

U.S. ARMY CORPS OF ENGINEERS (USACE)

ACQUISITION INSTRUCTION

A handwritten signature in black ink that reads "Denver S. Heath".

DENVER S. HEATH
Head of the Contracting Activity

SUMMARY OF CHANGES

Date	Description of Current Change
Effective 3 June 2019, Update 2: 30 NOV 2021 Prior Revisions: Feb 2022, May 2022, Jun 2022, Nov 2022 Current Revision: 4 Mar 2024	This major revision makes changes – - Table of Contents; - UAI Parts: 5101, 5102, 5107, 5108, 5111, 5113, 5116, 5132, 5136; and - UAI Appendix A

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UAI APPENDICES

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(<https://usace.dps.mil/sites/KMP-CTP/USACEAcquisitionInstructionUAIOfficialandUSACEDesk/Forms/AllItems.aspx>)**

UAI – PART 5101

FEDERAL ACQUISITION REGULATION SYSTEM

(Revised 4 March 2024)

Subpart 5101.1 – Purpose, Authority, Issuance

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

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

UAI 5101.104 Applicability. The UAI applies to all USACE Districts, Centers, and activities operating under the authority of the USACE HCA. All changes to this document apply to new solicitations issued after date signed.

UAI 5101.105 Issuance.

UAI 5101.105-3 Copies. The UAI is available electronically via the Intranet at <https://usace.dps.mil/sites/KMP-CTP>.

UAI 5101.170 Peer reviews.

(c) Peer Review Thresholds. Preward peer reviews for competitive and noncompetitive procurements.

(1) The Senior Contracting Official (SCO) is delegated the authority under AFARS 5101.170 to chair a Solicitation Review Board (SRB) and a Contract Review Board (CRB) for competitive procurements valued at \$100 million or more but less than \$1 billion and for noncompetitive procurements valued at \$50 million or more but less than \$1 billion.

(2) The Chief of Contracting Office (CoCO) is delegated the authority under AFARS 5101.170 to chair a SRB and a CRB for competitive procurements valued at \$50 million or more but less than \$100 million.

(v) *Independent Management Reviews (IMRs) (formerly Postaward peer reviews) of contracts for services valued at less than \$1 billion.*

(b) At least once during the period of performance the SCO will conduct an IMR of contracts for services valued at \$100 million or more but less than \$1 billion. As per AFARS 5101.170, the SCO will provide the Senior Services Manager (SSM) a summary report no later than 45 days after completion of the review; for details of content and submission, see AFARS 5101.170.

(c) *USACE peer reviews.*

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

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

(ii) Improve the quality of contracting processes throughout USACE, and

(iii) Facilitate sharing of best practices and lessons learned throughout USACE.

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

(3) *Peer review members.*

(i) *CoCO peer reviews.* The CoCO will establish the peer review participants. The Center/District Business Oversight Branch (BOB) will coordinate the Source Selection Team (SST) members requested as attendees at the peer review meeting. The attendees will include, at a minimum, the contracting officer, Technical Evaluation Team Lead (as applicable), Price Evaluation Team Lead/Price or Cost Evaluator (as applicable), Counsel, and the Source Selection Evaluation Board (SSEB) Chair. The Source Selection Authority (SSA) will be invited to attend the peer review meeting but is not required. If the SSA does not attend the peer review meeting, the peer review team will provide a debriefing to the SSA upon request. The CoCO may not chair a peer review when also serving as the Source Selection Authority (SSA) or on the Source Selection Advisory Council (SSAC). In such cases where the CoCO is the SSA or serves on the SSAC, the SCO retains authority to chair the peer review.

(ii) *SCO peer reviews.* The SCO will establish the peer review participants. The SCO analyst will confirm the peer review participants with the Center/District Business Oversight Branch (BOB), and the Center/District BOB will coordinate the SST members requested as attendees at the peer review meeting. The attendees will include, at a minimum, the contracting officer, Technical Evaluation Team Lead (as applicable), Price Evaluation Team Lead/Price or Cost Evaluator (as applicable), Counsel, and Source Selection Evaluation Board (SSEB) Chair. The Source Selection Authority (SSA) will be invited to attend the peer review meeting but is not required. If the SSA does not attend the peer review meeting, the peer review team will provide a debriefing to the SSA upon request. For more information on peer reviews, see DFARS 201.170 and AFARS 5101.170.

(4) *Notification of peer review cancellation.* In the event that it becomes necessary to cancel a peer review valued at \$100 million or greater, the Center/District BOB will document the justification in a memorandum to the SCO. The memorandum shall be submitted as soon as the cancellation becomes known.

(5) *Waivers.* Only the peer review chair with commensurate authority identified at UAI 5101.170(b) may waive the peer review. Each peer review waived shall have a written waiver signed by the Peer Review Chair. The waiver shall be part of the contract file.

(6) *Peer review required documents and elements, suggested questions, tenets and toolkits.* See USACE Desk Guide (UDG) 5101.170 for more information on peer review required documents, elements, questions, tenets, and toolkits.

UAI 5101.170-100 Compliance Reviews. The requirement for a peer review does not eliminate the requirement for a compliance review. The Procuring Contracting Officer (PCO) shall ensure that a compliance review is conducted on every contract action, regardless of the dollar amount. If a peer review is required, the compliance review shall be conducted prior to the peer review. The compliance review comments and peer review comments shall be documented in two separate reports and uploaded as final in the Paperless Contract File (PCF). All acquisition personnel are encouraged to use Compliance Checklists to available at https://usace.dps.mil/sites/KMP-CTP/ContractingOfficerComplianceReviewChecklist/Forms/All_Documents.aspx under USACE Templates, Forms, and Checklists.

Subpart 5101.2 – Administration

UAI 5101.201-100 Maintenance of the UAI.

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

(b) The UAI will be posted on the Policy Division SharePoint site, divided into the regulatory parts. Real-time updates to the UAI will reflect the date of the revision. The HQ USACE Directorate of Contracting, Policy Division will issue notices of UAI revisions to the USACE contracting enterprise and acquisition community.

UAI 5101.290 Routing documents and mailing addresses.

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

UAI 5101.290-100 USACE Acquisition review and approval process. See UDG 5101.290 for the HQ USACE Acquisition Review and Approval Process flowchart.

Subpart 5101.3 – Agency Acquisition Regulations

UAI 5101.303 Publication and codification.

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

UAI 5101.304 Agency control and compliance procedures. The HCA retains the authority under DFARS 201.304 to develop, coordinate, issue, and maintain the UAI, and UDG.

Subpart 5101.4 – Deviations from the FAR

UAI 5101.403 Policy.

(1) For deviations requiring higher headquarters approval, or publication in the *Federal Register*, the contracting officer shall submit the request to the SCO, with a copy furnished to the Policy Division email address (HQCECT-PolicyMailbox@usace.army.mil), for review, coordination, and staffing.

Subpart 5101.6 – Career Development, Contracting Authority and Responsibilities

UAI 5101.602 Contracting officers.

UAI 5101.602-2 Responsibilities.

UAI 5101.602-2-90 Legal coordination.

(b) Each contract action with a total estimated absolute value of \$500,000 or greater shall be reviewed by Office of Counsel for legal sufficiency prior to issuance. This legal sufficiency review process shall be documented in the contract file. The contracting officer may request legal sufficiency review for actions at any dollar value and may request advice from Office of Counsel; however, the contracting officer retains sole authority to determine matters that relate to the exercise of business judgment.

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

- (1) Acceptance or rejection of late bids,
- (2) Alternate payment protections,
- (3) Assignment of claims,
- (4) Bid mistakes,
- (5) Bid/proposal irregularities,
- (6) Buy America Act/Balance of Payment Program issues,
- (7) Competitive range determinations, or any other time a contractor is eliminated from competition (e.g. 2-Phase DB down-select decisions or pre-qualification decisions),
- (8) Suspension of work or stop work orders and liquidated damages assessments,
- (9) Individual surety bond request,
- (10) Justifications and Approvals (J&As) (includes FAR Section 8.405-6 -- Limited Source Justification, FAR subpart 16.5 – Exceptions to Fair Opportunity, and actions which limit competition (FAR Part 13)),
- (11) Determinations and Findings,
- (12) Requests for deviation from the FAR, DFARS, or AFARS,
- (13) Non-responsiveness determination,
- (14) Novation agreements,

(15) Ratification and Non-Ratifiable contract implied-in-fact quantum meruit actions,

(16) Contracting officer response to requests for Letters of Recommendation for contractors,

(17) Rejection of all bids, cancellation of IFBs, or conversion of IFB to RFP,

(18) Reassignment of claims,

(19) Substitution of sureties,

(20) Tax/duty issues,

(21) Terminations, Surety Takeover, or Surety Tender,

(22) Unacknowledged amendments,

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

(24) Any other decision that, in the independent judgment of the contracting officer, may lead to a protest, dispute, or appeal under FAR Part 33. General examples where this may occur include unilateral modifications, responses to requests for equitable adjustments (REAs), etc.,

(25) Cure notices and show cause notices,

(26) Use of any non-standard contract release language,

(27) Allegations of subcontractor non-payment, and

(28) Unsuccessful offeror notices and debriefing letters.

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

UAI 5101.602-2-92 Ordering officer appointments.

(b) *Appointment and termination authority.* The contracting officer is the appointing authority; however, the CoCO must first approve the ordering officer's qualifications. It is essential that the qualification decisions appropriately consider the technical

knowledge, training, and experience commensurate with what is being acquired via the contract, as well as the business acumen and judgment of the individual. Ordering officers should have at a minimum the training of a Type A contracting officer's representative (COR). See UDG 5101.604 and DoDI 5000.72 for the COR Certification and Training Requirements.

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

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

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

(e) *Annual ordering officer file review.* Contracting officers shall ensure a review of all ordering officers' files are conducted at least annually. If the period of performance is less than 12 months, the review should be conducted at least once during the performance period. A copy will be provided to the individual and their supervisor. The annual reviews required by AFARS 5101.602-2-92(c)(2) shall be documented on ENG Form 6262, Ordering Officer Annual File Surveillance Checklist, and filed in the PCF or include a cross reference in PCF to the electronic location of where the completed checklist is retained.

UAI 5101.602-3 Ratification of unauthorized commitments.

(b) *Policy.*

(1)(A) The HCA retains the authority under AFARS 5101.602-3(b)(3) to ratify unauthorized commitments above \$100,000 and may delegate this authority in accordance with AFARS Appendix GG.

(B) The SCO is delegated the authority in accordance with AFARS Appendix GG to ratify unauthorized commitments greater than \$10,000 but less than or equal to \$100,000. This authority may not be further delegated.

(C) The CoCO is delegated the authority in accordance with AFARS Appendix GG to ratify unauthorized commitments \$10,000 or less.

(2) See UDG Attachment 7 for the ENG Form 6120 Request for Approval of Unauthorized commitment (UAC) form.

UAI 5101.602-100 Quantum meruit.

(a) *Policy.*

(1) The HCA retains the authority to ratify implied-in-fact quantum meruit determinations above \$100,000. This authority may not be further delegated.

(2) The SCO is delegated the authority to ratify implied-in-fact quantum meruit determinations greater than \$10,000 but less than or equal to \$100,000. This authority may not be further delegated.

(3) The CoCO is delegated the authority to ratify implied-in-fact quantum meruit determinations of \$10,000 or less.

(4) The U.S. Army Corps of Engineers procedures regarding payment for work performed, if found to be contracts implied-in-fact, may properly be considered under the theory of quantum meruit and payment authorized by the Contracting Officer under the Contract Disputes Act (CDA) claims settlements authority.

