) Management consulting services.

(7) Auditing or accounting analyses/investigations.

(8) Training instruction and/or training material preparation not involving subject matter of a technical engineering nature.

(9) Historic preservation studies and coordination with state historic offices.

- (10) Cost estimating of CERCLA and RCRA phases of work.
- (11) Schedule analysis.
- (12) Sampling and laboratory chemical analysis of soil, groundwater, surface water, air, and sediments (purely data gathering and reporting without engineering recommendations).
- (13) Data collection and reporting under Title V of the Clean Air Act.
- (14) Excavation, transportation, and disposal of hazardous, toxic, or low-level radiological waste.
- (15) Asbestos and lead-based paint remediation.
- (16) Building remediation and demolition.
- (17) Construction and operation of groundwater treatment plants and extraction systems.
- (18) Implementation and operation of in situ treatment technologies including, but not limited to, air sparging, chemical oxidation, bioremediation, groundwater circulating wells, permeable reactive barriers, soil vapor extraction, and thermal treatment.
- (19) Water line installations/service connections hookups.
- (20) Utility line replacement and/or remediation along utility lines.
- (21) Erosion, sewer, and stormwater controls for the purpose of compliance and/or pollution prevention.
- (22) Monitoring, injection, and extraction well installation, monitoring, and maintenance.
- (23) UST removal and associated remediation.
- (24) Monitored natural attenuation studies.
- (25) Long-term monitoring.
- (26) Long-term response actions.
- (27) Air quality surveys and/or emissions reporting (stationary and mobile sources, asbestos, radon, CFC, and halon).
- (28) Public participation.
- (29) Preparation of air quality permits.

(30) Laboratory testing, such as for drinking water, wastewater, point source, and stormwater discharge/nonpoint source discharge.

(31) Environmental compliance assessment system surveys and preparation of RCS-1383 reports.

(32) Pollution prevention opportunity assessments.

(33) Reporting under the NCP (Oil, Hazardous Substances, Installation Spill Contingency Plan, and Toxic Release Inventory).

(34) Hazardous and toxic waste and materials management, including compliance with the EPA Emergency Planning and Community Right-to-Know Act.

(35) Surveys, plans, and testing (chemical inventories, lead-based paint surveys, environmental program management, forestry management plans, wildlife surveys and management plans including endangered species, archaeology surveys and management plans, pest management plans, wetland identification surveys and management plans, coastal zone management plans, land management and restoration plans, solid waste management, wastewater management, remedial design of ordnance and munitions disposal.

(36) CERCLA preliminary assessment.

c. Example services that may or may not be applicable to the A-E Statute, depending on the project requirements, include the following:

Note. Consideration should be given to the project requirements and how they relate to typical A-E services identified in paragraph 2–4, and if the effort requires technical engineering as a substantial or dominant portion of the contract.

(1) NEPA documentation, including environmental assessments and environmental impact statements.

(2) CERCLA combined PA/SI.³

(3) Noise abatement activities, such as compliance with the Quiet Communities Act of 2023 and the Noise Control Act (42 USC 4901), including assessments of impact activities and installation compatible-use zone studies.

(4) Preparation of permits for water resources (such as for drinking water, wastewater, point source and nonpoint source discharge, and stormwater discharge) by

³ PA/SI may be an A-E service where the SI effort is a key element of the scope and will require services such as, but not limited to, subsurface exploration, chemical sampling/testing/analysis, land surveying and mapping, engineering field investigations, soils engineering, and geotechnical analysis.

themselves are not considered an A-E service but may be incidental to an A-E service, depending on the scope of work.

- (5) UST installation certification.
- (6) Laboratory material testing services.

Appendix C

Classification of Contracts as Architect-Engineer Services – Geospatial: Survey, Computer-Aided Design – Building Information Modeling, Geographic Information System/Remote Sensing

C-1. Introduction

This appendix provides guidance and examples for KOs when determining if a contract should be procured as A-E services under FAR 36.6. Contracts require FAR 36.6 procedures if the SOW includes work that is primarily A-E services or the SOW includes a blend of A-E services and non-A-E services, where the A-E services are a substantial or dominant portion of the contract.

C-2. Categories of Architect-Engineer services

a. FAR 2.101 defines A-E services in relation to 40 USC 1102. FAR 36.601-4(a) further outlines the following four categories for consideration.

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

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

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

Discussion: The test for this category is whether the work is typically performed by architects or engineers during the design or construction of real property, even without explicit registration/license requirement in the SOW. Real property is land and any structures on it. Design includes investigations and planning related to a construction project. FAR 2.101 defines construction as constructing, altering, or repairing of buildings, structures, or other real property, providing numerous examples. Construction excludes manufacturing, production, furnishing, building, alteration, repair, processing, or assembling of vessels, aircraft, or other kinds of personal property. Personal property is movable or not attached to the land.

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

Discussion: The test for this category focuses on whether the work, by its nature, logically or justifiably requires accomplishment by, or under the supervision of, architects or engineers. Importantly, the work itself must be inherently architectural or engineering in nature. For instance, not all studies, investigations, tests, evaluations, consultations, planning activities, or CPS are architectural or engineering in nature. While the list of typical services in parentheses above is not all-inclusive, reasonable extrapolations from this list can be made.

(4) “Professional surveying and mapping services of an architectural or engineering nature. Surveying is an architectural and engineering service and shall be procured pursuant to [FAR] 36.601 from registered surveyors or architects and engineers. Mapping associated with the research, planning, development, design, construction, or alteration of real property is considered an architectural and engineering service and is to be procured pursuant to [FAR] 36.601. However, mapping services that are not connected to traditionally understood or accepted architectural and engineering activities, are not incidental to such architectural and engineering activities, or have not themselves traditionally been considered architectural and engineering services, shall be procured pursuant to provisions in [FAR] 13, 14, and 15.”

Discussion: USACE procures all surveying and mapping services, including real estate surveys (such as metes and bounds), under FAR 36.6. 33 USC 569b and 33 USC 2292 (specifically addressing water resource projects); these laws require USACE to adhere to the A-E Statute when awarding contracts for these services. All USACE prime contracts for such services must follow the statute. Award may be to A-E firms or to firms with qualified surveying and mapping professionals, such as licensed surveyors, geodesists, geographers, and cartographers. Since geospatial professionals represent a multidisciplinary group, surveying and mapping services are not limited to A-E firms. CAD-BIM professionals are typically engineers.

b. FAR 36.601-3(c) addresses mixed work and provides guidance when the SOW includes both A-E services and other services. “When the contract statement of work includes both architect-engineer services and other services, the contracting officer shall follow the procedures in this subpart if the statement of work, substantially or to a dominant extent, specifies performance or approval by a registered or licensed architect or engineer. If the statement of work does not specify such performance or approval, the contracting officer shall follow the procedures in [FAR] 13, 14, or 15.”

Discussion: When a contract includes both A-E services and other services, procurement falls under FAR 36.6 if the A-E services, as defined in FAR 2.101 and FAR 36.601, are a substantial or dominant portion of the overall work. Substantial means a considerable percentage of the work, though not necessarily a majority of the hours or cost. Dominant means the primary purpose of the work, the end product of the work, even if it does not represent the majority of the hours, cost, or the largest component of the work.

c. EM 1110-1-2909 addresses the three functional areas that involve geospatial technologies and services. Chapter 10 provides detail and guidance on contracting for geospatial products developed and/or produced, including an example performance work statement for professional (non-A-E) services. Geospatial information may be derived from a variety of technologies such as remote sensing, mapping, and surveying technologies.

Discussion: Geospatial information is usually collected using field surveying, mapping, remote sensing, photogrammetry, or any combination of these methods. The services needed for data collection, measuring, locating, and preparing maps, charts, or other graphical or digital products are typically procured following procedures in FAR 36.6.

C-3. Surveying, mapping, and geospatial services

a. Geospatial encompasses CAD-BIM, Surveying, and Geographic Information System-Remote Sensing (GIS-RS). Geospatial products and services associated with A-E services primarily include collection, analysis, development, and delivery of data in a variety of formats (charts, maps, reports). NAICS code 541370 is commonly used, but Contracting makes the final determination. It is recommended the organization seeking to acquire geospatial products or services coordinate with the District Geospatial Coordinator to confirm deliverables meet specifications and standards. It is also recommended to check the U.S. Geological Survey (USGS) Geospatial Platform to confirm data does not already exist.

b. Services that involve analyzing geospatial phenomena may or may not be an A-E service, depending on the work and deliverables. Results presented as maps, charts, or new geospatial features should be acquired using an A-E contract or TO. Collecting or using existing data to perform geospatial analysis and provide results as either a new dataset or as a technical report should be considered an A-E service. Nonsurvey grade geospatial data development, or customization of geospatial commercial off-the-shelf software, are not necessarily considered an A-E service.

c. In USACE geospatial services and activities associated with measuring, locating, and preparing maps, charts, or other graphical or digital presentations depicting natural and man-made physical features, phenomena, and legal boundaries of the earth, include items such as:

(1) CAD-BIM encompasses all aspects of civil infrastructure and facilities design, construction, and management for MILCON and CW.

