



US Army Corps
of Engineers®

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Construction Contracts

How to obtain construction contracts
with the U.S. Army Corps of Engineers



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FOREWORD

The U. S. Army Corps of Engineers (USACE) is the design and construction agent for the Army and most of the Air Force military construction programs. The Corps also performs work for other Department of Defense (DoD) and non-DoD agencies such as the Environmental Protection Agency. When in the national interest, the Corps executes engineering and construction missions overseas and provides assistance to foreign governments.

One of the largest current programs involves the realignment and reduction of the nation's military infrastructure which has created an important mission for supporting the affected installations with planning, real estate, engineering, and construction. Additionally, the Corps has taken on a large program of environmental protection and restoration for current and formerly used military sites.

Despite the size of the Corps' military mission, its civil works projects are the ones that are most often in the public view. The Assistant Secretary of the Army (Civil Works) directs and supervises the civil works mission carried out by the Corps. The Corps is responsible for planning, design, construction, operation and maintenance of projects for flood control, navigation, hydroelectric power, water supply for municipalities and industry, recreation, fish and wildlife management, and environmental enhancement. Along with developing our nation's water resources, the Corps provides an important regulatory function committed to maintaining a public interest balance between environmental protection of our wetlands and commercial development in the waters of the United States.

Another important responsibility of the Corps is responding to major emergencies having an impact on our nation's security. The Corps emergency plans for responding to major domestic emergencies includes providing support to others for dealing with civil disturbances; natural disasters, such as earthquakes, floods, droughts; and control of certain hazardous materials.

The majority of the Corps' construction program is procured by using the sealed bid procedure resulting in firm-fixed-price type contracts. Negotiated, letter, cost-reimbursable and other type contracts are used when appropriate. This pamphlet describes the procedures used by USACE for the procurement of construction services. It also describes the procedures a contractor should follow in seeking a construction contract with the Corps of Engineers.

FOR THE COMMANDER:



OTIS WILLIAMS
Colonel, Corps of Engineers
Chief of Staff

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ORGANIZATION

The United States Army Corps of Engineers (USACE) is an Army Major Command (MACOM). It is a decentralized organization. The Headquarters, USACE, located at 20 Massachusetts Avenue N.W., Washington, DC, 20314-1000, is responsible for overseeing all programs, formulating policies and allocating resources for the MACOM. District offices and Program Centers located throughout the United States and overseas accomplish the advertising and award of contracts. **Appendix A** contains a listing of all Corps division and district offices, their addresses, and telephone numbers. **Appendix B** shows geographic areas of responsibility.

ADVERTISING

The Corps of Engineers insures that prospective contractors are aware of contracting opportunities by publishing notices of advertised construction requirements in the Commerce Business Daily (CBD) and using mailing lists to alert contractors of solicitations.

The CBD is the primary official means for the publication and dissemination of notices of proposed government procurement actions, contract awards, sales of government property and other procurement information. The Department of Commerce publishes the CBD every business day. Each notice appears in the CBD only once.

The primary purposes of the CBD notice are to improve small business access to acquisition information and to enhance competition by identifying contracting and subcontracting opportunities. All Federal procurement offices are required by law to announce in the CBD proposed procurement actions expected to exceed \$25,000. Excepted from this requirement are procurements for classified supplies or services, emergency requirements, procurements governed by international agreements and certain other exceptions.

The CBD notice consists of a brief description of the scope of the work, the location of the project, estimated cost range, the anticipated date the solicitation will be available to contractors, the name and address of the contracting office and the point of contact, and other information. Construction work is typically shown under service codes Y and Z in the CBD. The notice of a proposed contract must be published

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at least 15 days before issuance of a solicitation. At least 30 days' response time for receipt of bids or proposals must be allowed from the date of issuance of the solicitation.

Most public libraries subscribe to the CBD. An annual subscription with first class mailing costs \$324 per year. Second class mail reduces the annual subscription to \$275. To subscribe, send remittance to the Superintendent of Documents, U.S. Government Printing Office, P.O. Box 371954, Pittsburgh, PA 15250, or call the main office in Washington, DC at telephone number (202) 512-1800. VISA or MASTERCARD are acceptable. The CBD is also accessible via the internet as a service provided by the Government Printing Office. The URL for this web site is <http://cbdnet.access.gpo.gov>.