(5) See UDG Attachment 6, Quantum Meruit Guidance and Checklist.

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

UAI 5101.603-1 General.

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

(1) The SCO is delegated the authority under Section 4001 (formerly 2358) of Title 10 U.S. Code, delegated to the HCA via the Assistant Secretary of the Army (Acquisition, Logistics, and Technology) (ASA(ALT)) Delegation of Authority Memorandum, to select and appoint warranted agreement officers (grant officers) to engage in basic research, applied research, advanced research, and development projects that are necessary in the field of research and development and that either relate to weapon systems and other military needs or are of potential interest to the Department of Defense (DoD), by means of contract, cooperative agreement, or grant. This delegation is effective 29 April 2022. Actions under this delegation shall comply with the limitations specified in the ASA(ALT) delegation. This delegation does not apply to transactions for prototype projects awarded under the authority of section 4022 (formerly 2371b) of Title 10, U.S. Code. Further delegation is authorized only to warranted agreements officers supporting actions using this authority.

(2) The SCO is delegated the authority under Section 4021 (formerly 2371) of Title 10 U.S. Code, delegated to the HCA via the ASA(ALT) Delegation of

Authority Memorandum, to select and appoint agreement officers (grant officers) to enter into transactions (other than contracts, cooperative agreements, and grants) under this section in carrying out basic, applied, and advanced research projects. This delegation is effective 25 August 2017. Actions under this delegation shall comply with the limitations specified in the ASA(ALT) delegation. This delegation does not apply to transactions for prototype projects awarded under the authority of section 4022 (formerly 2371b) of Title 10, U.S. Code. Further delegation is authorized only to warranted agreements officers supporting actions using this authority.

(3) The SCO is delegated the authority under Section 4022 (formerly 2371b) of Title 10, U.S. Code, delegated to the HCA via the ASA(ALT) Delegation of Authority Memorandum, to carry out prototype projects that are directly relevant to enhancing the mission effectiveness of military personnel and the supporting platforms, systems, components, or materials proposed to be acquired or developed by the DoD, or to improvement of platforms, systems, components, or materials in use by the Armed Forces. The SCO is delegated authority to approve a prototype project, and any follow-on production contract or transaction awarded under subsection 4022 (formerly 2371b(f)), that is expected to cost the DoD \$100,000,000 or less (including all options), subject to the provisions, conditions, and limitations in section 4022 (formerly 2371b). This delegation is effective 8 May 2020. Actions under this delegation shall comply with the limitations specified in the ASA(ALT) delegation. This authority may not be delegated.

(4) The SCO is delegated the authority under Section 2684a of Title 10 U.S. Code, delegated to the HCA via the ASA(ALT) Delegation of Authority Memorandum, to select and appoint agreement officers (grant officer) to enter into an agreement for purposes of: (1) limiting any development or use of the property that would be incompatible with the mission of the installation; (2) preserving habitat on the property in a manner that: (A) is compatible with environmental requirements; and (B) may eliminate or relieve current or anticipated environmental restrictions that would or might otherwise restrict, impede, or otherwise interfere, whether directly or indirectly, with current or anticipated military training, testing, or operations on the installation; or (3) protecting Clear Zone Areas from use or encroachment that is incompatible with the mission of the installation. The delegation is effective 17 July 2017. Actions under this delegation shall comply with the limitations specified in the ASA(ALT) delegation. Further delegation is authorized only to warranted agreements officers supporting actions using this authority.

(5) The SCO is delegated the authority under Section 2701d of Title 10 U.S. Code, delegated to the HCA via the ASA(ALT) Delegation of Authority Memorandum, to select and appoint agreement officers (grant officers) to enter into agreements to obtain the services of other entities to assist in carrying out responsibilities that arise under the Defense Environmental Restoration Program (DERP). The delegation is effective 7 September 2017. Actions under this delegation shall comply with the limitations specified in the ASA(ALT) delegation. Further

delegation is authorized only to warranted agreements officers supporting actions using this authority.

(6) The SCO is delegated the authority under Section 670c-1 of Title 16 U.S. Code, delegated to the HCA via the ASA(ALT) Delegation of Authority Memorandum, to select and appoint agreement officers (grant officers) to enter into cooperative agreements with States, local governments, Indian tribes, nongovernmental organizations, and individuals and into interagency agreements with the heads of other Federal departments and agencies, to provide for enumerated land management activities. The delegation is effective 23 July 2017. Actions under this delegation shall comply with the limitations specified in the ASA (ALT) delegation. Further delegation is authorized only to warranted agreements officers supporting actions using this authority.

(7) SCO-ALX is delegated the authority under Sections 4144 (formerly 2362(a) – (c)) of Title 10 U.S. Code, delegated to the HCA from the ASA(ALT) via the Secretary of the Army, Delegation of Authority Memorandum, dated 4 February 2019 to carry out a program to provide assistance to historically black colleges and universities and minority-serving institutions of higher education to assist the Department in defense-related research, development, testing, and evaluation activities. Actions under this delegation shall comply with the limitations specified in the HCA delegation. Further delegation is authorized only to warranted agreements officers supporting actions using this authority.

(8) The SCO is delegated the authority under Section 2684 of Title 10 U.S. Code, delegated to the HCA via the ASA(ALT) Delegation of Authority Memorandum, to enter into a Cooperative Agreement with a State or local government or other entity for the preservation, management, maintenance, and improvement of cultural resources located on an authorized site, and for the conduct of research regarding the cultural resource. The delegation is effective 20 March 2020. Actions under this delegation shall comply with the limitations specified in the HCA delegation. Further delegation is authorized only to warranted contracting or agreements officers supporting actions using this authority.

(9) SCO-ALX is delegated the authority under Section 2702(c) of Title 10 U.S. Code, delegated to the HCA via the ASA(ALT) Delegation of Authority Memorandum, to enter into contracts and cooperative agreements with, and make grants to, universities, public and private profit and nonprofit entities, and other persons to carry out a program of research, development, and demonstration with respect to hazardous wastes authorized under 10 U.S.C. 2702(a). The delegation is effective 20 April 2020. Actions under this delegation shall comply with the limitations specified in the HCA delegation. Further delegation is authorized only to warranted contracting or agreements officers supporting actions using this authority.

UAI 5101.603-3-100 Appointment.

(a) *ACO appointment.* An Administrative Contracting Officer (ACO) shall be warranted by the SCO with specified warrant authority. The warrant dollar threshold shall not exceed \$500,000.

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

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

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

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

(c) *ACO performance objectives.* ACOs shall include a standard performance objective in their Defense Performance Management and Appraisal Program (DPMAP) that addresses contract quality and compliance. The contracting officer shall provide input on the ACO's performance annually to the ACO's supervisor.

(d) *Annual ACO file review.* Contracting officers shall ensure a review of all ACOs' files are conducted at least annually. If the period of performance is less than 12

months, the review should be conducted at least once during the performance period. A copy will be provided to the individual and their supervisor. The reviews must be documented on Annual ACO File Inspection Checklist (ENG Form 6167) and shall be filed in the PCF.

UAI 5101.603-100 Warrant Transfer. Though USACE warrants have USACE wide authority, contracting officers either temporarily supporting or permanently transferring to another SCO Area of Responsibility (AOR), certain administrative procedures apply. For temporary or permanent warrant transfer process, see UDG Attachment 8, Warrant Transfer Guidance.

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

(a) *General.* Each Center/District shall have a sufficient number of trained CORs available to ensure that contractors comply with all contract requirements. See UDG 5101.604 for specific guidance on COR certification and training.

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

(c) *COR performance objectives.* CORs shall include a standard performance objective in their DPMAP that addresses contract quality and compliance.

(d) *Annual COR file review.* Contracting officers shall ensure a review of CORs' files are conducted at least annually. If the period of performance is less than 12 months, the review should be conducted at least once during the performance period. A copy will be provided to the individual and their supervisor. The reviews must be documented using the Surveillance and Performance Monitoring (SPM) Module COR Annual Review checklist within the Procurement Integrated Enterprise Environment (PIEE) at <https://piee.eb.mil/>.

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

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

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

UAI 5101.692 HCA.

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

Subpart 5101.90 – Non-Appropriated Funds

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

UAI – PART 5102

DEFINITIONS OF WORDS AND TERMS

(Revised 4 March 2024)

Subpart 5102.1 – Definitions

UAI 5102.101 Definitions.

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

“Chief of the Contracting Office ” (CoCO) means the Contracting Chief (for the District or Center). The CoCO provides expert contracting advice to the senior leadership within the District/Center and is responsible for the successful execution of the contracting mission and the overall quality of contracting support to the District/Center.

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

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

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

“Implied-in-fact quantum meruit” means the value of services rendered to the Government for which the Government is obligated to pay based on an implied contract when the amount due is not stipulated in a legally enforceable contract.

“Legally sufficient” means a determination by the Office of Counsel of legality of a contract action or portion of a contract action based on counsel’s legal judgment and opinion about the actions compliance with law, regulation, and policy. Actions requiring legal review cannot proceed until they have received legal sufficiency in writing.

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

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“Quantum meruit” means a claim or right of action for the reasonable value of services rendered when performed without a contract.

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

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

UAI – PART 5103

IMPROPER BUSINESS PRACTICES AND PERSONAL CONFLICTS OF INTEREST

(Revised June 2019)

Subpart 5103.1 – Safeguards

UAI 5103.103 Independent pricing.

UAI 5103.103-2 Evaluating the certification.

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

(2) If the Chief of the Contracting Office (CoCO) is the contracting officer, the Senior Contracting Official (SCO) makes the determination under Federal Acquisition Regulation (FAR) 3.103-2(b)(2).

UAI 5103.104 Procurement integrity. The U.S. Army Corps of Engineers (USACE) Chief Counsel is the Deputy Designated Agency Ethics Official (DDAEO) for USACE. Contracting personnel should work through their Office of Counsel to identify the appropriate delegated ethics official for their action.

UAI 5103.104-5 Disqualification.

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

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

UAI 5103.104-7 Violations or possible violations.

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

Subpart 5103.2 – Contractor Gratuities to Government Personnel

UAI 5103.203 Reporting suspected violations of the Gratuities clause.

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

Subpart 5103.7 – Voiding and Rescinding Contracts

UAI 5103.704 Policy.

(c) The SCO is delegated the authority under FAR 3.704(c) to consider declaring void and rescinding contracts, in cases in which there is a final conviction for any violation of 18 U.S.C. 201-224, as appropriate, and recovering the amounts expended under the contracts and recommending the initiation of suspension or debarment proceedings.

UAI – PART 5104

ADMINISTRATIVE MATTERS

(Revised June 2019)

Subpart 5104.4 – Safeguarding Classified Information within Industry

UAI 5104.403 Responsibilities of contracting officers.

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

Subpart 5104.6 – Contract Reporting

UAI 5104.604 Responsibilities.

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

Subpart 5104.8 – Government Contract Files

UAI 5104.802 Contract files.

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

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

UAI 5104.804 Closeout of contract files.

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

UAI – PART 5105

PUBLICIZING CONTRACT ACTIONS

Subpart 5105.4 – Release of Information

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

UAI 5105.404 Release of long-range acquisition estimates.

UAI 5105.404-1 Release procedures.

(a) The Chief of the Contracting Office (CoCO) is delegated the authority under Army Federal Acquisition Regulation Supplement (AFARS) 5105.404-1(a) to release long-range acquisition estimates.

Subpart 5105.5 – Paid Advertisements

UAI 5105.502 Authority.