(2) Surveying functional areas, including hydrogeographic, topographic, and boundary surveying, as well as mapping technologies and services for MILCON and CW facilities design, construction, and management.

(a) Topographic engineering surveying, which includes acquisition of topographic-oriented surveying and mapping data for design, construction, master planning, operations, as-built conditions, precise structure stability studies using conventional and electronic instrumentation, photogrammetric, remote sensing, inertial, satellite, and other survey methods, as applicable.

(b) Hydrographic engineering surveying, which includes acquisition of hydrographic-oriented surveying and mapping data for design, construction, dredging, master planning, operations, and as-built conditions using conventional and electronic instrumentation, and photogrammetric, remote sensing, inertial, satellite, side-scan sonar, sub-bottom profiling, and other surveying methods, as applicable.

(c) Land surveying, which includes property and boundary surveys, monumentation, marking and posting, preparing tract descriptions, etc., using conventional and electronic instrumentation, photogrammetric, inertial, satellite, and other survey methods, as applicable.

(d) Geodetic surveying, which includes first, second, and third order horizontal and vertical control surveys, geodetic astronomy, gravity, and magnetic surveys using conventional and electronic instrumentation, photogrammetric, inertial, satellite, and other survey methods, as applicable.

(e) Cartographic surveying, which includes acquisition of topographic and hydrographic-oriented surveying and mapping data for construction of maps, charts, and similar products for general use other than those for engineering, construction, and boundary or geodetic purposes using conventional and electronic instrumentation, photogrammetric, inertial, satellite, and other survey methods, as applicable.

(f) Mapping, charting, and related geospatial database development, which includes the design, compilation, digitizing, attributing, scribing, drafting, printing, and dissemination of printed or digital map, chart, and related geospatial database products associated with planning, engineering, operations, and related real estate activities using photogrammetric, geographic information systems, remote sensing, satellite imagery, field surveying, and other manual and computer-assisted methods, as applicable.

d. GIS-RS functional areas encompass regulatory activities, investigations and studies, civil planning, real estate, emergency operations, master planning, and engineering functions.

e. Geographic information services associated with cultural resource, groundwater monitoring, growth forecast modeling, habitat conservation plans, habitat modeling, image analysis support for emergency response, combining existing data from more than one sources into a single integrated tool, migration pattern analysis, natural resource planning, remote sensing for environmental studies, terrestrial/marine/atmospheric measurement/management, vegetation mapping, and watershed characterization for mitigation planning are not considered A-E services in and of themselves but may be incidental to a larger work product that is defined as an A-E service.

f. Technical operations, such as aerial photography, are not considered surveying and mapping services unless they are an integral part of a broader scoped contract resulting in a surveying or mapping product.

g. Projects exceeding approximately \$50,000 should be procured by contractors specifically selected for surveying, mapping, or geospatial work. IDCs primarily selected for other types of A-E services may not possess the required expertise. The IDC contractor or subcontractor may not be as highly qualified to provide the required surveying, mapping, or geospatial services, as this type of specific work was not considered in the selection process.

h. If an MSC or Center does not have the appropriate surveying, mapping, geospatial contract capability, or the technical expertise to administer such contracts, then support should be sought from other regional areas or from the Technical Center of Expertise for Photogrammetric Mapping at the St. Louis District. The Center can assist with contract administration and has several USACE-wide IDCs for surveying, mapping, or geospatial services that may be used.

C-4. Selection and preselection boards

Boards primarily focused on real property surveys, topographic or photogrammetric mapping, hydrographic surveying, or geodetic surveying contracts should consist of members specialized and experienced in the required work. At least one licensed land surveyor must be included as a board member for real property survey contracts or where state laws require certain surveying and mapping work to be performed by a licensed surveyor. If an MSC or Center does not have adequate expertise to properly staff an evaluation board for acquisition of a surveying and mapping contract, technical support can be obtained from other MSC regions, or the St Louis District's Technical Center of Expertise for Photographic Mapping.

C-5. Survey and mapping statement of work

If a contract SOW requires significant surveying and mapping services, the public announcement must state that the surveying and mapping subcontractor (or the prime contractor's in-house surveying and mapping personnel) will be identified in the SF 330. The qualifications are then evaluated as a part of the A-E selection process.

C-6. Certifications

The most common certification for GIS Geographers, Cartographers, and Physical Scientists is the GISP certification from the GIS Certification Institute at <https://www.gisci.org/>. There are also certifications available through the American Society for Photogrammetry and Remote Sensing at <https://www.asprs.org/certification>, although these are somewhat less common. Unlike Professional Land Surveyors, Architects, and Engineers, the GIS/Remote Sensing field does not have state-sanctioned professional licensure. Many highly trained, educated, and experienced individuals, fully capable of performing COR duties on technically appropriate contracts may have one of the certifications mentioned here and can be considered as a COR on an A-E services contract, subject to approval by the Chief of Engineers.

C-7. Examples

Examples of contract types include:

- a. A contract for the complete architectural and engineering design of a building, structure, or utility system is A-E services.
- b. A contract for the architectural design of the renovation of a building (such as relocation of load-bearing partitions to accommodate a new occupancy, alteration of hallways and corridors to comply with life-safety codes, and various improvements to allow handicapped access), which may also include interior design services (such as space planning and modular furniture systems design), is A-E services. However, a contract principally for interior design services, where load-bearing structural elements and mechanical and electrical systems are not altered and life, health, and safety elements are not affected, is not A-E services, notwithstanding the fact that a few states require registration of interior designers.
- c. A contract for a geotechnical engineering study is A-E services, even if the necessary soil borings and tests are the majority of the effort measured in hours or dollars. However, a contract principally for borings and laboratory tests, where engineering analysis and judgment are not required, is not A-E services even if the SOW requires monitoring of the borings and tests by a registered engineer as a QC measure.
- d. A contract for landscape architecture, which is concerned with the functional and aesthetic aspects of site development and is licensed by most states, is A-E services. However, a contract that is principally landscaping (such as altering ornamental features or planting trees and shrubs) requires application of the natural sciences (such as botany, marine science, or forestry) and is not A-E services.
- e. A contract for hydraulic engineering to study the effects on shoreline erosion and marine structures due to increased flow in a river is A-E services. However, a contract principally to study the effects on marine plants and fish due to increased flow in a river is not A-E services, even if a minor effort is required from a hydraulic engineer.

f. A contract for an environmental study or assessment with significant engineering considerations or engineered remediation of environmental issues (such as alternative highway alignments, air pollution control, sanitary sewage waste collection and treatment, storm drainage management, domestic water supply, energy consumption, or remedial technology evaluation) is A-E services. A contract for environmental studies or assessment where the primary purpose is to obtain information or provide reporting on environmental issues where engineering considerations are not a significant or dominant part of the work is not A-E services. See Appendix B for more detailed guidance on which types of environmental services should typically be procured as A-E services.

g. A contract for aerial photogrammetry or lidar is A-E services. A contract for aerial photography only that does not result in a surveying and mapping product is not A-E services. See EM 1110-1-2909 for additional guidance.

h. A contract for CPS support where the A-E firm is not the DOR and the firm monitors various aspects of the construction contractor's performance to confirm compliance with design elements and design-related quality standards of the plans and specs is A-E services.

i. A contract for master planning where the deliverables include items such as identifying facility requirements, facility utilization studies, real property master plans, vision plans, area development plans, capital improvement plans, Installation Status Report facility inspections, and Facility Condition Assessments is A-E services.

j. Master planning and any contract to collect, create, enter, edit, and maintain as audit data attributes in DoD, U.S. Army enterprise systems of record, and USACE Sustainment Management System applications supporting a comprehensive asset management program that includes any of the following are a subset of master planning and are A-E services.