BIDDERS LIST BY DISTRICT

A firm desiring to perform construction services for the U.S. Army Corps of Engineers should inform the contracting division of each district of its desire to be placed on its mailing list. To be placed on a mailing list, forward a copy of a complete Standard Form 129 "Solicitation Mailing List Application" to each contracting office with which you desire to do business. This form is available at each of the contracting offices listed in **Appendix A**. Once placed on the mailing list you will automatically receive advance notices of "Invitation to Bid" or "Request for Proposal" on new procurements. Your responsiveness will indicate your interest in remaining on the list. Should you not wish to respond to the announcement but wish to stay on the mailing list you should notify the contracting division.

BONDING

For all fixed price construction contracts over \$100,000, a requirement exists for each bidder to submit a bid bond or bid guarantee with the bid. It must be in the form of a firm commitment such as a bond, certified check, or irrevocable letter of credit. For fixed price construction contracts over \$100,000, the bid guarantee amount required is twenty percent (20%) of the bid price or \$3,000,000 whichever is less. The contracting officer retains this guarantee until the contract is awarded. The purpose is to offset any additional cost of acquiring the work should a bidder default their bid upon being chosen for award of the contract.

The contractor is also required to obtain performance and payment bonds before award of a construction contract. The selected contractor obtains these bonds. The contracting activity reviews these bonds after execution on standard U. S. Government forms.

Performance bonding is generally for one hundred percent (100%) of the contract price. The payment bond guarantees the payment of workers, material suppliers and subcontractors. It is fifty percent (50%) of the contract price for contracts \$1,000,000 or less, forty percent (40%) for contracts between \$1,000,000 and \$5,000,000 and \$2,500,000 for those of greater value. A requirement exists for evidence of proper bonding before a notice to proceed will be issued.

BID OPENING AND EVALUATION OF BIDS

Opening of sealed bids is public. The solicitation document contains the place and time (local time, Monday through Friday, excluding holidays) of the bid opening. Public announcement of bids takes place at the bid opening. Preparation of bid abstracts and availability of abstracts for public inspection, upon request, follows the bid opening. Bid abstracts are normally maintained at the contracting division in the district which opened the bids.

The bid evaluation process involves a check of each bid to determine whether the bidder is both responsive and responsible. To be responsive, the bid must comply in all material respects with the invitation or solicitation (with respect to timeliness, method of submission and substance of the resulting contract) and the bidder must have: bid all items on the bid schedule; checked all extensions of bid items for arithmetical correctness; acknowledged all solicitation amendments; and met all technical requirements.

The responsibility of the bidder refers to the contractor's ability and resources to fulfill the requirements and performance schedule of the contract. A pre-award survey is performed by the government to assure that the contractor is responsible.

PROMPT PAYMENT ACT

Under a government fixed-price contract, payments may be made in the

following ways: a lump sum upon completion and acceptance of all work under the contract; partial payments upon partial delivery and acceptance; or progress payments. While a single lump-sum payment upon delivery and acceptance of all end items may be the simplest procedure for making payments, it is often not practicable for contracts of significant duration or contracts requiring substantial investment in work-in-progress inventory, as is the case in construction contracts. Thus payments under fixed-price construction contracts are normally made by means of partial or progress payments.

The principal obligation of the government under a contract of any type is to pay the contractor for supplies delivered or work performed. Under a fixed-price contract, the exact amount to be paid has been stated in the contract. Public Law 100-496, the Prompt Payment Act Amendments of 1988, requires payments on contracts to be timely (normally 14 days after receipt of a proper and accurate payment request or "invoice" by the person or office designated in the solicitation as "the designated billing office".) The "clock" starts running on the date that the invoice is received at the billing office. If the billing office fails to date stamp the invoice, the "clock" starts on the date of the invoice. If the Government agency fails to make timely payment, it must pay the contractor an interest penalty out of its existing appropriation.