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

UAI – PART 5106
COMPETITION REQUIREMENTS

(Revised 21 November 2022)

Subpart 5106.3 – Other than Full and Open Competition

UAI 5106.302 Circumstances permitting other than full and open competition.

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

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

(c) *Application for brand-name descriptions.* The Assistant Secretary of the Army for Acquisition, Logistics and Technology (ASA(ALT)), as the Senior Procurement Executive, approved a Class Justification and Approval (J&A) for Other than Full and Open Competition to allow Contracting Officers to issue solicitations for construction contracts where “brand name or equal” references are necessary to effectively communicate interior finishes, colors, patterns, textures, and textile designs. The estimated value for the Class J&A is \$775,000,000, which covers all USACE construction-related contracts from Fiscal Year (FY) 22 through FY 26. A copy of the J&A shall be included in the official contract file. When one is required, the Acquisition Plan for the requirement shall reference the approved J&A. For a copy of the Class J&A, see USACE Alert 22-014, Class Justification and Approval for Other than Full and Open Competition for Use of Brand Name or Equal References in Interior Color and Finish Selections, issued 13 April 2022, <https://usace.dps.mil/sites/KMP-CTP/USACEAlerts/Forms/AllItems.aspx>.

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

UAI 5106.302-2 Unusual and compelling urgency.

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

UAI 5106.302-4 International agreement.

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

(1) *Additional document for Foreign Military Sales.* When a foreign military sales (FMS) customer requests that a defense article or defense service be obtained from a particular contractor, the contracting officer shall ensure that the request is processed in accordance with the requirements of DoD 5105.38-M, Security Assistance Management Manual (SAMM). In addition to all SAMM requirements, the contracting officer shall ensure inclusion of an offshore procurement determination (22 U.S.C. 2791(c)), if required.

UAI 5106.304 Approval of the Justification.

(a)(1) The Contracting Officer shall log each Justification and Approval on the Acquisition Support Division SharePoint site at <https://cops.usace.army.mil/sites/CT/ASD/Lists/JALog/AllItems.aspx>. The Advocate for Competition (AFC) will use the official contract file in the Paperless Contracting File (PCF) System when auditing approved justifications trends.

(2) The Senior Contracting Officials (SCO)/Alternate SCOs for Alexandria, Atlanta, and Dallas serve as a USACE Alternate AFC for their AOR under UAI 5106.501(1) with signatory authority for contract actions within the threshold identified in FAR 6.304(a)(2).

(i) The Chief of the Contracting Office (CoCO) of Baltimore District, serves as a USACE Alternate AFC – National Security Programs under UAI 5106.501(1), with signatory authority for contract actions identified in FAR 6.304(a)(2) for the National Security Program.

(ii) The Command AFC, as an official described under UAI 5106.501(1), may also sign actions within the threshold identified in FAR 6.304(a)(2).

UAI 5106.304-100 Approval of the Justification Matrix.

(a) See UDG Attachment 1 for the USACE Document Review and Approval Matrix. Approval authority for justifications based on dollar value are illustrated on the table

below. The table also depicts *typical* roles and responsibilities associated with the preparation, coordination, and review of justifications.

J&A Threshold	Prepared By	Coordinated By	Approved By
≤ \$750K	Contract specialist and/or Contracting officer Technical Official Requirements Official	Small Business Specialist Legal	Contracting Officer
> \$750K ≤ \$15M	Contracting Officer Technical Official Requirements Official	Small Business Specialist Legal	SCO (Alternate AFC)*
> \$15M ≤ \$100M	Contracting Officer Technical Official Requirements Official	Small Business Specialist Legal SCO (Alternate AFC)* DDOC (Command AFC)	HCA
> \$100M	Contracting Officer Technical Official Requirements Official	Small Business Specialist Legal SCO (Alternate AFC)* DDOC (Command AFC) HCA	SPE
> \$100M for Sole Source 8(a) DFARS 206.303-1	Contracting Officer Technical Official Requirements Official	Small Business Specialist Legal SCO (Alternate AFC)* DDOC (Command AFC)	HCA

*For National Security Programs, see UAI 5106.304(a)(2)(i).

Subpart 5106.5 – Advocates for Competition

UAI 5106.501 Requirement.

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

(i) The Deputy Director of Contracting (DOC) is appointed as the USACE Command AFC.

(ii) The SCOs/Alt SCOs are appointed as Alternate AFC for their AOR.

(iii) The CoCO of Baltimore District is appointed as an Alternate AFC for the National Security Programs.

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

UAI – PART 5107

ACQUISITION PLANNING

(Revised 4 March 2024)

Subpart 5107.1 – Acquisition Plans

UAI 5107.102 Policy.

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

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

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

(b) OAS.

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

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

- (1) Type of work,
- (2) Anticipated workload,
- (3) Impact on competition,

(4) Most effective contract type (including, for example, fixed-price, cost-reimbursement, incentive, and indefinite delivery contracts (IDCs)),

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

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

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

UAI 5107.103 Agency-head responsibilities.

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

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

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

(F) Contracting Officers shall prepare and submit for the Senior Contracting Official's (SCO) approval a written formal AP in accordance with (IAW) FAR 7.105 and DFARS 207.105 for all discreet stand-alone construction acquisitions valued at \$100 million or greater, and for all Indefinite Delivery Indefinite Quantity (IDIQ) construction acquisitions that have a total value of \$100 million or greater.

(G) The \$100 million or greater threshold is inclusive of all options. If a programmatic AP is prepared to support multiple individual procurements, the threshold shall apply to the total value of all procurements included within the AP.

(H) The SCO, at his or her discretion, may request to review all informal APs prior to solicitation, or the SCO may require preparation and submittal of a written formal AP for SCO approval for a designated procurement, regardless of dollar value.

(ii) IAW the Army Federal Acquisition Regulation Supplement (AFARS) 5107.103(d)(ii), the Contracting Officer may use the acquisition strategy section of the Project Management Plan (PMP), prepared IAW Engineering Regulation 5-1-11, USACE Business Process, as an alternate format for an informal written acquisition plan. The informal AP is applicable to stand-alone construction acquisitions that have a total value of less than \$100 million and for IDIQ construction acquisitions that have a total value of less than \$100 million.

UAI 5107.103-90 Acquisition Plan approvals.

(a)(2)(A) The Senior Contracting Official (SCO) is delegated the authority under Army Federal Acquisition Regulation Supplement (AFARS) 5107.103-90(a)(2) to approve acquisition plans for all Non-PEO/Direct Reporting Program Manager acquisitions. For general information on Non-PEO or Direct Reporting Program Manager, refer to DA PAM 70-3.

(B) The Head of the Contracting Activity (HCA) retains the authority to approve acquisition plans for all non-PEO/direct-reporting program manager acquisitions if the acquisition is deemed a special interest.

UAI 5107.104 General procedures.

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

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

UAI 5107.105 Contents of written acquisition plans.

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

UAI 5107.107 Consolidation of contract requirements.

UAI 5107.107-2-100 Consolidation.

(b) The delegated authority to make the consolidation determination prescribed at FAR 7.107-2 is as follows:

(ii) In accordance with AFARS 5107.107-2(b)(ii), citing AFARS Appendix GG, where the total value of the consolidated requirement is equal to or greater than \$25 million for any FY or equal to or greater than \$50 million for all years but less than \$500M, or in any circumstance where the Acquisition Plan will be approved by the SCO, the SCO will retain approval for the determination.

(A) Reference Memorandum, Delegation of Authority to Approve Consolidation Determination, dated 12 February 2021. Where the total value of the non-construction consolidated requirement is greater than \$2 million but less than \$25 million for any FY or less than \$50 million for all years, the CoCO will make the determination.

(B) Construction Exception. For stand-alone and indefinite-delivery, indefinite-quantity (IDIQ) construction acquisitions where the total value of the consolidated requirement is:

(1) \$100M or greater but less than \$500M, or in any circumstance where the Acquisition Plan will be approved by the SCO, the SCO will retain approval for the determination; and

(2) Less than \$100M, the CoCO will make the determination.

Subpart 5107.4 – Equipment Lease or Purchase

UAI 5107.470 Statutory requirements.

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

Subpart 5107.5 – Inherently Governmental Functions

UAI 5107.503 Policy.

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

(1) For Army Services Requirements Including Civil Works: A Request for Services Contract Approval (RSCA) form shall be provided for service contracts. The RSCA form shall be provided for Army funded Operations and Maintenance construction per FAR Subpart 2.1 and defined as services in accordance with FAR Subpart 37.1. A RSCA form is not required for construction projects using Military Construction funds nor Civil Works Construction. Reference CEMP-ZB Memorandum, 12 Aug 2020, subject: USACE Policy on Request for Services Contract Approval Regarding Inherently Governmental Functions. A RSCA form shall be completed when one or more of the following apply:

- i. When Army Military or Civil Works funds are being used to buy contractor labor for services, regardless of which organization is awarding or administering the contract;
- ii. When Army Military or Civil Works is the requiring activity, or is the executive agent for the mission/organization requiring the services; or,
- iii. When Army Military or Civil Works funds for services are being transferred to contracts outside of the Army.

(2) For Non-Army DoD and Non-DoD Services Requirements: The designated requirements official shall provide the contracting official, concurrent with transmitting the formal work requirements package, an approved overall acquisition plan; performance work statement; statement of work or contract scope modification, a written determination that none of the functions to be performed are inherently governmental in accordance with FAR 7.503(e), DFARS 207.503(e), and AFARS 5107.503(e). The determination may be provided by the agency requesting the service of USACE or prepared by the USACE requiring organization and certified at the GS-15 level. See USACE Desk Guide (UDG) 5107.503 for example of determination language.

(3) Programmatic RSCA forms are acceptable, in accordance with the guidance from Assistant Secretary of the Army - Manpower and Reserve Affairs. The RSCA form shall include a list of all projects anticipated for the program.

(4) Reference Rev 2, USACE DOC Alert 18-018, USACE O-6/GS-15 Signatory Authority on Request for Services Contract Approval Form for O&M Funded Requirements, issued October 12, 2018. USACE District/Center Commanders at the O-6/GS-15 level have unlimited delegated authority to approve O&M (Army) funded Sustainment, Restoration, and Modernization construction work where USACE is the requirement holder/owner. This delegation is solely to the District/Center Commander or Director, and does not permit generic delegation to the O-6/GS-15 level.

(5) A RSCA form is not required for Military Construction (MILCON).

UAI 5107.503-100 Delegation of Authority to Confirm Scope Determination for Request for Services Contract Approval. In accordance with Directorate of Contracting Memorandum, Delegation of Authority to Confirm Scope Determination for Request for Services Contract Approval, dated 15 September 2020, Procuring Contracting Officers are delegated the responsibility to receive the scope determination and confirm that the action is within the original RSCA certification.

Subpart 5107.90 – Independent Government Estimates

UAI 5107.9001 Definitions.

“Independent Government Estimate (IGE) preparer” is the individual employed by the Government (or under contract to the Government) who is responsible for preparation of the estimate.

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

“IGE approver” is the individual employed by the Government, other than contracting officer and administrative contracting officer (ACO) for the acquisition, who is responsible for certifying the validity of the IGE.

UAI 5107.9002 Policy.

(a) This part supplements the USACE policy regarding IGEs and provides standard operating guidance for contracting officers and all project team members regarding the development, review, use, and maintenance of IGEs. The contracting officer shall ensure the IGE is received by the time and date scheduled for receipt of proposals or bids.