- (1) Real Estate Management Information Systems.
- (2) Range Facility Management Support Systems.
- (3) General Fund Enterprise Business System.
- (4) Headquarters Installation Information System.
- (5) Army Stationing and Installation Plan.
- (6) Installation Status Report.
- (7) Real Property Land Analysis System.
- (8) Army Energy and Water Reporting Systems.
- (9) Defense Medical Logistics Standard Support.

(10) Force Management System Website.

(11) Building Information Modeling.

(12) Proactive Real-property Space Management Systems.

k. A contract for surveying and mapping, topographical surveys, geospatial services, and any mapping efforts associated with research, planning, development, design and construction or alteration of real property is A-E services.

Appendix D
Typical Durations for Single Award Task Order Contracts, Multiple Award Task Order Contracts, C-Type Contracts, and Task Orders

Table D-1
Typical durations for single award task order contracts, multiple award task order contracts, C-Type contracts, and task orders

CONTRACT TYPE	DAYS
A-E SATOC TASK ORDER	62
ACQ - SATOC TO Services S.01 Pre-solicitation Phase	28
ACQ - TO Services S.02 Solicitation Phase	14
ACQ - TO Services S.03 Evaluation Phase	13
ACQ - TO Services S.04 Award Phase	7
A-E MATOC TASK ORDER	91
ACQ - MATOC TO Services S.01 Pre-solicitation Phase	30
ACQ - MATOC TO Services S.02 Solicitation Phase	32
ACQ - MATOC TO Services S.03 Evaluation Phase	24
ACQ - MATOC TO Services S.04 Award Phase	5
A-E SATOC D-TYPE (IDC)	211
ACQ - SATOC D Type A-E.1 Pre-solicitation Phase	61
ACQ - SATOC D Type A-E.2 Solicitation Phase	37
ACQ - SATOC D Type A-E.3 Evaluation Phase	25
ACQ - SATOC D Type A-E.4 Negotiations Phase	81
ACQ - SATOC D Type A-E.5 Award Phase	7
A-E MATOC D-TYPE (3 IDCs in pool)	358
ACQ - MATOC D Type A-E.1 Pre-solicitation Phase	115
ACQ - MATOC D Type A-E.2 Solicitation Phase	45
ACQ - MATOC D Type A-E.3 Evaluation Phase	24
ACQ - MATOC D Type A-E.4 Negotiations Phase	166
ACQ - MATOC D Type A-E.5 Award Phase	8
A-E C-TYPE	202
ACQ - C Type A-E.1 Pre-solicitation Phase	45
ACQ - C Type A-E.2 Solicitation Phase	37
ACQ - C Type A-E.3 Evaluation Phase	23
ACQ - C Type A-E.4 Negotiations Phase	86
ACQ - C Type A-E.5 Award Phase	11

Note:

1. MATOC, SATOC, and C-Type are between \$10M and \$100M.
2. MATOC has three awardees; three IDCs negotiated.
3. Durations are in calendar days.

Appendix E

Standard Synopsis Format for Architect-Engineer Services

E-1. Standard 18-item synopsis format

FAR 5.207(a) specifies a standard 18-item format for synopses. Most items are self-explanatory. Additional instructions are provided below for Items 5, 7, 16, and 17 to standardize synopses for A-E services throughout USACE. A template is provided in paragraph E-7.

E-2. Synopsis data elements

Each synopsis transmitted to the GPE at SAM.gov must address the following data elements, as applicable:

- a.* Action Code.
- b.* Date.
- c.* Year.
- d.* Contracting Office ZIP code.
- e.* Product or Service Code.
- f.* Contracting Office Address.
- g.* Subject.
- h.* Proposed Solicitation Number.
- i.* Closing Response Date.
- j.* Contact Point or Contracting Officer.
- k.* Contract Award and Solicitation Number.
- l.* Contract Award Dollar Amount.
- m.* Line Item Number.
- n.* Contract Award Date.
- o.* Contractor.
- p.* Description.

- q. Place of Contract Performance.
- r. Set-aside Status.

E-3. Synopsis Data Element 5, Product Service Code (classification code).

List all A-E services, including surveying, mapping, and master planning, under Product Service Code starting with C (typically written as Classification Code C – Architect and Engineering Services). Most A-E actions are C219, with CPS being C1JZ and CMS being R425 (this is not to be used for A-E actions and is a reference for CMS only).

E-4. Synopsis Data Element 7, Subject

a. Write the proposed A-E contract title in capital letters. Include the project location for specific project contracts. For IDCs, specify the geographic area.

b. Examples of language and format are as follows:

(1) “DESIGN OF GENERAL-PURPOSE WAREHOUSE, FT. RUCKER, AL.”

(2) “INDEFINITE DELIVERY CONTRACT (IDC) FOR MULTIPLE AWARD TASK ORDER CONTRACT ARCHITECT and ENGINEERING CONSTRUCTION PHASE SERVICES FOR MILITARY AND CIVIL WORKS PROJECTS PRIMARILY FOR THE SACRAMENTO DISTRICT AND SOUTH PACIFIC DIVISION AREA OF RESPONSIBILITY, UNRESTRICTED WITH A SMALL BUSINESS RESERVE.”

(3) “INDEFINITE DELIVERY CONTRACT (IDC) FOR SINGLE AWARD TASK ORDER CONTRACT ARCHITECT and ENGINEERING GEOTECHNICAL SERVICES FOR MILITARY AND CIVIL WORKS PROJECTS PRIMARILY FOR THE VICKSBURG DISTRICT, SMALL BUSINESS SET ASIDE.”

E-5. Synopsis Data Element 16, Description

The description is divided into the following four standard parts: Contract Information, Project Information, Selection Criteria, and Submittal Requirement.

a. *Part 1: Contract Information.* Include, as appropriate:

(1) Include an introductory statement, as follows: “This contract(s)/these services is/are being procured, consistent with 40 USC Chapter 11 and Public Law 107-217, known as the Architect-Engineer Statute, as implemented in the FAR 36.6. Firms will be selected for negotiation based on demonstrated competence and qualifications for the required work stated in the synopsis.”

(2) Identify the general nature of A-E services, such as design, studies, surveying and mapping, facilities master planning, value engineering, construction management services, or CPS. Do not use the terms “Title I” or “Title II,” which are obsolete and have no statutory or regulatory basis.

(3) Include the NAICS code and size standard applicable to the type of service being acquired. For Engineering Services, the NAICS is 541330 which includes a SB size standard. Verify the size standard as it changes over time.

(4) Identify set-aside restrictions and types of business categories, if applicable. Also indicate in Item 18.

(5) Identify the type of contract, such as SATOC or MATOC (if IDC); C-Type and identify award(s) will be FFP.

(6) Identify the number of contracts targeted for award and the minimum and maximum TO range for IDCs. If multiple IDC awards from the same synopsis (such as MATOC), state how rank of firms will relate to award of contracts. State how TOs will be awarded (for example, issue a TORN stating use of SF 330s on file and supplemental information, if requested, according to selection criteria FAR 36.602-1 and any other additional criteria identified in the TORN).

(7) Provide the anticipated start and completion dates of the contract. State the ordering period for the overall contract and identify the duration of the base contract award, how many options to be exercised, and durations of those options for an IDC award. For a C-Type contract award, describe the options for consideration, such as final design, support bidder inquiry responses during construction solicitation, or CPS; include the estimated duration for completion of the base contract award and each option.

(8) For SATOC or MATOC awards, identify the maximum dollar value of the total contract (base plus options); for C-Type award, identify the Construction Cost Limitation (CCL). Provide the maximum and minimum TO amounts for IDCs, if applicable.

(9) Identify if award is SAF, if applicable.

(10) For MATOC awards, state the SF 330 Part I and Part II updates will be requested annually, anticipated around the award date of the MATOC.

(11) For contracts expected to exceed \$750,000, other than SBs must understand the requirements for subcontracting part of the work. Specifically, they need to submit a subcontracting plan with their proposal (not the SF-330 submission) that details how they will subcontract to SBs and outlines goals for working with certain types of SBs. Address applicability of the Service Contract Act (FAR 22.10) in this section.

(12) Provide notice of the requirement for registration in SAM.gov and PIEE.

b. Part 2: Project Information. Include, as appropriate:

(1) Brief description of the project and/or A-E services. Do not include selection criteria in this description, such as necessary disciplines and special experience requirements.

(2) A description of the A-E deliverables to be produced.

(3) Additional information on the geographic area of work for an IDC, if not clear from Item 7, Subject, above.

(4) Range of ECC, if applicable (such as C-Type). Use the ranges in FAR 36.204 and DFARS 236.204.