On final payments, payment is due either the 30th day after receipt of the invoice or the 30th day after acceptance of the work, whichever is later. Where final payment is subject to settlement action (e.g., release of claims), acceptance is deemed to have occurred on the effective date of settlement. The **Prompt Payment Act** provisions also apply and flow down to subcontractors and suppliers at all tiers. The prime contractor must include a contract clause requiring each of its subcontractors to flow down the same prompt payment requirements to each of their subcontractors. Contractors and subcontractors must pay their subcontractors within seven days of receipt of their respective invoice, and may not specify longer payment periods in their subcontracts. Contractors and subcontractors must pay interest to their subcontractors for payments made after the due date (7th day). Interest that the contractor pays a subcontractor cannot be charged to the government.

REQUESTS FOR PROPOSAL (RFP) - (Competitive Negotiation Procedures)

Some construction procurements require the use of "best value" negotiated

competitive procedures. An RFP begins this procedure. The RFP sets forth the proposal submittal requirements, criteria for evaluation of the offers, and the work requirements for a specified contract period. This contracting method assures that the advantages of competition operate to help obtain a fair and reasonable contract price. It further permits discussions with proposers to insure they have a full understanding of the job requirements and can perform the work within the completion schedule. It allows for comparative and subjective evaluation of a number of variable selection factors and the selection of the contractor offering the Government the "best value". However, the government also reserves the right to award a contract, based on initial proposals received, without discussions of such proposals if it finds the contract most advantageous to the government. For this reason, it is imperative that proposers submit their initial proposals on the most favorable terms possible from a price and technical standpoint.

CONSTRUCTION CONTRACTOR PERFORMANCE EVALUATION

As required by the Federal Acquisition Regulation (FAR), the U.S. Army Corps of Engineers contracting officer or his/her designated representative will evaluate the construction contractor's performance following substantial completion of the contract. The evaluation is mandatory on contracts with an award value of \$100,000 or more, or \$25,000 or more if any performance element is either "unsatisfactory" or "outstanding". Five performance elements constitute the overall performance evaluation: quality of work; timely performance; effectiveness of management; compliance with labor standards; and, compliance with safety standards. Performance on each element, as well as overall performance, is determined to be either, "outstanding", "above average", "satisfactory", "marginal" or "unsatisfactory". The construction contractor is furnished the performance evaluation normally following substantial completion of the construction contract. It is mandatory that the contractor be given the opportunity to meet with the contracting officer prior to issuance of an unsatisfactory performance rating.

The U.S. Army Corps of Engineers maintains a central electronic data base history of contractor performance evaluations. It includes construction contractor performance evaluations submitted by the U.S. Army Corps of Engineers as well as by other Department of Defense and Federal agencies. The acronym for the data base is CCASS (Construction Contractor Appraisal Support System). The FAR requires the

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performance evaluations to be maintained for six years. Contracting officers are required to conduct a CCASS search as part of the pre-award responsibility survey process. Award of the contract to the apparent low-bid contractor may be denied if the Contracting Officer determines that the firm has a history of unsatisfactory performance.

EMPLOYMENT STANDARDS REQUIRED BY LAW

The Davis-Bacon Act, along with the Copeland Anti-Kickback Act and the Contract Work Hours and Safety Standards Act, establish employment standards for laborers and mechanics on public construction projects in the United States under Federal contract. The Davis-Bacon Act requires covered contracts in excess of a stipulated amount to specify prevailing minimum wage rates for various classes of mechanics and laborers employed on the project. Every covered solicitation, therefore, will contain a prevailing wage determination published by the Department of Labor. In addition, the solicitation will contain a number of clauses which implement the Davis-Bacon and related acts. Additional information regarding these requirements may be obtained from the Contractor Industrial Relations Specialist at the contracting office in the U.S. Army Engineer District issuing the solicitation.

SMALL BUSINESS PROGRAM

The Small Business Act is the backbone of a long-standing Congressional commitment to foster the development of small business in the United States and to increase its role in the national economy. The Act provides that small businesses should receive a fair portion of Federal agency contracts and that small businesses (SB) and small disadvantaged businesses (SDB) should have the maximum practical opportunity to participate in contracting with the Federal agencies. The Federal Acquisition Regulations and its supplements provide policy and guidance for implementing the small business program.