(i) All IGEs shall be prepared and reviewed by knowledgeable individuals who are familiar with the scope of work and shall be prepared independently from an offeror’s proposal (or independently of the incumbent offeror’s contracted rates for a new acquisition). The preparation and review of the IGE shall be independent functions to ensure the quality and validity of the document. The IGE will be approved by an authorized approving official. See UDG Attachment 3, IGE Signatory Matrix, for signatory authorities.

(ii) The Project Management Plan shall identify the organization that is responsible for the preparation, review, and approval of the IGE. Assignment of the organization shall be in accordance with UDG Attachment 3, IGE Signatory Matrix.

(iii) Prior to acceptance of an IGE, the contracting officer shall review all IGEs to ensure each contains the following:

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

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

(3) All amendments to a solicitation were acknowledged in writing by the Cost Estimating engineer or other IGE preparer, and as applicable, incorporated into the IGE; any required revision to the IGE includes a narrative supporting the revisions made to reflect the amended solicitation.

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

(v) For actions conducted under FAR part 35 and being considered under a Broad Agency Announcement (BAA), in accordance with FAR 35.016(e), cost realism and reasonableness shall be considered to the extent appropriate during the selection of acceptable proposals. In lieu of an IGE, a detailed analysis of cost/price reasonableness utilizing the full range of tools and techniques (i.e. field pricing assistance) identified in FAR 15.404, Proposal Analysis, will be conducted. The complete cost/price analysis will be documented in a Pre-Negotiation Objective Memorandum (POM) and in the final Price Negotiation Memorandum (PNM). The POM and the PNM will be signed by the technical Point of Contact, the technical reviewer, the technical approving authority, and the contracting officer.

Subpart 5107.91 – Integrating Antiterrorism and Operations Security

UAI 5107.9101 Policy. USACE policy regarding Integrating Antiterrorism and Operations Security (AT/OPSEC) is available in Annex Q in Fragmentary Order (FRAGORD) 6 to Operations Order (OPORD) 2022-03, USACE Integrated Protection Program.

UAI – PART 5108

REQUIRED SOURCES OF SUPPLIES AND SERVICES

(Revised 4 March 2024)

Subpart 5108.4 – Federal Supply Schedules

UAI 5108.404 Use of Federal Supply Schedules.

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

UAI 5108.405-6 Limited Sources.

(a) The Contracting Officer shall log each Limited-Sources Justification on the Acquisition Support Division SharePoint site at

<https://team.usace.army.mil/sites/HQ/CT/CoP/Lists/JALog/AllItems.aspx>.

(d)(3)(ii) The Head of the Contracting Activity (HCA) retains the authority under FAR 8.405-6(d)(3) to approve limited sources justifications of \$15 million or more but less than \$100 million. This authority may not be delegated.

Subpart 5108.74 – Enterprise Software Agreements

UAI 5108.7403-100 Acquisition Procedures.

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

UAI – PART 5109

CONTRACTOR QUALIFICATIONS

(Revised June 2019)

Subpart 5109.2 – Qualifications Requirements

UAI 5109.202 Policy.

(a)(1) The Chief of the Contracting Office (CoCO) is delegated the authority under Army Federal Acquisition Regulation Supplement (AFARS) 5109.202(a)(1) to approve written justifications establishing a contractor qualification requirement.

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

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

UAI 5109.206 Acquisitions subject to qualification requirements.

UAI 5109.206-1 General.

(b) The SCO is delegated the authority under AFARS 5109.206-1(b) to determine that an emergency exists, whenever an agency elects, whether before or after award, not to enforce a qualification requirement which it established.

Subpart 5109.4 – Debarment, Suspension, and Ineligibility

UAI 5109.404 System for Award Management Exclusions.

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

UAI 5109.406 Debarment.

UAI 5109.406-3 Procedures.

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

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

Subpart 5109.5 – Organizational and Consultant Conflicts of Interests

UAI 5109.504 Organizational and Consultant Conflicts of Interest.

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

UAI 5109.506 Procedures.

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

UAI – PART 5110
MARKET RESEARCH

UAI 5110.002 Procedures.

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

(f) For information on a market research report format, see UDG 5110.

UAI – PART 5111
DESCRIBING AGENCY NEEDS

(Revised 4 March 2024)

Subpart 5111.2 – Using and Maintaining Requirements Documents

UAI 5111.274 Item identification and valuation requirements.

UAI 5111.274-2 Policy for item unique identification.

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

Subpart 5111.6 – Priorities and Allocations

UAI 5111.602-100 General.

(a) In accordance with the regulations at 15 Code of Federal Regulations (CFR) Part 700, Defense Priorities and Allocations System (DPAS), Department of Defense (DoD) Manual 4400.1, *DoD Priorities and Allocations Manual*, and Army Regulation (AR) 700-90, *Army Industrial Base Process*, a “DO” priority rating is authorized for all DoD approved programs for procurement contracts and orders. Except for the limitations specified by 15 CFR 700.18:

(1) USACE contracting officers may assign a priority rating of “DO” to contracts and orders for Department of Defense construction (Program Identification Symbol C2) and maintenance, repair, and operating supplies (Program Identification Symbol C3).

(2) In accordance with the Department of the Army ASA(ALT) memorandum, Clarification of Policy for the USACE to use the DPAS rating DO-C2 for Civil Works Construction Projects, dated 06 July 2023, USACE contracting officers may use the “DO” priority rating for USACE civil works construction projects, with the Program Identification Symbol C2 (“DO-C2”). The memorandum is posted on the CT-Policy SharePoint page.

(b) In accordance with the Department of Homeland Security (DHS) Delegation of Authority regarding the Defense Priorities and Allocations System (DPAS)

memorandum, renewed 22 February 2023, the Administrator of the Federal Emergency Management Agency (FEMA) has re-delegated certain authorities under the Department of Commerce's DPAS Delegation 4 to the Commanding General, USACE. The authority is to place "DO" priority-rated contracts and orders as provided in the DPAS regulations at 15 Code of Federal Regulations (CFR) Part 700 and DPAS Delegation 4.

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

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

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

(2) This delegation is valid without expiration. The current delegation is posted on the CT-Policy SharePoint page.

(3) In accordance with this delegation, the USACE Commanding General will designate at least one subordinate to serve as a Federal Priorities and Allocations Systems (FPAS) Officer (*formerly DPAS Officer*) for the organization. The USACE FPAS Officer is the Deputy Director of Contracting (DDoC). The Alternate USACE FPAS Officer is the Senior Contracting Official – Alexandria (SCO-ALX). The current delegations are posted on the CT-Policy SharePoint page.

(c) In accordance with DoD Manual 4400.1, *DoD Priorities and Allocations Manual (2002)*, and as provided in CFR 15 Part 700, the Deputy Assistant Secretary of Defense for Industrial Policy (DUSD(IP)) granted USACE authority to apply a "DO" priority rating to DoD programs utilizing super computers that are essential to national defense objectives.

(1) USACE shall use the Program Identification Code DO-A7, "Electronic & Communications Equipment" to rate the super computer equipment.

(2) This authorization is valid until 31 Dec 2025. The DUSD(IP) approval memorandum is posted on the CT-Policy SharePoint page.

UAI – PART 5112
ACQUISITION OF COMMERCIAL ITEMS

(Revised June 2019)

Subpart 5112.1 – Acquisition of Commercial Items - General

UAI 5112.102 – Applicability.

(a)(ii)(B) The Chief of the Contracting Office (CoCO) is delegated the authority to perform the duties to conduct a review under Defense Federal Acquisition Regulation Supplement (DFARS) 212.102(a)(ii)(B).

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

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

(c) The Head of the Contracting Activity (HCA) retains the authority under DFARS 212.302(c) to approve a waiver to tailor any clause or otherwise include any additional terms or conditions in a solicitation or contract for commercial items in a manner that is inconsistent with customary commercial practice for the item being acquired.

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

Subpart 5112.70 – Limitation on Conversion of Procurement from Commercial Acquisition Procedures

UAI 5112.7001 - Procedures.

(a)(1) The CoCO is delegated the authority to perform the duties under DFARS 212.7001(a)(1).

UAI – PART 5113
SIMPLIFIED ACQUISITION PROCEDURES

(Revised 4 March 2024)

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

UAI 5113.201 General.

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

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

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

Subpart 5113.5 – Simplified Procedures for Certain Commercial Items

UAI 5113.501 Special documentation requirements.

(a)(ii) The Contracting Officer shall log each Justification on the Acquisition Support Division SharePoint site at <https://team.usace.army.mil/sites/HQ/CT/CoP/Lists/JALog/AllItems.aspx>.

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

UAI – PART 5114

SEALED BIDDING

(Revised November 2021)

Subpart 5114.2 – Solicitation of Bids

UAI 5114.201 Preparation of invitations for bids.

UAI 5114.201-1 Uniform contract format.

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

UAI 5114.201-7 Contract clauses.

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

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

Subpart 5114.4 – Opening of Bids and Award of Contract

UAI 5114.407 Mistakes in bids.

UAI 5114.407-3 Other mistakes disclosed before award.

(a) The SCO is delegated the authority under the Army Federal Acquisition Regulation (AFARS) 5114.407-3(e) to make a determination permitting a bidder to correct a mistake as described at FAR 14.407-3(a).

(b) The SCO is delegated the authority under AFARS 5117.407-3(e) to make a determination permitting a bidder to correct a bid and not permit its withdrawal as described at FAR 14.407-3(b).

(c) The Chief of the Contracting Office (CoCO) is delegated the authority under AFARS 5114.407-3(c) to make a determination permitting a bidder to withdraw a bid as described at FAR 14.407-3(c).

(d) The SCO is delegated the authority under AFARS 5117.407-3(e) to make a determination that a bid be neither withdrawn nor corrected as described at FAR 14.407-3(d).

UAI 5114.407-4 Mistakes after award.

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

UAI – PART 5115

CONTRACTING BY NEGOTIATION

(Revised 21 November 2022)

Subpart 5115.2 – Solicitation and Receipt of Proposals and Information

UAI 5115.204 Contract format.

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

(e) The Senior Contracting Official (SCO) is delegated the authority under Army Federal Acquisition Regulation Supplement (AFARS) 5115.204(e) to exempt individual contracts from the use of the uniform contract format.

Subpart 5115.3 – Source Selection

UAI 5115.300-100 Scope of subpart.

(a) Training, ethics, and non-disclosure statements. Source selection evaluation board (SSEB) members on formal source selections are strongly encouraged to take Defense Acquisition University (DAU) CON 0072, Source Selection (see www.dau.mil), and the USACE PROSPECT Course 183, Formal Source Selection (see <http://ulc.usace.army.mil/>). The contracting officer is responsible for providing source selection training tailored to the solicitation and ensuring that the source selection plan (SSP) is fully understood and followed by all members of the source selection team. SSEB members shall receive standards of conduct briefing provided by the Office of Counsel. Upon completion of SSEB training and prior to the commencement of the evaluation board, each SSEB member shall execute a non-disclosure agreement.

(b) Non-federal sponsor participation on source selection teams. Where the DoD Source Selection Procedures Section 1.4.6, Other Advisors, refers to "Government advisors," it means "Federal Government Employees" and not state or local government employees. State and/or local government employees are not considered "Government employees," they are non-Government personnel and should be viewed as such when selecting members for the SSEB.

(c) SSA hierarchy.