(5) Include the specific geographic locations that are anticipated for primary performance (such as North Atlantic Division continental U.S. area of responsibility or named particular states, etc.). Identify if contract will be occasionally considered for regional use.

c. *Part 3. Selection Criteria.* List all selection criteria in descending order of importance following the general FAR 36.602-1 and DFARS 236.602-1 selection criteria, and clearly state the primary criteria and secondary criteria.

(1) State any justifiable minimum qualifications (such as minimum number of years of experience, minimum number of projects, or minimum number of personnel in a discipline). Include only selection criteria that will be true discriminators in determining the MHQ firms. Identify how the secondary tie-breaker criterion will be systematically applied until a tie is broken. For MATOCs, acknowledge the selection criteria that will be applied for award of the base contracts and how selection criteria will be applied for TO awards through the TO evaluation process using a TORN.

(2) Begin this part with a statement similar to the following: "The primary and secondary selection criteria for this particular project/contract are listed below in descending order of importance (first by major criterion and then by each sub-criterion). Criteria a through e are primary. Criteria f through h are secondary and will only be used as tie-breakers among firms that are essentially technically equal."

(3) In the example that follows the primary criteria (a through e) are listed in the order of importance that is usually most appropriate; however, they may be ordered differently as warranted for specific contracts. The secondary criteria (f through h) are listed in the order of importance that is usually most appropriate; however, they too may be ordered differently as warranted for specific contracts. For unrestricted announcements, the SB participation secondary criteria are typically the first listed.

(4) Examples of how to state primary and secondary criteria in the synopsis. The following items (a through e) are the Primary Criteria.

(a) *Specialized experience and technical competence.*

1. Experience of firm and its consultants in certain types of projects and/or features of work.

2. Experience in energy conservation, pollution prevention, waste reduction, and the use of recovered materials, as appropriate.

3. Experience of the prime firm and significant subcontractors in working together.
4. Experience in adapting standard design packages.
5. Specific technical capabilities, such as construction cost estimating or materials testing.
6. Knowledge of specific laws and regulations for areas of responsibility.
7. Compatibility with specific CADD equipment and format of required CADD/BIM products.
8. Knowledge of certain design criteria.
9. Design quality management approach.
10. Specialized equipment requirements.
11. Knowledge of a foreign language.

(b) Professional qualifications.

1. Professional and supporting disciplines, including registration or licensing requirements (these are key personnel required for the contract).
2. Specific experience and training for certain personnel.
3. Minimum number of personnel in a certain discipline required for the contract, typically for SATOC/MATOC.

(c) Past performance. State this criterion similar to the following: "Past performance on DoD and other contracts with respect to cost control, quality of work, and compliance with performance schedules, as determined from CPARS and other sources."

(d) Capacity to accomplish the work.

1. Ability to meet the schedule of the overall project and/or certain phases.
2. Ability to provide a minimum number of teams (or crews for surveying), inspections, data collection, or similar services within a stated time frame.
3. Ability to accomplish a certain number of TOs simultaneously for an IDC.
4. If schedule is critical for the project, say so.

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

translated into specific required knowledge of the locality where the anticipated TOs or project is to be performed.

(5) The following items (f through h) are the Secondary Criteria.

(a) *Small business participation.*

1. State similar to the following: "Extent of participation of small businesses including women-owned small business, small disadvantaged businesses, HUBZone, veteran owned small business, and service-disabled veteran owned small business measured as a percentage of the total estimated effort as stated in the synopsis."

2. Other than SBs may achieve their proposed SB participation commitments through subcontracting to SBs. SBs may achieve their proposed SB participation commitments through their own performance/participation as a prime or through a JV, teaming arrangement, and subcontracting to other SBs.

(b) *Geographic proximity.* State similar to the following: "Location of the firm in the general geographical area of xxxxxxx." Proximity is typically used as a secondary criterion; however, proximity as a primary selection criterion can be appropriate for small or routine projects and/or IDCs in support of a specific installation(s).

(c) *Volume of contract awards.* State similar to the following: "Provide the volume of DoD A-E contract awards and task orders (inclusive of modifications), in the last 12 months for the Prime or JV. Provide the project name, government agency, contract number, task order number (if appropriate), dollar amount, and the month/year of the awards." The objective is to affect an equitable distribution of DoD A-E contracts among qualified firms, including SB and SDB.

d. *Part 4: Submission requirements.* Do not include any selection criteria in this part.

(1) Begin this part with a statement similar to the following: "Interested firms having the capabilities to perform this work must submit a SF 330 for the prime/JV and all consultants/subcontractors electronically via the solicitation module of PIEE."

(2) Indicate any additional submittal requirements or instructions such as:

(a) Specific instructions for completing certain blocks of the SF 330.

(b) Information to include in SF 330, Part I, Section H, such as design quality management plan, organization chart, SB participation plan, description of capabilities, and equipment or page limitation.

(c) Requirement for in-person presentations by the MHQ firms for significant projects.

(d) The specific address for delivery of the submission.

- (e) Any page limitations.
- (f) Selection and notification of award schedule.

E-6. Synopsis Data Element 17, Place Of Contract Performance

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

E-7. Synopsis outline

The following is a template outline of the synopsis format described above.

C – Architect-Engineer Services
Synopsis for [insert contract type] for Architect and Engineering Services for [insert title of proposed A-E contract]

General Information

Document Type:	Pre-Solicitation Notice
Solicitation Number:	W9127824R0015
Posted Date:	## Month #####
Original Response Date:	## Month #####
Current Response Date:	## Month #####
Archive Date:	N/A
Classification Code:	C – Architect and Engineering (A-E) Services
Title:	Indefinite Delivery-Indefinite Quantity, [insert contract type] Architect and Engineering Services for [insert title]

Contracting Office Address

U.S. Army Corps of Engineer District, [insert USACE address].

Description

1. **CONTRACT INFORMATION:**
2. **PROJECT INFORMATION:**
3. **SELECTION CRITERIA:**

The following items (a through e) are the primary criteria:

- (a) Specialized Experience and Technical Competence.**
- (b) Professional Qualifications.**
- (c) Past Performance.**
- (d) Capacity.**

(e) Knowledge of Locality.

The following items (f through h) are the secondary criteria:

(f) Small Business Participation.

(g) Geographic Proximity.

(h) Volume of DoD Contract Awards.

- 4. SUBMITTAL REQUIREMENT**
- 5. SF 330, Part I, ADDITIONAL INSTRUCTIONS**
- 6. SF 330, PART II, ADDITIONAL INSTRUCTIONS**
- 7. OFFERORS QUESTIONS AND COMMENTS**

THIS IS NOT A REQUEST FOR PROPOSAL.

Appendix F Independent Government Estimates – Example Project Applying Statutory Design Fee Checks

F–1. General

An IGE for A-E services is developed from a detailed analysis of the SOW, assuming reasonable economy, efficiency, and modern and effective methods. An IGE is not based on a percentage of construction cost, arbitrary ceilings, the availability of funds, or any cost or pricing information provided by the A-E firm. The intent of an IGE is to determine a price for the required work that is fair and reasonable to the government (GAO 1992).

F–2. Independent government estimate preparation

An IGE preparer will be an engineer, architect, and/or other appropriate technical personnel having familiarity with the scope of work and will prepare the IGE independent from knowledge of the A-E's proposal. Where available, cost and pricing specialists or auditors should be consulted for information on overhead, labor rates, and other pertinent unit costs and prices. An IGE is a procurement-sensitive document and must be marked "Controlled Unclassified Information" and protected accordingly.

F–3. Independent government estimate review and approval

a. An IGE will be reviewed and approved by competent and knowledgeable individuals independent from the IGE preparer to assure quality and validity of the estimate. The IGE reviewer is a government employee one management level above, or organizationally independent of, the IGE Preparer (typically, this is the supervisor over the IGE preparer). The IGE approver is a government employee (not the KO or ACO) who certifies the validity of the IGE (UAI 5107.90).

b. For actions less than \$500,000, the IGE approver can be the Cost Estimating Chief, Branch Chief, or second-line supervisor over the IGE preparer. For actions more than \$500,000, only the Chief of the Engineering Division has the authority to approve an A-E IGE; this is not a delegable action (UDG Attachment 3). An IGE is approved and sent to the KO prior to opening the related A-E price proposal. Internal management controls must be established to confirm that each IGE is prepared, reviewed, and approved independently of the A-E proposal.