Set Asides

The Small Business Act established several small business preferences, including the "set aside" program. The set aside program is one way that the U.S. Army Corps of Engineers can restrict an entire procurement for award to SB or SDB. Under this

program, the contracting officer determines, prior to synopsis of a requirement in the CBD, that only SB or SDB, whichever the case may be, will be considered for award of a contract.

8 (a) Program

Another major program area to assist SDB is the Section 8 (a) Program, named for the section of the Small Business Act from which it derives its authority. Through the 8 (a) program, small companies owned by socially and economically disadvantaged persons can obtain Federal contracts and other assistance from the Small Business Administration (SBA) in developing their business. The Corps of Engineers participates with the SBA to identify potential 8 (a) contracts and also to match the needs of 8 (a) firms as effectively as possible with available contracts.

Subcontracting

Congress has prescribed contract provisions intended to maximize the award of subcontracts to SB and SDB. All construction contracts of \$1,000,000 or more awarded to large business firms require an approved subcontracting plan prior to award of a contract. Subcontracting plans include goals for subcontract awards to SB and SDB and specific contractor reporting requirements. Subcontract plans are made a material part of the contract. Liquidated damages can be assessed when the contractor fails to make a good faith effort to comply with the subcontracting plan. Contracting officers are responsible for administering contracts to ensure contractor compliance with all contract requirements. This includes enforcing all contract requirements concerning SB and SDB utilization and assessing liquidated damages when applicable.

Additional information regarding these programs may be obtained from the Small Business specialists at the contracting office in the U.S. Army Engineer District issuing the solicitation.

MILITARY CONSTRUCTION OVERSEAS

Japan and Korea

Licensing by the host government is compulsory for firms desiring consideration

for construction contracts in these countries. Firms should contact specific embassies for further information. **Appendix A** provides the addresses for the USACE Pacific Ocean Division's Japan and Far East (Korea) Districts. Depending on the location of the work site, more specific contract information may be obtained from the appropriate district. The Republic of Korea uses the Controlled Single Source Selection procedure for awarding construction contracts. Contractor selection is made from a list of pre-qualified contractors for negotiation of a fair and reasonable price for the work required.

Germany

The Transatlantic Programs Center's Europe District executes contracts each year with the Federal Republic of Germany (FRG) for the construction of U.S. facilities in Germany. The FRG, under Article 49 of the Status of Forces Agreement (SOFA), has the right to construct all U.S. facilities except for certain limited categories. The administrative agreement which sets forth the procedures of contract performance is "ABG-75." No legal bar exists which would prevent a U.S. firm from competing for U.S. funded projects accomplished by the FRG. ABG-75 provides that neither the U.S. forces nor the German authorities will impose any restrictions with regard to the employment of U.S. contractors, subcontractors and suppliers. Advertising all U.S. military construction projects over \$5,000,000 in the CBD further provides interested U.S. contractors the opportunity to become involved in the German bidding process. The limited categories of projects that can be directly contracted by the United States Government are usually for maintenance and repair of existing facilities, minor construction (annually appropriated line item construction requirements not to exceed \$1,500,000), troop construction, projects with special security measures or projects with U.S. peculiar equipment. The procedures for these projects are the same as described for other Corps offices; namely, firms interested in participating in such projects should inform the Europe District of their desire for placement on the mailing list.

Middle East, Africa and Former Soviet Union (FSU) Regions

For international work in the Middle East, Africa and the FSU countries, both Best Value and Low Price Technically Acceptable contracting procedures are used. The Commerce Business Daily (CBD) announcement indicates the method and

associated criteria to be utilized.

Advertisements for solicitations for international work not only appear in the CBD, but also in applicable publications. Some of these publications are: International Construction Week, McGraw-Hill Publications Co. of McGraw Hill, Inc., New York, NY 10020; Middle East Economic Digest, MAISCO, Inc., New York, NY 10020; and Middle East Trade Letter, Charlotte, NC 29203.