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

Threshold	SSA	Appointment Authority
Less than \$100M	contracting officer or individual other than the contracting officer	If the contracting officer is not the SSA, the SCO must appoint another individual to serve as the SSA.
\$100M to \$500M	Individual other than the contracting officer	Appointed by SCO
Greater than \$500M - Other than Service Contracts	Individual other than the contracting officer	Appointed by SCO
Greater than \$500M - Service Contracts	Individual other than the contracting officer	Appointed by DASA(P)

UAI 5115.303 Responsibilities.

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

UAI 5115.304-100 Evaluation factors and significant subfactors. See UDG Attachment 4 for the Naval Facilities Engineering Command (NAVFAC)/USACE Past Performance Questionnaire (PPQ) Instructions and Form.

UAI 5115.371 Only one offer.

UAI 5115.371-5 Waiver.

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

Subpart 5115.4 – Contract Pricing

UAI 5115.403 Obtaining certified cost or pricing data.

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

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

UAI 5115.404 Proposal analysis.

UAI 5115.404-1 Proposal analysis techniques.

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

UAI 5115.404-4 Profit.

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

UAI 5115.404-73 Alternate structured approaches.

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

UAI 5115.407 Special cost or pricing areas.

UAI 5115.407-3 Forward pricing rate agreements.

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

UAI 5115.407-4 Should-cost review.

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

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

UAI 5115.504 Award to successful offeror.

(d) All award letters issued by the contracting officer to contractors will include the statement below. This statement shall also be read to the contractor at the postaward conference by a USACE official, preferably the contracting officer. The names and contact information of both the contracting officer and administrative contracting officer (ACO), if one has been appointed, shall also be provided to the contractor.

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

UAI – PART 5116

TYPES OF CONTRACTS

(Revised 4 March 2024)

Subpart 5116.3 – Cost-Reimbursement Contracts

UAI 5116.301-3 Limitations.

(2) The Senior Contracting Official (SCO) is delegated authority, as described in the Army Federal Acquisition Regulation Supplement (AFARS) 5116.301-3(2), to approve the determination and findings for use of cost-reimbursement contracts over \$25 million, justifying that the use of this type of contract is in the best interest of the Government.

Subpart 5116.4 – Incentive Contracts

UAI 5116.401 General.

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

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

Subpart 5116.5 – Indefinite-Delivery Contracts

UAI 5116.504 Indefinite-Delivery Contracts.

(c)(1)(ii)(D)(1) The SCO is delegated the authority to approve actions as stated in DFARS 216.504(c)(1)(ii)(D)(1) for Single Award Task Order Contracts over \$100 million.

UAI 5116.505 Ordering.

(b)(2)(ii) The Contracting Officer shall log each Exception to Fair Opportunity on the Acquisition Support Division SharePoint site at <https://team.usace.army.mil/sites/HQ/CT/CoP/Lists/JALog/AllItems.aspx>.

UAI 5116.505-100 Ombudsman. The Deputy Director of Contracting is designated the USACE task and delivery order Ombudsman with delegated authority under Federal Acquisition Regulation 16.505(b)(2)(ii)(D)(8) to review complaints from contractors and ensure they are afforded a fair opportunity to be considered, consistent with the procedures in the contract.

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

UAI 5116.603 Letter contracts.

UAI 5116.603-2 Application.

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

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

UAI – PART 5117

SPECIAL CONTRACTING METHODS

(Revised November 2021)

Subpart 5117.1 – Multiyear Contracting

UAI 5117.106 Procedures.

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

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

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

UAI 5117.172 Multiyear contracts for supplies.

(f)(2) The SCO is delegated the authority under Defense Federal Acquisition Regulation Supplement (DFARS) 217.172(f)(2) threshold to determine that conditions required in DFARS 217.172(h)(2)(i) thru (vii) will be met for multiyear supply contracts.

UAI 5117.174 Multiyear contracts for electricity from renewable energy sources.

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

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

Subpart 5117.2 – Options

UAI 5117.200 Scope of subpart. Notwithstanding FAR 17.200, USACE shall apply FAR Subpart 17.2 to contracts for construction and architect-engineer services, subject to the provisions of this UAI subpart.

UAI 5117.202 Use of options.

(a) The contracting officer may include options in construction and architect-engineer services contracts provided –

(1) The option(s) is publicized with the basic contract requirement and option pricing is evaluated consistent with FAR 17.206 and, if applicable, AFARS 5117.206.

(2) There is a reasonable likelihood that the option(s) will be exercised;

(3) Inclusion of an option(s) is in the Government's best interest, consistent with the considerations outlined in FAR 17.202(b), and none of the conditions in FAR 17.202(c) are applicable, including, among other things:

- a. the risks to the contractor and the government from cost escalation in,
 - b. whether the optional items are truly optional and additive to the basic work,
 - c. whether the work can be divided into discrete elements which can be finished (i.e. protected from damage or degradation in the event other options are not exercised),
 - d. the likelihood that by the time the options are exercised if there could be changes to market conditions that would make another procurement vehicle more beneficial to the government, and
 - e. whether the optional work could be done more efficiently or economically under a separate future contract; and
- (4) the option(s) provides for
- a. the purchase of additional quantities of supplies or services provided for in the basic contract requirement; or
 - b. an extension of the period of performance (see FAR 22.404-12 for construction contracts and FAR 22.1007 for service contracts); or
 - c. optional construction or architect-engineer services contract line items.

(b) The contracting officer will include the justification required by FAR 17.205 in the contract file. For construction and architect-engineer services contracts, contracting officers must explain why an item is an option and the rationale for the timeframe within which the option will be exercised.

UAI 5117.204 Contracts.

(e) The SCO is delegated the authority under FAR 17.204(e) to make the determination to enter into a contract for more than five (5) years for services and supplies.

UAI 5117.208 Solicitation provisions and contract clauses.

(d) The clauses at FAR 52.217-8 and 52.217-9 shall not be used for construction and architect-engineer requirements, as described in paragraph 5117.202(4)(c) above, in standalone contracts or task orders under an indefinite delivery contract where there may be different time periods for the execution of different optional contract line items. Instead of using the clauses at FAR 52.217-8 and 52.217-9, include the time frame for execution of the option in the description of the contract line item. The optional contract line description must also include what effect the exercise of the option has on the contract completion date. See FAR 22.404-12 for labor standards requirements for contracts containing construction and option provisions that extend the term of the contract.

Subpart 5117.7 – Interagency Acquisitions: Acquisitions by Nondefense Agencies on Behalf of the Department of Defense.

UAI 5117.770 Procedures.

(2) As permitted by AFARS Appendix GG, the following officials from the requiring activity's responsible contracting office shall concur with the use of a non-DoD contract prior to public announcement of the requirement:

- (i) For acquisitions valued at or above the simplified acquisition threshold, but less than \$50 million, the contracting officer.
- (ii) For acquisitions valued at or above \$50 million but less than \$250 million, the CoCO.
- (iii) For acquisitions valued at or above \$250 million, the SCO.

Subpart 5117.74 – Undefined Contract Actions

UAI 5117.7404 Limitations.

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

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

UAI 5117.7405 Plans and reports.

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

UAI 5117.7406 Contract Clauses

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

Subpart 5117.75 – Acquisition of Replenishment Parts

UAI 5117.7504 Acquisition of parts when data is not available.

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

UAI 5117.7505 Limitations on price increases.

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

UAI – PART 5118

EMERGENCY ACQUISITIONS

Subpart 5118.2 – Emergency Acquisition Flexibilities

(Revised November 2021)

UAI 5118.201 Contingency operation.

(b) The Senior Contracting Official (SCO) is delegated the authority under Federal Acquisition Regulation (FAR) 18.201(b), in accordance with Defense Federal Acquisition Regulation Supplement (DFARS) 218.270(e), to determine the supplies or services to be used to support a contingency operation. This authority may not be further delegated.

(c) The SCO is delegated the authority under FAR 18.201(c), in accordance with DFARS 218.270(e), to determine the supplies or services to be used to support a contingency operation. This authority may not be further delegated.

UAI 5118.202 Defense or recovery from certain events.

(a) The SCO is delegated the authority under FAR 18.202(a), in accordance with DFARS 218.270(e), to determine the supplies or services to be used to facilitate defense against or recovery from nuclear, biological, chemical, or radiological attack. This authority may not be further delegated.

(b) The SCO is delegated the authority under FAR 18.202(b), in accordance with DFARS 218.270(e), to determine the supplies or services to be used to facilitate defense against or recovery from nuclear, biological, chemical, or radiological attack. This authority may not be further delegated.

(c) The SCO is delegated the authority under FAR 18.202(c), in accordance with DFARS 218.270(e), to determine the supplies or services to be used to facilitate defense against or recovery from nuclear, biological, chemical, or radiological attack. This authority may not be further delegated.

UAI 5118.203 Emergency declaration or major disaster declaration.

UAI 5118.203-100 Emergency Acquisition Flexibilities. In accordance with the Head of the Contracting Activity (HCA) Determination to use Emergency Acquisition Flexibilities dated 3 May 2021, Contracting Officers are authorized to issue solicitations using the acquisition flexibilities pursuant to a declared major disaster or emergency

within the U.S. Army Corps of Engineers. Contracting Officers are authorized to use the following acquisition flexibilities pursuant to a declared major disaster or emergency:

(a) For any contract to be awarded and performed, or purchase to be made, inside the United States, the micropurchase threshold and the simplified acquisition threshold at FAR 2.101;

(b) For any contract to be awarded and performed, or purchase to be made, outside the United States, the micropurchase threshold and the simplified acquisition threshold at FAR 2.101; and

(c) For the acquisition of commercial items, the threshold for use of simplified acquisition procedures for certain commercial items at FAR 13.500(c).

Additionally, other acquisition flexibilities are available to the Contracting Officer in the FAR 18.203, "Emergency declaration or major disaster declaration," and the DFARS 218.203, "Incidents of national significance, emergency declaration, or major disaster declaration."

UAI – PART 5119
SMALL BUSINESS PROGRAMS

(Revised June 2019)

Subpart 5119.2 – Policies

UAI 5119.201 General policy.

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

UAI 5119.202 Specific policies.

UAI 5119.202-1 Encouraging small business participation in acquisitions.

(1) The Senior Contracting Official (SCO) is delegated the authority under AFARS 5119.202-1(1) to determine that a consolidated requirement cannot be placed under one of the preference programs prior to release of the solicitation.

Subpart 5119.5 – Set-Asides for Small Business

UAI 5119.502 Setting aside acquisitions.

UAI 5119.502-3 Partial set-asides.

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

UAI 5119.505 Rejecting SBA recommendations.

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

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

Subpart 5119.13 – Historically Underutilized Business Zone (HUBZone) Program

UAI 5119.1305 HUBZone set-aside procedures.

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

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

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

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

UAI – PART 5120

Reserved

UAI – PART 5121

Reserved

UAI – PART 5122

APPLICATION OF LABOR LAWS TO GOVERNMENT ACQUISITIONS

(Revised March 2024)

Subpart 5122.1 – Basic Labor Policies

UAI 5122.101 Labor relations.

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

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

UAI 5122.101-3 Reporting labor disputes.

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

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

Subpart 5122.3 – Contract Work Hours and Safety Standards Act

UAI 5122.302 Liquidated damages and overtime pay.

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

Subpart 5122.4 – Labor Standards for Contracts Involving Construction

UAI 5122.406 Policy.

UAI 5122.406-13 Semiannual enforcement reports. The SCO is delegated the authority under DFARS 222.406-13 to forward the semiannual report on compliance with and enforcement of the construction labor standards requirements of the

Construction Wage Rate Requirements statute and Contract Work Hours and Safety Standards statute to the labor advisor.

UAI 5122.407 Solicitation provision and contract clauses.