F–4. Independent government estimate revision

An A-E IGE should be revised whenever there is a significant change in the SOW or a significant error or omission is discovered in the IGE and prior to seeing the A-E proposal. A revised A-E IGE should normally be prepared by the same person who prepared the original IGE and then be reviewed and approved by the same persons who reviewed and approved the original IGE. Revision of an A-E IGE is not required to justify accepting a proposal greater than the IGE if the significant differences can be adequately explained in the POM and PNM. An A-E IGE cannot be revised after the

proposal has been received for review; significant differences are then itemized in the POM with results from negotiations documented in the PNM.

F-5. Independent government estimate for base contracts

An A-E IGE for an IDC or a C-Type contract will consist of an independent analysis of fair and reasonable rates for labor, overhead, and other costs. The IGE will use labor and overhead rates representative of the class of A-E firms that have been selected as MHQ to perform the required work. Class includes such factors as firm size, market area, specialization, and capabilities. The results of market research will influence the class of A-E firms considered highly qualified. For a TO, the base contract scope of work in a SATOC/MATOC will determine which class of firms are considered highly qualified to perform the work.

F-6. Independent government estimate for task orders

An A-E IGE for a FFP TO (or modification to a TO) will use the negotiated contract rates for labor, overhead, travel, supplies, services, and possibly profit (if the same profit rate is applicable to all orders) in effect at the time the order (or modification to a TO) is issued.

F-7. Task order breakdown of costs

An IGE will be organized to correspond to each phase or sub-phase of work in the SOW. The estimated price for each phase or sub-phase will be itemized to show the direct labor costs, overhead costs, travel costs, ODCs, and profit.

a. Direct labor costs. The labor hours needed for each position classification (types of disciplines at certain levels of expertise) are determined by analysis of the required tasks and products in the SOW. Reasonable effort must also be included for project management, QC/QA, partnering, clerical support, and coordination between disciplines. If the SCA applies to the contract, then the labor rates and benefits for service employees must be at least equal to those in the appropriate DoL WD.

b. Overhead. Overhead costs (also called indirect costs) include overhead on direct labor and G&A overhead. FAR 31 provides detailed guidance on overhead costs. For a C-Type contract, this needs to be established; for a TO issued from an IDC, apply the negotiated rate. An IGE will normally be prepared using a single overhead factor that combines overhead on direct labor with G&A overhead, expressed as a percentage of the total direct labor costs (often referred to as a fully burdened rate). This method is representative of the accounting practices of most A-E firms. Other overhead structures may be used in an IGE if representative of the class of firms selected for the work. An IGE on a C-Type may be prepared using separate overhead rates for the prime contractor and primary subcontractors, if considered reasonable and typical for the type of work.

c. Travel. Travel requirements are determined from analysis of the SOW for tasks, such as field investigation and meetings, based on the location of the firm selected for

negotiation. Typical travel costs include rental car, company car mileage, airfare, parking fees, and per diem expenses. The labor of personnel when traveling will be included in the direct labor portion of an IGE. The unit cost and quantity of each travel item will be identified. Per diem and airfare costs are limited by FAR 31.205-46. The prevailing privately owned vehicle mileage reimbursement rate for government personnel will be used to estimate car mileage costs.

d. Other direct costs. Include all other necessary direct costs not included in direct labor and travel, and not ordinarily included in the overhead of an A-E firm when developing a TO IGE. Commercial quotes from suppliers are usually available for these items. Typical ODCs include reproduction of documents for government review, supplies, photographs, renderings, models, color boards, long-distance communications, laboratory tests, computer use, and postage.

e. Profit.

(1) Profit rates will be determined for A-E contracts, consistent with UDG 5115.404-73-2, using the Alternate Structured Approach. The profit rate will be applied to all costs (direct labor, overhead on direct labor, G&A overhead, travel, reproduction, and ODCs) to estimate the dollar amount of profit.

(2) Based on the Alternate Structured Approach, the pre-negotiation profit objective for an A-E contract (including surveying, mapping, geospatial), an A-E contract modification or an A-E TO is determined as described below. The profit objective for all other types of A-E contracts will be determined consistent with DFARS 215.404-71.

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

where:

Cost is the total estimated costs, including G&A costs, of the prime contractor and any subcontractors (including subcontractor profit). Normal profit need not be deducted from the prices for subcontractors or commercial supplies and services (such as airfares, reproduction, lab tests, express mail, and materials) in developing the cost base.

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.

Duration factor is .02 for a contract action of 1 month or less, and increases 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.

Support of socioeconomic programs factor will vary from 0.0 for a prime contractor (including an SB prime contractor) who plans no subcontracting, to 0.02 for a contractor who demonstrates exceptional program support. Consider the contractor's intent with regard to mentoring and subcontracting with SBs, small disadvantaged businesses, and historically Black colleges and universities and minority institutions.

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).

F-8. Statutory limitation

a. The statutory design fee limitation requirement for the "production and delivery of designs, plans, drawings and specifications" (FAR 15.404-4(c)(4)(i)(B) and FAR 36.606(a)) must be documented on the IGE. An IGE will be clearly organized to show the elements of estimated price, including associated overhead and profit, subject to the design fee limitation. The total of these elements of price are expressed as a percentage of the ECC (excluding contingencies and S&A).

b. For additional work or redesigned work, the ECC (used in the calculation) is increased by the value of the additional or redesigned work (DFARS 236.606-70(b)). For redesigns that involve a reduction in scope, the ECC of the change is calculated based on the value of the work remaining after the removal of the feature, not the value of the removed feature itself. See the example below for clarification.

F-9. Determining applicability of the statutory design fee limitation

a. DFARS 236.606-70 provides further guidance that for redesign and added construction features not originally within the project, the statutory limit will be applied to the cost of the redesign or design of the added construction features. This is done by adding the cost of the original design to the contract cost of redesign or new work, then dividing the total contract design cost by the new total ECC (the original ECC added to the ECC of the redesigned feature or added feature). See examples below on how to apply and keep track of the statutory design fee limitation when doing modifications.

b. For design directive issuance (MILCON), the following determinations are made:

(1) CODE 0 Planning Charrette: design fee limit does not apply.

(2) CODE 1 Predesign activities and Technical Instruction 800-01 Design Criteria efforts: design fee limit does not apply.

(3) CODE 2 Concept Design: The Project Definition Report (PDR) and 3086 efforts do not count toward the design fee limit; preparation of the 35% design does count toward the limit.

(4) CODE 3 Parametric Design: design fee limit does not apply.

(5) CODE 6 Final Design: design fee limit applies, but see exclusions.

(6) CODE 7 Design Build RFP: design fee limit does not apply to preparation of a DB RFP.

(7) CODE T Adapt Build: design fee limit applies, but see exclusions.

c. There are many common items/activities not included in the statutory design fee limitation check. Note that while CPS are typically excluded from the design fee limitation, any changes to the signed or sealed drawings necessitated by user-requested modifications, variances, or unforeseen site conditions will incur additional design fees, as these alterations contribute to the production of design deliverables and will require a statutory limit check.

(1) AR 420-1 Chapter 4-37(b) exempts the following activities from the fee limitation:

(a) Project development.

(b) Engineering feasibility.

(c) Deficiency studies.

(d) Site investigations.

(e) Subsurface explorations.

(f) Surveys.

(g) Shop drawing review.

(h) Construction inspection.

(i) Preparation of O&M manuals and similar activities.

(j) Furniture-related interior design.

(k) Construction cost estimates.

(l) Economic analyses.

(m) National Pollution Discharge Elimination System and other environmental permits.

(n) HTRW surveys.

(2) Other common activities that do not count toward the design fee limitation include:

- (a) Preparation of the PDR and 3086.
- (b) CW Investigations through the Chief's report.
- (c) Historic preservation studies.
- (d) Traffic studies.
- (e) Existing facility investigation.
- (f) Energy analysis over and above normal calculations required for the actual design of typical heating, ventilation, and air conditioning system and supporting electrical and instrumentation systems (such as a life cycle cost analysis).
- (g) Record drawing development (as-builts of existing systems and facilities).
- (h) Flow gauging, model testing, data capture, and development.
- (i) Site selection.
- (j) Preparation of general and developmental criteria.
- (k) Preparation and general and feature design memoranda.
- (l) Master planning.
- (m) Project and program development of planning documentation.
- (n) Project management.
- (o) Display models and renderings.
- (p) Concept presentations.
- (q) Value engineering.
- (r) Interior space design/space layout drawings for items that are not real property installed equipment.
- (s) Graphic communication services.
- (t) Special energy services.
- (u) Designs by design build contractors.
- (v) Travel costs including labor and per diem.
- (w) Meetings.