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

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

UAI 5122.503-100 Policy.

(a) *Applicability.* In accordance with Executive Order (EO) 14063, Use of Project Labor Agreements for Federal Construction Projects, issued 04 February 2022, project labor agreements (PLAs) are required for “large-scale construction projects,” which as defined at FAR 22.502, means a Federal construction project within the United States for which the total estimated cost of the construction contract to the Federal Government is \$35 million or more (using appropriated funds), unless an exception applies. Large-scale construction projects may be solicited via a stand-alone C-type acquisition, or as an order under an indefinite-delivery contract. As used in FAR Subpart 22.5, “United States” means the 50 States and the District of Columbia.

(b) *Dredging.* Based on the definition of “construction” that is applicable to EO 14063 and FAR Subpart 22.5, the PLA rule does not apply to dredging projects. For large-scale construction projects that might involve dredging or the use of a dredge, but whose primary purpose is not dredging, EO 14063 and FAR Subpart 22.5 applies.

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

(d) *PLAs and acquisition planning.* During acquisition planning, the project delivery team (PDT) shall consider whether an exception exists to the use of a PLA for large-scale construction projects on a project-by-project basis by conducting market research in accordance with the instructions provided in the PLA Exception Determination Tool (See UDG 5122.503-2). For construction projects that have a total estimated cost of less than \$35 million, the PDT may consider the factors identified at FAR 22.503(c)(2) for use of a PLA, if appropriate. In addition to the factors listed at FAR 22.503(c)(2), the PDT may consider factors such as:

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

(2) Skilled labor shortages (e.g., projects located in a remote location where a contractor may encounter difficulties in recruiting and retaining a skilled workforce for an extended period, or projects where there may be competition within the contractor community due to concurrent large-scale construction contracts in the project vicinity).

(e) *Exceptions.* The Senior Procurement Executive (SPE) may grant an exception from the Project Labor Agreement requirements at FAR 22.503(b), for a particular contract not later than the solicitation date, providing a specific written explanation of why at least one of the conditions identified at FAR 22.504(d)(1) exists with respect to the particular contract. For Indefinite Delivery, Indefinite Quantity (IDIQ) contracts, an exception must be granted prior to the solicitation date if the basis for the cited exception will apply to all orders. Otherwise, exceptions shall be granted for each order by the time of the notice of the intent to place an order (e.g., FAR 16.505(b)(1)).

(f) *Contracting officer responsibilities to determine whether an exception exists to use of PLA.* The contracting officer shall prepare a PLA Exception Memorandum for all large-scale construction projects, as defined at FAR 22.502, when an exception to using a PLA is anticipated to be requested. See UDG 5122.503-2 for PLA Exception Memorandum template. The memorandum shall address which exception under FAR 22.504(d)(1) applies to a particular project. The memorandum shall include specific detail supporting the basis for the exception. If multiple exceptions exist, the memorandum shall identify and support each exception. The memorandum shall be accompanied by the market research report (see FAR 22.504(d)(1)(ii), 10.0002(b)(1) and 36.104) and any other research or information applicable to the determination whether an exception is appropriate for the project. The contracting officer shall submit the memorandum and supporting documentation through the SCO and Head of Contracting Activity for approval by the SPE. Office of Counsel shall review this memorandum and any request for an exception. The contracting officer shall retain all documentation in each applicable contract file.

(g) The source selection plan (SSP) shall address the PLA requirements to be included in the solicitation.

(h) *Timing of the PLA Submission and Evaluation.* FAR 22.505 includes different versions of provision 52.222-33, Notice of Requirement for Project Labor Agreement, and clause 52.222-34, Project Labor Agreement, that allow for different timing of the submission of the executed PLA (all offerors with their offer, only the apparent successful prior to award, or after award). Each option presents its own risks and benefits. For example, requiring all offerors to submit their PLA with their offer could require extending offer submission timeframes; however, it ensures complete proposals

and could reduce delay of award. Requiring only the apparent successful to submit its PLA prior to contract award could result in delay of award. Requiring only the successful offeror to submit its PLA after award might reduce proposal submission timelines, but could result in delays in issuing Notice to Proceed or even termination if the awardee cannot timely provide a compliant PLA. **See 5122.503-100(h)(4) for large-scale construction projects subject to end-of-year funding (e.g., O&M funded).**

(1) For negotiated procurements (stand-alone C-type contracts):

(i) If the basic version of 52.222-33 is used (all offerors required to submit a PLA with their offer), the contracting officer shall perform a proposal compliance review to ensure that all offerors have submitted a copy of their executed PLA with their proposals. All submitted PLAs shall be reviewed during the source selection process. To be acceptable, the PLA shall comply with the requirements at FAR 52.222-33(c). Offerors not submitting a required PLA shall not be eligible for award, unless discussions are opened, and the offeror revises its proposal and submits a PLA; compliance with the PLA requirements in the solicitation should not result in a change in an offeror's price. It is recommended that the PLA review be done with Office of Counsel and the Contractor Industrial Relations (CIR) Officer or Specialist. The CIR Officer or Specialist, also called the "labor advisor," refers to the individual responsible for advising contracting agency officials on Federal contract labor matters; see FAR 22.001 and ER 1180-1-8 at paragraph 1-9(d). A roster of labor advisors can be found here, <https://usace.dps.mil/sites/KMP-EC/SitePages/Labor-Compliance.aspx>. If a PLA is still unacceptable after clarifications or discussions, as appropriate, the offeror shall be ineligible for contract award. **Award can only be made to an offeror with a PLA that is fully compliant with the contract requirements.**

(ii) If 52.222-33 Alternate I is used (only the apparent successful submits its PLA, prior to award), the submitted PLA shall be reviewed for compliance with FAR 52.222-33(c) Alternate I. It is recommended the PLA review be done with Office of Counsel and the CIR Officer, as discussed above. Identified areas of non-compliance will be addressed with the apparent successful offeror and corrected; corrections to the apparent successful offeror's PLA necessary for compliance with the PLA requirements in the solicitation should not result in a change in an offeror's price. **Award shall not be made until the PLA is fully compliant with the contract requirements. 52.222-33 Alternate I shall not be used without written concurrence of the SCO.** For example, this may be accomplished for actions \$100 million or over that require submission of a formal acquisition plan to the SCO via risk-based information pertaining to the use of Alternate I in the acquisition plan. If the subject acquisition does not require an acquisition plan be sent to the SCO, written concurrence may be accomplished via a risk-based decision memorandum for SCO concurrence. A determination and findings is not required.

(iii) If 52.222-33 Alternate II is used (PLA submitted after award), the solicitation and resulting contract shall contain instructions for timing of PLA submission post-award, substantially the same as the following:

A copy of the contractor's executed project labor agreement (PLA) is required to be submitted to the Contracting Officer within **[fill-in number] calendar days after contract award**, or such other time as agreed to by the Contracting Officer. The Contractor shall not be entitled to issuance of Notice to Proceed until it has furnished evidence of an executed PLA meeting the minimum requirements and containing the mandatory terms as required by this contract. Any PLA reached pursuant to the requirements of this contract does not change the terms of this contract, or provide for any price adjustment by the Government. The PLA is a material requirement of this contract, and failure to timely submit a copy of the contractor's executed PLA may be considered grounds for termination for default.

The submitted PLA shall be reviewed for compliance with FAR 52.222-34(c) Alternate I. It is recommended the PLA review be done with Office of Counsel and the CIR Officer, as discussed above. Identified areas of non-compliance will be addressed with the contractor and corrected; such corrections shall not provide for any price adjustment by the Government. **52.222-33 Alternate II shall not be used without written concurrence of the SCO as provided above in UAI 5122.503-100(h)(1)(ii).**

(2) For sealed bidding:

(i) If the basic version of 52.222-33 is used (all offerors required to submit a PLA with their offer), the PLA submitted by the apparent low bidder shall be reviewed for compliance with 52.222-33(c). It is recommended the PLA review be done with Office of Counsel and the CIR Officer, as discussed above. Failure to submit an executed PLA with the bid shall be considered a matter of responsiveness. Other issues with the apparent low bidder's PLA may be a matter of responsiveness or responsibility, depending on the facts; the contracting officer shall consult with Office of Counsel in this situation. If an issue with the apparent low bidder's PLA is a matter of responsibility, such issues will be addressed with the apparent low bidder and corrected prior to award. Pricing cannot be adjusted after bid opening; any such corrections to the apparent low bidder's PLA shall not provide for any price adjustment by the Government. **Award shall not be made until the PLA is fully compliant with the contract requirements. The basic version of 52.222-33 shall not be used in a sealed bid without written concurrence of the SCO as provided above in UAI 5122.503-100(h)(1)(ii).**

(ii) If 52.222-33 Alternate I is used (only the apparent low bidder submits its PLA, prior to award), the submitted PLA shall be reviewed for compliance with FAR 52.222-33(c) Alternate I. It is recommended the PLA review be done with Office of

Counsel and the CIR Officer, as discussed above. Identified areas of non-compliance will be addressed with the apparent low bidder and corrected prior to award. Pricing cannot be adjusted after bid opening; any such corrections shall not provide for any price adjustment by the Government. **Award shall not be made until the PLA is fully compliant with the contract requirements.**

(iii) If 52.222-33 Alternate II is used (PLA submitted after award), the solicitation and resulting contract shall contain instructions for timing of PLA submission post-award, substantially the same as the following:

A copy of the contractor's executed project labor agreement (PLA) is required to be submitted to the Contracting Officer within **[fill-in number] calendar days after contract award**, or such other time as agreed to by the Contracting Officer. The Contractor shall not be entitled to issuance of Notice to Proceed until it has furnished evidence of an executed PLA meeting the minimum requirements and containing the mandatory terms as required by this contract. Any PLA reached pursuant to the requirements of this contract does not change the terms of this contract, or provide for any price adjustment by the Government. The PLA is a material requirement of this contract, and failure to timely submit a copy of the contractor's executed PLA may be considered grounds for termination for default.

The submitted PLA shall be reviewed for compliance with FAR 52.222-34(c) Alternate I. It is recommended the PLA review be done with Office of Counsel and the CIR Officer, as discussed above. Identified areas of non-compliance will be addressed with the apparent successful offeror and corrected. Such corrections shall not provide for any price adjustment by the Government. **52.222-33 Alternate II shall not be used without written concurrence of the SCO as provided above in UAI 5122.503-100(h)(1)(ii).**

(3) For IDIQ contracts:

(i) If a PLA will be required for all orders issued under the contract, see the requirements above for negotiated procurements (stand-alone C-type contracts) for PLA submission timing and the use of the basic and alternate versions of 52.222-33 and 52.222-34 in the IDIQ solicitation.

(ii) If use of a PLA will arise on an order-by-order basis, and one or more orders may not use a PLA, use 52.222-33 Alternate III and 52.222-34 Alternate II in the IDIQ solicitation. For orders under IDIQ contracts that will require use of a PLA, insert language in the notice of intent to place an order whether an executed copy of the PLA shall be submitted to the agency (1) with the order offer, (2) prior to award of the order, or (3) after award of the order. See the requirements above for negotiated procurements (stand-alone C-type contracts) for PLA submission timing for orders (i.e.,

submission of the PLA by the apparent successful prior to award, or after award of the order shall require written concurrence of the SCO as provided above in UAI 5122.503-100(h)(1)(ii).

(4) For large-scale construction projects subject to end-of-year funding (e.g., O&M funded): Notwithstanding UAI 5122.503-100(h)(1)-(3), large-scale construction projects subject to end-of-year funding (e.g., O&M funded) may allow submission of a PLA after contract or order award without written concurrence of the SCO.

Subpart 5122.8 – Equal Employment Opportunity

UAI 5122.805 Procedures.

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

Subpart 5122.13 – Equal Opportunity for Veterans

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

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

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

- U.S. Department of Labor Veterans' Employment and Training Service (VETS):
<https://www.dol.gov/vets/>
- Federal Veteran Employment Information: **<https://www.fedshirevets.gov/>**
- Veterans Opportunity to Work (VOW) Program: **<https://www.benefits.va.gov/vow/>**
- U.S. Army Warrior Transition Command Employment Index:
<https://wct.army.mil/modules/employers/index.html>
- Hiring Our Heroes: **<https://www.uschamberfoundation.org/hiring-our-heroes>**

(End of special contract requirement)

UAI – PART 5123

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

(Revised June 2019)

Subpart 5123.1 – Sustainability Acquisition Policy

UAI 5123.103-100 Sustainable acquisition.

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

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

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

Subpart 5123.2 – Energy and Water Efficiency and Renewable Energy

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

Subpart 5123.3 – Hazardous Material Identification and Material Safety Data

UAI 5123.370 Safety precautions for ammunition and explosives.

UAI 5123.370-4 Procedures.

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

UAI – PART 5124

PROTECTION OF PRIVACY AND FREEDOM OF INFORMATION

(Revised June 2019)

Subpart 5124.1 – Protection of Individual Privacy

UAI 5124.103 Procedures.

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

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

Subpart 5124.2 – Freedom of Information Act

UAI 5124.203 Policy.

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

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

UAI – PART 5125

FOREIGN ACQUISITION

(Revised June 2019)

Subpart 5125.1 – Buy American – Supplies

UAI 5125.103 Exceptions.

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

(b)(2)(i) The SCO is delegated the authority under Federal Acquisition Regulation (FAR) 25.103(b)(2)(i) to determine that an article, material, or supply is not mined, produced, or manufactured in the United States in sufficient and reasonably available commercial quantities of a satisfactory quality for acquisitions \$1.5M or greater.

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

Subpart 5125.2 – Buy American – Construction Materials

UAI 5125.202 Exceptions.

(a)(2) *Nonavailability.* The SCO is delegated the authority under Army Federal Acquisition Regulation Supplement (AFARS) 5125.202(a)(2), in accordance with DFARS 225.202(a)(2), to determine that a particular construction material, other than construction materials listed in FAR 25.104(a), is not mined, produced, or manufactured in the United States in sufficient and reasonably available commercial quantities of a satisfactory quality for acquisitions valued at \$1.5 million or more.

Subpart 5125.3 – Contracts Performed Outside the United States

UAI 5125.302 Contracting reachback in support of forward districts operating in OCO within CENTCOM. The procuring contracting officers (PCOs) shall follow the procedures for contracting reachback in support of forward districts operating in Overseas Contingency Operations (OCO) within the U.S. Central Command (CENTCOM) area of responsibility (AOR). The Transatlantic Division (TAD) is

responsible for all reachback actions in the CENTCOM AOR. Issues or questions that arise between the forward supported district and the reachback district are addressed to the TAD Regional Contracting Chief. The Transatlantic Middle East District (TAM) will determine capability to fulfill all reachback requests originating in the CENTCOM AOR and may authorize other elements of U.S. Army Corps of Engineers (USACE) to fulfill a requirement(s) subject to TAM oversight and coordination. All acquisition documents and actions, including Peer Reviews, Acquisition Strategies and Plans, Determinations and Findings, etc. will be accomplished through the reachback district's SCO. For guidance on the acquisition process in OCO, see USACE Desk Guide (UDG) 5125.3.

Subpart 5125.4 – Trade Agreements

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

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

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

UAI 5125.603 Exceptions.

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

Subpart 5125.8 – Other International Agreements and Coordination

UAI 5125.870 Contracting with Canadian contractors.

UAI 5125.870-4 Contracting procedures.

(c)(2)(ii) The SCO is delegated the authority under DFARS 225.870-4(c)(2)(ii) to determine that data other than certified cost or pricing data from a Canadian Commercial Corporation is needed in order to determine that price is fair and reasonable, provided they are at least two levels above the contracting officer. If the Chief of the Contracting Office (CoCO) is the contracting officer for the contract action, the Head of the Contracting Activity (HCA), in a position two levels above the contracting officer, retains the authority under DFARS 225.870-4(c)(2)(ii).

(5) The SCO is delegated the authority under DFARS 225.870-4(c)(5) to determine that it is in the best interest of the Government to make the award to the offeror who does not comply with a requirement to submit data that the contracting officer has deemed necessary to determine price reasonableness or cost realism is ineligible for award, provided they are at least two levels above the contracting officer. If the Chief of the Contracting Office (CoCO) is the contracting officer for the contract action, the Head of the Contracting Activity (HCA), in a position two levels above the contracting officer, retains the authority under DFARS 225.870-4(c)(5).

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

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

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

UAI – PART 5126

OTHER SOCIOECONOMIC PROGRAMS

Reserved

UAI – PART 5127

PATENTS, DATA, AND COPYRIGHTS

Subpart 5127.4 – Rights in Data and Copyrights

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

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

Subpart 5127.70 – Infringement Claims, Licenses, and Assignments

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

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

UAI 5127.7103-1 Policy.

(e) If the Chief of the Contracting Office (CoCO) is the contracting officer for the contract action, the SCO, in a position one level above the contracting officer, will make the determination under Defense Federal Acquisition Regulation Supplement (DFARS) 227.7103-1(e).

UAI – PART 5128

BONDS AND INSURANCE

(Revised September 2017)

Subpart 5128.1 – Bonds and Other Financial Protections

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

UAI 5128.106 Administration.

UAI 5128.106-2 Substitution of surety bonds.

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

Subpart 5128.3 – Insurance

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

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

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

(c) *DBA waivers.*

(1) Active DBA waivers can be viewed at either the Office of Workers' Compensation Program (OWCP) website,

<http://www.dol.gov/owcp/dlhwc/dbawaivers/dbawaivers.htm>, which is the official repository for DBA waivers, or at the Defense Pricing and Contracting (DPC) website, http://www.acq.osd.mil/dpap/cpic/cp/waivers_for_defense_base_act_insurance.html.

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

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

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

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

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

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

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

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

UAI 5128.370 Additional clauses.

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

UAI – PART 5129

TAXES

(Revised June 2019)

Subpart 5129.2 – Federal Excise Taxes

UAI 5129.201 General.

(b) The Senior Contracting Official (SCO) is delegated the authority under Army Federal Acquisition Regulation Supplement (AFARS) 5129.201(b) to approve applications to the Bureau of Alcohol, Tobacco, and Firearms for permits to procure alcohol free of tax pursuant to guidance at Title 27 Code of Federal Regulations, Section 22.172 Application and permit.

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Version 5 dated 3 JUNE 2019

UAI – PART 5130

COST ACCOUNTING STANDARDS ADMINISTRATION

Reserved

UAI – PART 5131

CONTRACT COST PRINCIPLES AND PROCEDURES

(Revised June 2019)

Subpart 5131.1 – Applicability

DoD Class Deviation 2011-O0006, Utilities Privatization.

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

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

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

(d)(2)(i)(B) In accordance with FAR 31.105(d)(2)(i)(b), for the predetermined schedule of construction equipment use rates, use Engineer Pamphlet (EP) 1110-1-8, Construction Equipment Ownership and Operating Expense Schedule.

UAI – PART 5132

CONTRACT FINANCING

(Revised 4 March 2024)

Subpart 5132.7 – Contract Funding

UAI 5132.702 Policy.

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

UAI 5132.702-100 Class Deviation from AFARS 5132.702 - Signed Statement from the Comptroller Formerly Used Defense Sites (FUDS) Program.

(a)(ii)(A) and (C) USACE contracting officers need not obtain a signed statement from the comptroller on the purchase request that the requirement is included and provided for in the fiscal year financial plan prior to solicitation for a Formerly Used Defense Sites (FUDS) project. Reference USACE Alert 23-HQ-009, Class Deviation for the Formerly Used Defense Sites (FUDS) Program from AFARS 5132.702(a)(ii)(A), Signed Statement from the Comptroller, issued January 20, 2023. All other requirements of Federal Acquisition Regulation (FAR) 32.7, Defense FAR Supplement (DFARS) 232.7, and all other elements of AFARS 5132.7 remain in effect. This class deviation is effective through January 16, 2028 or until rescinded or superseded by changes to the FAR, the DFARS, or the AFARS.

UAI 5132.705 Contract clauses.

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

(b) The contracting officer shall insert Alternate I of clause 5152.232-9001, Special Continuing Contract for Civil Works Project Managed by the USACE [DEVIATION], in solicitations and contracts for civil works water resource projects that have been specifically adopted by Congress in authorizing legislation but for which future FY

funding is not provided in the budget or when use of the clause at Defense Federal Acquisition Regulation Supplement (DFARS) 252.232-7007, Limitation of Government's Obligation, could be used.

Subpart 5132.9 – Prompt Payment

UAI 5132.901 Applicability.

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

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

UAI – PART 5133

PROTESTS, DISPUTES, AND APPEALS

(Revised 21 November 2022)

Subpart 5133.1 – Protests

UAI 5133.102 General.

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

UAI 5133.102-100 General.

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

UAI 5133.103 Protests to the agency.

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

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

UAI 5133.103-100 Protests to the agency.

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

(b) The USACE Chief Counsel has delegated the authority to decide agency protests for Army Geospatial Center (AGC), Engineer Research Development Center (ERDC), and Humphreys Engineer Center Support Activity (HEC) to the USACE Assistant Chief Counsel for Procurement Law and Contract Disputes (CECC-C).

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

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

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

UAI 5133.104 Protests to GAO.

(b) Protests Before Award.

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

(c) Protests After Award.

(2) All requests to the HCA for approval and before the contracting officer authorizes continuing performance, shall be forwarded through the appropriate Senior Contracting Official (SCO) to the USACE HCA for processing. Generally, such request shall be submitted to the USACE HCA within three days of notice of the protest. The request shall include a complete explanation for the need to proceed with performance of the award, including costs and other impacts, and the contracting officer's report with the analysis and documentation set forth in FAR 33.104(a)(3). In addition, the request

shall address the likelihood of the agency successfully defending the protest on the merits. The request shall be reviewed for legal sufficiency at the originating office and at each office required to concur with the request. Note: Use the Competition in Contracting Act (CICA) Override Guidebook (June 2008) for reference and additional policy guidance for GAO protests both prior to award and after award.

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

UAI 5133.104-100 Protests to GAO.

(a) The USACE Chief Counsel has the authority to determine the final agency position for GAO protests. The USACE Chief Counsel has delegated the authority, with power of redelegation from the Divisions to the Districts, to determine the final Agency position to the following Center/Division Counsels: ERDC, HNC, LRD, NAD, NWD, POD (for Alaska District only), SAD, SPD, SWD, and TAD. Delegated protests shall be processed in accordance with procedures established by the respective Division Counsel.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

UAI 5133.190-1-100 Bid protest action report. The requirement for after action reporting will be satisfied by the attorney assigned to each protest promptly entering

the required data in the Matter Tracking System (MTS/LawManager) Procurement Bid Protest Notebook.

Subpart 5133.2 – Disputes and Appeals

UAI 5133.204 Policy.