- (x) Reproduction costs above one set.
- (y) BIM services.
- (z) Postage, telephone costs.
- (aa) Art in architecture coordination.
- (bb) Critical path method/construction scheduling.
- (cc) Site slides/photographs.
- (dd) Construction phase services (do not result in changes to stamped drawings).
- (ee) Post-occupancy evaluation.
- (ff) Post-construction commissioning services.
- (gg) Subsurface explorations and borings, materials testing, subsequent reports.
- (hh) Design code and Unified Facilities Criteria (UFC) updates to previously signed and sealed drawings (100% design packages).

d. Following is a list of items typically included in the design fee limitation for a DBB package, inclusive of all design phases for all disciplines.

- (1) Design development process (35%/65%/95%/corrected final).
- (2) Drawings and specifications.
- (3) Designs after construction award, DOR services (changes to stamped drawings).
- (4) Preparation of DBB packages.
- (5) Drawings and specifications for demolition packages.
- (6) Interior space design/permanent partitions.

F-10. Example project

This example project demonstrates how to apply the statutory design fee limitation to the original A-E design contract to modifications of the A-E design contract during design (prior to construction contract award), and how to apply the design fee limit check after construction contract award.

a. Begin using a vehicle maintenance shop with a full design effort (DBB), which is subject to the 10% design fee limitation (applicable to MILCON).

b. Apply the 10% limit to the original design effort by the A-E firm (start of design phase, before construction award).

$$\frac{ORIGINAL\ DESIGN\ FEE}{ORIGINAL\ ECC} \times 100 = \% \quad (F-1)$$

c. In this example, the vehicle maintenance shop and supporting facilities totals \$19.6M. The A-E proposed a design fee of \$1.8M and nondesign fee of \$500,000.

- (1) Total A-E Fee: \$2,300,000 (original design).
- (2) Design Fee: \$1,800,000.
- (3) Nondesign Fee: \$500,000.
- (4) Estimated Cost of Construction (ECC): \$19,600,000.

$$\frac{\$1,800,000}{\$19,600,000} \times 100 = 9.18\% \quad (F-2)$$

d. The 10% limit is not exceeded. The design contract to the A-E may be awarded.

Note 1. The original ECC used in doing the initial 10% check is never replaced with an updated ECC value during design phase, nor is that changed to the actual awarded construction amount if design is needed after construction award. The value of the original ECC used remains constant with all subsequent modifications when doing the design fee check for DOR services.

Note 2. Nondesign services are not part of the design fee limit.

e. Apply the 10% limit to modifications of the A-E contract during the design phase (DFARS 236.606-70).

$$\frac{ORIGINAL\ DESIGN\ FEE + additional\ or\ redesign\ cost\ (fee)}{ORIGINAL\ ECC + ECC\ of\ added\ or\ redesigned\ features} \times 100 = \% \quad (F-3)$$

(1) This is Mod01 to the original design effort, where a feature is added to the original design scope. In this example, the customer requested a change to the project by adding an additional 200 square feet of storage space.

- (a) Mod01 A-E Fee: \$7,000.
- (b) Mod01 Design Fee: \$5,000.
- (c) Mod01 Nondesign Fee: \$2,000.
- (d) Mod01 ECC: \$58,000.

$$\frac{\$1,800,000 + \$5,000}{\$19,600,000 + \$58,000} \times 100 = 9.18\% \quad (\text{F-4})$$

This Mod01 may be awarded since the 10% design limit is not exceeded by the aggregate total.

Note 1. Notice there is no change to the original ECC. The ECC of the added feature is added to the original ECC.

Note 2. The 10% check is an administrative statutory check. Do not change/replace previously used ECCs with revised estimates (or actual construction awards) when using the equation.

Note 3. All features have a positive value. The equation reads to include the value (as noted by the plus sign; “+ added or redesigned features”).

Note 4. Doing the design fee check is an aggregate process. The check is an aggregate running total of the design fee over the duration of the project (during design phase and after construction award). Each mod adds to the calculation that went before.

Note 5. Continue this design fee check process throughout the life of the project by adding the next modification to the past accumulated total.

(2) This is Mod02 to the design effort involving a situation where a redesign is required. In this example, the customer requested redesign of restrooms to include showers.

- (a) Mod02 A-E Fee: \$4,000.
- (b) Mod02 Design Fee: \$3,000.
- (c) Mod02 Nondesign Fee: \$1,000.
- (d) Mod02 ECC: \$24,000.

$$\frac{\$1,805,000 + \$3,000}{\$19,658,000 + \$24,000} \times 100 = 9.19\% \quad (\text{F-5})$$

Note 1. Doing the 10% check is an aggregate process, so for Mod02, it considers the original calculation and prior Mod01.

Note 2. The design of the new feature on its own exceeds 10% design when only looking at the ratio of the design value for just the new feature ($\$3,000/\$24,000 \times 100 = 12.5\%$). However, Mod02 may be awarded since the 10% design limit is not exceeded after the aggregate result is calculated.

Note 3. The \$19,658,000 is the running total of the original ECC and the ECC of Mod01.

Note 4. The \$1,805,000 is the running total of the original design fee and design fee for Mod01.

(3) This is Mod03 to the design effort where a previously designed feature is removed. In this example the customer requests sitework redesign to remove a pond and replace with landscaping.

- (a) Mod03 A-E Fee: \$48,000.
- (b) Mod03 Design Fee: \$38,000.
- (c) Mod03 Nondesign Fee: \$10,000.
- (d) Mod03 ECC: \$400,000.

$$\frac{\$1,808,000 + \$38,000}{\$19,682,000 + \$400,000} \times 100 = 9.19\% \quad (\text{F-6})$$

Note 1. Mod03 can be awarded since the 10% design limit is not exceeded.

Note 2. When the design change removes a feature, the value of the (construction) work that remains as a consequence of the removed feature becomes the ECC for the calculation. The value of the removed feature is not the ECC used for this calculation.

There are no revisions to the equation and values previously used due to removal of the original pond scope. In this example, the design fee of \$38,000 and ECC of \$400,000 is the landscaping cost, which is the work that remains as a result of removing the pond from the design effort. The value of the pond was part of the original scope and was accounted for within the original ECC.

(4) This is Mod 04 to the A-E's design effort where a design change happens after construction award and requires the DOR to make the change. The Mod4 situation is an example where a redesign effort is necessary due to unforeseen site conditions where the electrical utility tie-in must be rerouted to a different point to avoid an obstacle.

- (a) Mod04 A-E Fee: \$17,000.
- (b) Mod04 Design Fee: \$13,000.
- (c) Mod04 Nondesign Fee: \$4,000.
- (d) Mod04 ECC: \$150,000.

$$\frac{\$1,846,000 + \$13,000}{\$20,082,000 + \$150,000} \times 100 = 9.19\% \quad (\text{F-7})$$

Note 1. Mod04 may be awarded since it is below the 10% limit.

Note 2. In this example, the \$20,082,000 is the running total of the original ECC and the ECC of Mods 01 through 03. The original ECC and the ECC of the Mods are not replaced by actual construction award amounts.

Note 3. In this example, the \$1,846,000 is the running total of the original design fee and Mods 01 through 03 design fee.

(5) This is Mod05 to the A-E's design effort where a design change happens after construction award and requires the DOR to make the change. In this example the customer requests the addition of a crane with higher load capacity impacting the building's structural design.

- (a) Mod05 A-E Fee: \$15,000.
- (b) Mod05 Design Fee: \$13,000.
- (c) Mod05 Nondesign Fee: \$2,000.
- (d) Mod05 ECC: \$60,000.

$$\frac{\$1,859,000 + \$13,000}{\$20,232,000 + \$60,000} \times 100 = 9.23\% \quad (\text{F-8})$$

Note. The new feature on its own exceeds the 10% design to ECC ratio. $\$13,000/\$60,000 \times 100 = 21.67\%$. However, Mod05 may be awarded since the 10% design limit is not exceeded when the aggregate total is applied.

F-11. Quick summary

Consider the following when performing the statutory check on design effort during the design phase and post-construction award:

- a. The original ECC is always used in the calculation for a mod with the DOR.
- b. The actual construction award amount does not replace the original ECC if a design change is needed after construction award.
- c. If the design change removes a feature, then the value of the (construction) work that remains as a consequence of the removed feature becomes the ECC for that mod calculation.
- d. The design fee limitation check is an administrative statutory check. The check is an aggregate running total of the design fees over the duration of the project (during design phase and after construction award).
- e. Continue this design fee check throughout the life of the project. Always add the next modification to the previous accumulated total.

Appendix G Architect-Engineer Liability Process Flow Chart

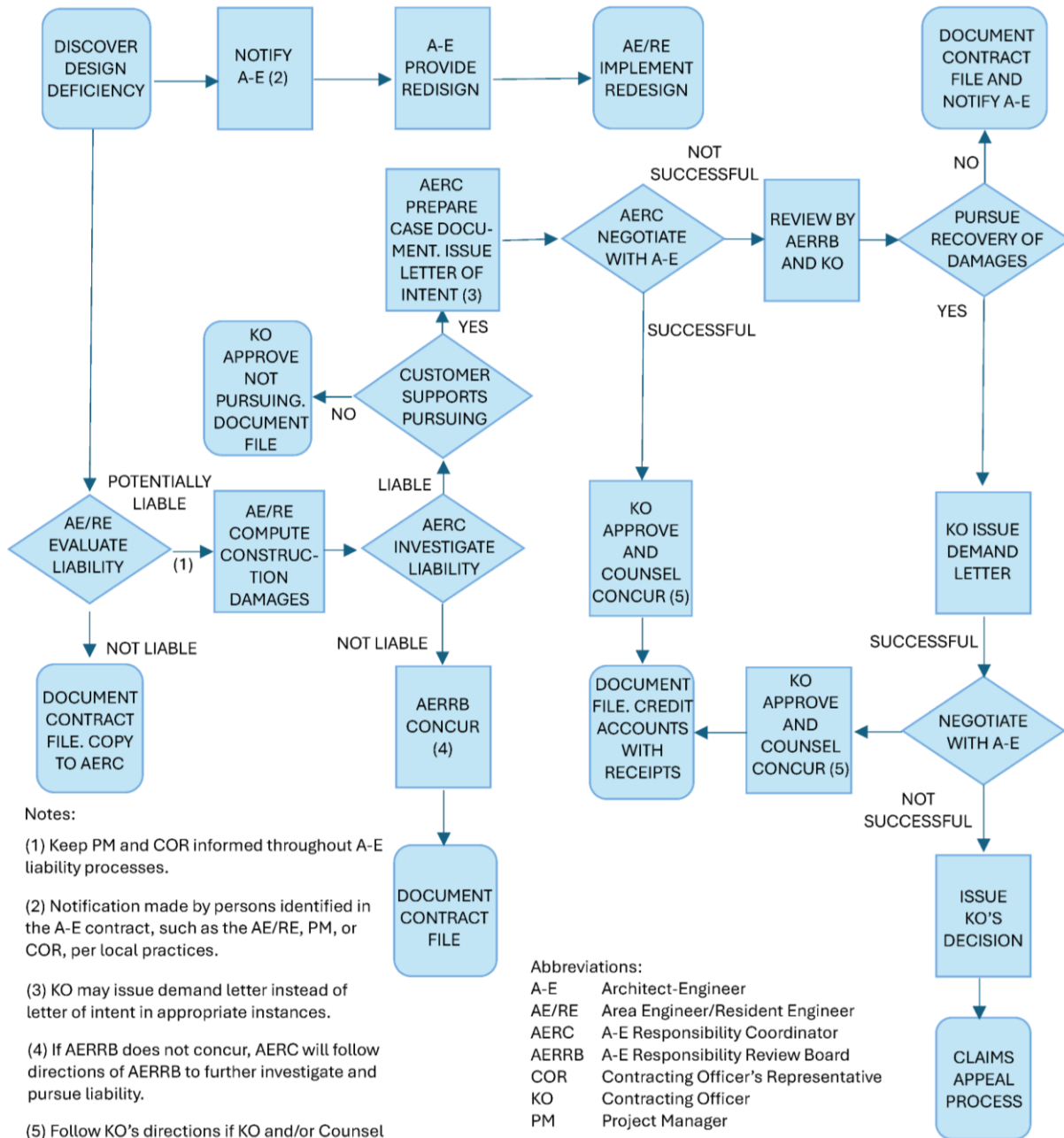


Figure G-1. Architect-Engineer liability process flow chart

Glossary of Terms

Section I

Acronym List

Term	Definition
ACO	Administrative Contracting Officer
ACQ	Acquisition
ADR	Alternative Dispute Resolution
AE	Area Engineer
A-E	Architect-Engineer
AERA	A-E Responsibility Administrator
AERC	A-E Responsibility Coordinator
AERMP	A-E Responsibility Management Program
AERRB	A-E Responsibility Management Review Board
AFARS	Army Federal Acquisition Regulation Supplement
AO	Assessing Official
AOR	Assessing Official Representative
AR	Army Regulation
ASPRS	American Society for Photogrammetry and Remote Sensing
BCD	Basic Change Document
BIM	Building Information Modeling
CAD	Computer-Aided Design
CADD	Computer-Aided Design and Drafting
CAGE	Commercial and Government Entity (code)
CCL	Construction Cost Limitation
CECT	Headquarters, U.S. Army Corps of Engineers Directorate of Contracting
CEEC	Headquarters, U.S. Army Corps of Engineers, Directorate of Engineering and Construction
CEFMS	Corps of Engineers Financial Management System
CERCLA	Comprehensive Environmental Response, Compensation, and Liability Act
CERM-F	Corps of Engineers Resource Management - Financial
CFC	Chlorofluorocarbon
CFR	Code of Federal Regulations
CLC	Continuous Learning Module
CLIN	Contract Line Item Number
CMS	Construction Management Services
CoCO	Chief of the Contracting Office
COFD	Contracting Officer Final Decision
COR	Contracting Officer's Representative

Term	Definition
CPARS	Contractor Performance Assessment Reporting System
CPS	Construction Phase Services
CR	Cost Reimbursement
CS	Contract Specialist
CUI	Controlled Unclassified Information
CW	Civil Works
DA	Department of the Army
DAU	Defense Acquisition University
DB	Design-Build
DBB	Design-Bid-Build
DCAA	Defense Contract Audit Agency
DDC	Design During Construction
DFARS	Defense Federal Acquisition Regulation Supplement
DM	Design Manager
DoD	Department of Defense
DoL	Department of Labor
DOR	Designer of Record
E&C	Engineering and Construction
ECC	Estimated Construction Cost (synonymous with CCL)
EDWOSB	Economically Disadvantaged Women-Owned Small Business
EM	Engineer Manual
ENG	Engineer Form
EP	Engineer Pamphlet
EPA	Environmental Protection Agency
ER	Engineer Regulation
eSRS	Electronic Subcontracting Reporting System
ETL	Engineering Technical Lead
FAO	Finance and Accounting Officer
FAR	Federal Acquisition Regulation
FFP	Firm-Fixed-Price
FIO	For Information Only
FMR	Financial Management Regulation
FOIA	Freedom of Information Act
FP	Focal Point
FPDS	Federal Procurement Data System
FPR	Final Proposal Revision
FS	Feasibility Study
G&A	General and Administrative
GA	Government Approval
GAO	Government Accountability Office

Term	Definition
GIS	Geographic Information System
GISP	Geographic Information System Professional
GIS-RS	Geographic Information System-Remote Sensing
GPE	Government-Wide Point of Entry
GS	General Schedule
HCA	Head of Contracting Activity
HQUSACE	Headquarters, U.S. Army Corps of Engineers
HTRW	Hazardous, Toxic, Radioactive Waste
HUBZone	Historically Underutilized Business Zone
IDC	Indefinite Delivery Contract
IGE	Independent Government Estimate
ISR	Individual Subcontracting Report
J&A	Justification and Approval
JAM	Joint Appointment Module
JTR	Joint Travel Regulation
JV	Joint Venture
KO	Contracting Officer
LEED	Leadership in Energy and Environmental Design
LTM	Long-Term Operation and Maintenance
MATOC	Multiple Award Task Order Contract
MFR	Memorandum For Record
MHQ	Most Highly Qualified
MILCON	Military Construction
MSC	Major Subordinate Command
MSCAERC	MSC-wide AERC
NAF	Nonappropriated Fund
NAICS	North American Industrial Classification System
NCP	National Contingency Plan
NDAA	National Defense Authorization Act
NEPA	National Environmental Policy Act
NGA	Nongovernment Advisors
NIST	National Institute of Standards and Technology
NTP	Notice To Proceed
O&M	Operation and Maintenance
OAS	Overall Acquisition Strategy
OC	Office of Counsel
ODC	Other Direct Cost
OH	Overhead
OMRR&R	Operation, Maintenance, Repair, Replacement, and Rehabilitation

Term	Definition
P&D	Planning and Design (applies to MILCON only)
PA/SI	Preliminary Assessment and Site Inspection
PALT	Procurement Administrative Lead Time
PAM	Procurement.Army.Mil (Contracting knowledge portal)
PCF	Paperless Contract File
PCO	Procuring Contracting Officer
PDR	Project Definition Report
PDT	Project Delivery Team
PGI	Procedures, Guidance, and Information (companion to DFARS)
PIEE	Procurement Integrated Enterprise Environment
PL	Public Law
PM	Project Manager
PNM	Price Negotiation Memorandum
POM	Pre-negotiation Objective Memorandum
POP	Period of Performance
PPQ	Past Performance Questionnaire
PROSPECT	Proponent Sponsored Engineer Corps Training
PSC	Product Service Code
PWS	Performance Work Statement
QA	Quality Assurance
QC	Quality Control
QCS	Quality Control System
RA-C	Remedial Action
RCRA	Resource Conservation and Recovery Act
RD	Remedial Design
RE	Resident Engineer
RFI	Request for Information
RFP	Request for Proposal
RFPP	Request for Price Proposal
RI	Remedial Investigation
RM	Resource Management
RMS	Resident Management System
RO	Reviewing Official
RSI	Request for Supplemental Information
S&A	Supervision and Administration
SAF	Subject to Availability of Funds
SAM	System for Award Management
SAT	Simplified Acquisition Threshold
SATOC	Single Award Task Order Contract

Term	Definition
SB	Small Business
SBA	Small Business Administration
SBP	Small Business Professional
SCA	Service Contract Act
SCLS	Service Contract Labor Standards
SCO	Senior Contracting Official
SCR	Service Contract Reporting
SDB	Small Disadvantaged Business
SDVOSB	Service-Disabled Veteran Owned Small Business
SF	Standard Form
SOW	Statement of Work
SP	Special Publication
SPE	Senior Procurement Executive
SPM	Surveillance and Performance Monitoring Module
TL	Technical Lead (synonymous to A-E DM, ETL)
TM/LH	Time and Materials Labor-Hour Contract Type
TO	Task Order
TORN	Task Order Requirement Notice
TRAC	Total Report of Acquisition Capacity
UAI	USACE Acquisition Instruction
UCF	Uniform Contract Format
UDG	USACE Desk Guide
UEI	Unique Entity Identifier
UFC	Unified Facilities Criteria
UFGS	Unified Facilities Guide Specifications
ULO	Unliquidated Obligation
USACE	U.S. Army Corps of Engineers
USC	United States Code
USGS	U.S. Geological Survey
UST	Underground Storage Tank
VECP	Value Engineering Change Proposal
VOSB	Veteran-Owned Small Business
WD	Wage Determination
WOSB	Woman-Owned Small Business

Section II

Terms

Acquisition

A term that typically applies to a base contract acquisition like a SATOC or MATOC spanning more than 1 year or a C-Type acquisition that is high risk or nonroutine or a task order from a SATOC or MATOC.

Architect-Engineer Design Manager (A-E DM)

Type of technical lead with responsibilities on A-E task orders or C-Type contracts.

Chief of Engineering

Engineering Division and Chief of Engineering (or Chief, Engineering Division) is used generically in this EP to refer to the Engineering Division Chief or the Engineering and Construction Chief in those Districts/Centers where the E&C Divisions are combined. It is the chief responsible for the engineering function at a District/Center.

Commercial and Government Entity

CAGE (code) is a code created in [SAM.gov](https://sam.gov) that is managed by and obtained from the Defense Logistics Agency CAGE Program Office; used in conjunction with the Unique Entity Identifier (UEI) for government contracts.

Construction Cost Limitation

CCL is the anticipated construction contract price that excludes S&A and contingency; the funding limitation of the estimated construction cost to be awarded to the construction contractor.

Construction Phase Services

Services provided by an A-E firm after construction is awarded that are beyond those responsibilities of the DOR; CPS does not include responding to design clarification RFIs, errors, or omissions that are inherent part of the design liability of the DOR.

Contracting Officer

Same role and responsibilities as a Procuring Contracting Officer.

Contracting Officer's Representative

The COR serves as the official conduit for communication between the contractor and contracting officer for technical and administrative compliance of contract terms and conditions; see UDG for certification and training requirements. The COR may or may not also be the design manager/technical lead on the A-E task order.

Design Manager

The DM is the technical person responsible for A-E product delivery, which includes addressing A-E pre-award issues with the PM (scope, schedule, budget) needed to prepare an A-E scope of work, negotiate for award, and subsequently manage the A-E task order contract. DMs have overall management and oversight responsibility to

confirm the requirements of the task order are fulfilled. The DM can also be the COR if required training, licensure, and experience has been fulfilled. DM, ETL, TL, technical manager are general terms used to denote the engineering division team member responsible for A-E performance. Typical responsibilities are scoping and award of an A-E task order and the subsequent management of the services and products produced through contact close-out of an A-E task order (or C-Type).

Designer of Record

An A-E firm/member of the A-E firm responsible for stamping and sealing the design drawings and who carries the responsibility to respond to design clarifications during construction (without additional fee) and to resolve any errors or omissions (without additional fee).

Indefinite Delivery Contract

Either a SATOC or MATOC, from which task orders are issued.

Independent Government Estimate

The IGE is developed internally by the government for use in negotiated contract awards.

Joint Appointment Module

A module within the PIEE where COR nominations and appointments are initiated, reviewed, approved, signed, stored, and terminated.

Key Personnel

Individuals who will have major contract (IDC) responsibilities and/or provide unusual or unique expertise; typically, not task order-level key staff personnel (not execution level).

Major Subordinate Command

A USACE Division, such as South Pacific Division, Mississippi Valley Division, and North Atlantic Division.

Multiple Award Task Order Contract

A base contract awarded to a pool of a minimum of three A-E firms issued from a single solicitation where capacity is shared among the firms and a task order selection process is used to identify the most highly qualified firm in the pool for a specific task order award.

Procuring Contracting Officer

Interchangeably used with Contracting Officer.

Senior Contracting Official

USACE has three SCO locations who have responsibility for the performance of contracting authorities delegated by the HCA, which includes reviews, approvals, and endorsements of procurement matters that involve SCO approval or coordination for higher level approval in HQ Army.

Single Award Task Order Contract

A single base contract with a specific scope that is awarded to a single A-E firm under which task orders are issued.

Small Business Concern

A business that is independently owned and operated and that is not dominant in its field of operation and in conformity with specific industry criteria.

Solicitation

Solicitation means any request to submit offers or quotations. Solicitations under negotiated procedures are called “requests for proposal.”

Statement of Work

The SOW clearly defines and quantifies the work a A-E contractor is to perform in developing or producing goods or services, inclusive of type, quality, time of delivery, and criteria to follow. A-E task orders are not a PWS.

Supervision and Administration

An activity that has specific funding dedicated for post-construction award activities; funds do not include DDC.

Surveillance and Performance Monitoring Module

A module within the PIEE where the annual review of a COR’s files are documented using the COR Annual Review checklist and where the monthly COR reports are submitted.

System for Award Management

USACE announces requirements (synopsis) for A-E services in SAM.gov.

Task Order

An individual order with a defined scope placed against an existing IDC (SATOC, MATOC).

Task Order Manager

See Technical Lead.

Task Order Requirement Notice

A one-page notice sent to all firms within a MATOC pool notifying them of an upcoming task order requirement; it may or may not request supplemental information.

Technical Lead

The engineer/architect responsible for technical product delivery of professional services (A-E series and deliverables). Per ER 1110-3-12, the TL is a PDT member who serves as the proponent for the projects technical quality (technical quality being applicable criteria, policies, standards, and design standards, if applicable). The TL and COR may be the same person on an A-E task order.

USACE Acquisition Instruction

The UAI establishes uniform policies and procedures to ensure that business practices are consistent throughout USACE, provides internal guidance, delegations of authority, assignments of responsibilities, workflow procedures, procedures that are required by regulation to be established by the HCA, procedures that implement policies, and internal reporting requirements. UAI implements the FAR, DFARS, and AFARS to establish standard processes for USACE acquisitions; it is applicable to all USACE Districts, Centers, and activities operating under the authority of the USACE HCA.

USACE Desk Guide

A companion document to the UAI.

Unique Entity Identifier

A unique 12-character entity identifier used across the federal government that is assigned by SAM.gov; the UEI replaced the Data Universal Numbering System (DUNS) in April 2022.