(f) The Armed Services Board of Contract Appeals (“ASBCA” or “Board”) is the agency board having jurisdiction over appeals arising from final decisions of the contracting officer (“Contracting Officer’s Final Decision” or “COFD”) on contractor claims arising from USACE contracts, to include certain contracts for real estate such as leases. A contractor has 90 days from receipt of a COFD to file an appeal with the ASBCA. A contractor or the government may appeal the Board’s decision to the U.S. Court of Appeals for the Federal Circuit within 120 days.

(g) A contractor may, in lieu of filing an appeal with the ASBCA, bring an action in the U.S. Court of Federal Claims (“COFC”) within one year of receipt of the COFD. A contractor or the government may appeal a decision of the COFC to the U.S. Court of Appeals for the Federal Circuit within 60 days after the date of entry of judgment.

UAI 5133.204-100 Policy.

(a) The Engineer Chief Trial Attorney is the authorized representative of the Secretary of the Army and has the sole authority and responsibility for the conduct and control of litigation of USACE contract disputes docketed with the ASBCA of a value less than \$3 million. The Director, Civil Law and Litigation, U.S. Army Legal Services Agency may determine, on a case-by-case basis, to delegate USACE cases of a value of \$3 million or more to the Engineer Chief Trial Attorney. All decisions regarding settlement of claims before the ASBCA require the written concurrence of the Engineer Chief Trial Attorney or designee.

(b) The Department of Justice is responsible for the litigation of cases before the COFC and before the U.S. Court of Appeals for the Federal Circuit. All decisions regarding settlement of claims before those entities are made solely by the Department of Justice.

(c) Only attorneys of record have the authority to engage in any communications with the contractor regarding matters upon appeal.

UAI 5133.206 Initiation of a Claim.

(a) Any written request by a contractor for the payment of money, granting of time adjustment, interpretation of contract terms, or other relief arising under or relating to the contract may become a contract claim against the government. If not included in the original request, the contracting officer should immediately ask the contractor to furnish documentation: e.g., facts, cost breakdown or the contract clause underlying the claim. Every effort should be made to resolve such requests as soon as possible.

UAI 5133.207 Contractor Certification; Office of Counsel Involvement.

(a) A contract claim for which all certification requirements as described in FAR 33.207 have been met shall be subject to a thorough fact finding investigation conducted by appropriate staff members, including an attorney from the office of counsel. The attorney will determine the scope of the review, evaluate the relevancy and materiality of the facts considered, and take appropriate measures to preserve the documentation, including written statements and affidavits.

(b) In the event of a defective certification, the contracting officer shall also direct the contractor to correct the defect in writing before issuing a final decision.

After the investigation has been completed and the staff recommendations have been considered, the contracting officer should offer the contractor an opportunity to discuss the claim. An attorney from the office of counsel should participate in this discussion. If the claim has merit in whole or part, an attempt should be made to negotiate quantum.

UAI 5133.209 Suspected Fraudulent Claims.

(c) If the contractor cannot support any part of the claim and evidence shows that the inability to support the claim is attributable to misrepresentation of fact or to fraud on the part of the contractor, the contracting officer shall refer the matter to the appropriate Army Criminal Investigation Division officer for investigating fraud and shall not issue a COFD. The contracting officer shall provide the reason for the non-decision in writing and advise the contractor that it can dispute the finding of potential misrepresentation of fact or fraud at the COFC.

UAI 5133.211 Contracting Officer's Decision.

(a) The written decision of the contracting officer shall include a description of the claim, a reference to the pertinent contract terms, a statement of the factual areas of agreement and disagreement and a statement of the final decision with supporting rationale. The decision also must include a demand for payment in cases where the decision results in a finding that the contractor is indebted to the government (affirmative government claim). The decision must be written to inform the contractor of

the facts and reasons upon which the contracting officer's conclusion is based and that the decision is final.

(b) The contracting officer shall present the facts in a Findings of Fact section and shall present the final decision in a Contracting Officer's Final Decision section.

UAI 5133.211-100 Contracting Officer's Final Decision.

(a) The first paragraph should include a reference to the contract number, date, and a brief description of the contract work and the location thereof.

(b) The next part of the decision should summarize the contractor's claim(s). Each claim document discussed will reference a tab number where the document can be located in the potential appeal file. In arranging the tabs for the potential appeal file, the first two tabs should be reserved for the notice of appeal and the COFD.

(c) The third part should be entitled Findings of Fact and presented chronologically in narrative form. Conclusions or arguments should not be included. The Findings of Fact will consist of (a) a statement of facts relevant to the claim, and (b) a reference to the pertinent bidding documents and contract provisions. Quotations from standard contract clauses normally should be avoided; however, non-standard clauses relied upon by the contracting officer should be quoted. All documents mentioned should be referred to by a tab number where they can be found in the potential appeal file. If possible, agreed and disputed facts should be so identified.

(d) The fourth part should be entitled Contracting Officer's Final Decision and consist of the contracting officer's analysis of each claim based only upon the facts included in the Findings of Fact.

(e) The last paragraph of the fourth part should clearly state that the writing is the contracting officer's final decision and advise the contractor of its appeal rights.

(f) The Notification of Appeal Rights paragraph, which is found in FAR 33.211(a)(4)(v), should be included at the end of a contracting officer's final decision:

"This is the final decision of the Contracting Officer. This decision may be appealed to the Armed Services Board of Contract Appeals, Skyline 6, 5109 Leesburg Pike, Falls Church, Virginia 22041-3208. If you decide to appeal, you must mail or otherwise furnish written notice thereof to the Armed Services Board of Contract Appeals within 90 days from the date you receive this decision. A copy thereof shall be furnished to the contracting officer from whose decision the appeal is taken. The notice shall indicate that an appeal is intended, include a copy of this decision and identify the contract by

number. The notice shall also include a copy of this decision. With regard to appeals to the Armed Services Board of Contract Appeals, you may, solely at your election, proceed under the Board's small claims procedure for claims of \$50,000 or less or its accelerated procedures for claims of \$100,000 or less. In lieu of appealing to the Armed Services Board of Contract Appeals, you may bring an action directly in the U.S. Court of Federal Claims (except as provided in the Contract Disputes Act, 41 U.S.C. § 7102(d), regarding Maritime Contracts) within 12 months of the date you receive this decision."

(g) Transmittal of the Contracting Officer's Final Decision. The contracting officer's final decision with the Findings of Fact shall be transmitted by certified or registered mail, return receipt requested, to the contractor's address shown on the initial contract page or by another reasonable method that evidences receipt by the contractor. The contractor may request, in writing, that a different address be utilized if the specific purpose is identified, i.e., receipt of formal contracting officer's final decision.

UAI 5133.212 Contracting officer's duties upon appeal.

(a) All government personnel must exercise care to prevent premature destruction of contract administration and finance records, including electronic files, that are involved in claims and appeals before the Board and federal courts. The contracting officer must identify such material during the investigation, and all personnel must comply with litigation hold orders as directed by the Engineer Chief Trial Attorney or designee.

(b) To avoid closeout of an official contract file prior to completion of a pending appeal, all contract files involving an appeal shall be retained intact for seven years after the date of the final Board or federal court decision. In an appeal dismissed by the Board or federal court with prejudice, this requirement does not apply.

UAI 5133.212-91 Notice of appeal.

(a) Contracting officers must send any notice of appeal to the ASBCA in accordance with AFARS 5133.212-91 and concurrently notify the local District or Center Counsel and the Engineer Chief Trial Attorney.

(b) Upon receipt of the notice of appeal, the local District or Center Counsel will assign one or more attorneys from the office of counsel to enter an appearance in the matter before the ASBCA (attorney of record).

(c) Following assignment, only the attorney of record may communicate with the contractor on any matter related to the claim.

UAI 5133.212-92 Comprehensive report to the Engineer Chief Trial Attorney.

(a) The attorney of record designated in 5133.212-91(b) is responsible for compiling and transmitting the comprehensive report described in AFARS 5133.212-92. The contracting officer shall provide data, documentation, information, and support in case preparation and presentation as may be required by the Engineer Chief Trial Attorney or designee or the attorney of record for use on a pending appeal from the contracting officer's decision.

(b) Under Rule 4 of the ASBCA, the government has a duty to assemble and transmit to the Board and the appellant an appeal file consisting of all documents pertinent to the appeal, including: the decision from which the appeal is taken; the contract, including pertinent specifications, amendments, plans, and drawings; and all correspondence between the parties relevant to the appeal. Appeal files are the responsibility of the attorney(s) from the office of counsel who has entered an appearance in the matter before the ASBCA.

UAI 5133.212-93 Review of appeal.

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

UAI 5133.212-96 Disposition.

(a) The authority and responsibility to settle contract disputes docketed with the ASBCA remains with the contracting officer, subject to (b) and the following:

(1) The contracting officer and local counsel must advise the Engineer Chief Trial Attorney of all offers of settlement from a contractor, whether directly from the contractor or through the contractor's attorney.

(2) The contracting officer and local counsel must obtain written concurrence of the Engineer Chief Trial Attorney before accepting a contractor's offer of settlement or before making a settlement offer to the contractor.

(b) The Engineer Chief Trial Attorney has all necessary authority to conclude settlement agreements with the concurrence of the contracting officer, the reviewing official, or the Deputy Assistant Secretary of the Army (Procurement).

UAI 5133.213 Obligation to continue performance.

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

UAI 5133.215 Contract clauses.

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

USACE Acquisition Instruction (UAI)
Version 5 dated 3 JUNE 2019

UAI – PART 5134

MAJOR SYSTEM ACQUISITION

Reserved

UAI – PART 5135

RESEARCH AND DEVELOPMENT CONTRACTING

(Revised June 2019)

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

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

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

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

UAI – PART 5136

CONSTRUCTION AND ARCHITECT-ENGINEER CONTRACTS

(Revised 4 March 2024)

Subpart 5136.1 – General

UAI 5136.104 Policy.

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

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

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

Subpart 5136.2 – Special Aspects of Contracting for Construction

UAI 5136.201 Evaluation of contractor performance.

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

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

UAI 5136.203 Government estimate of construction costs.

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

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

UAI 5136.205-101 Cost limitations – Military construction contracts.

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

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

UAI 5136.208 Concurrent performance of firm -fixed-price and other types of construction contracts. The CoCO is delegated the authority to approve contracts with cost variation or cost adjustment described at Federal Acquisition Regulation (FAR) 36.208. In accordance with 10 U.S.C. 2306 (c), a contract entered into by the United States in connection with a military construction project or a military family housing project may not use any form of cost-plus contracting.

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

UAI 5136.213 Special procedures for sealed bidding in construction contracting.

UAI 5136.213-2 Pre-solicitation notices.

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

UAI 5136.272 Prequalification of sources.

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

Subpart 5136.3 – Two-Phase Design-Build Selection Procedures

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

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

UAI 5136.303-100 Procedures.

UAI 5136.303-1-100 Phase One.

(a)(4) The SCO is delegated the authority under DFARS 236.303-1(a)(4)(i)(B) to approve the contracting officer's determination for an individual solicitation that a number greater than five offerors selected to submit phase-two proposals is in the best interest of the Government and is consistent with the purposes and objectives of the two-phase design-build selection procedures.

UAI 5136.303-100 Procedures.

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

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

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

(2) The package contains the technical approvals IAW Engineering and Construction Bulletin (ECB) 2019-14, Limitations on the Use of One-Step Selection Procedures for Design-Build.

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

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

Subpart 5136.5 – Contract Clauses

UAI 5136.570 Additional provisions and clauses.

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

UAI 5136.570-100 Additional solicitation provisions and contract clauses.

(a) The contracting officer shall insert the clause at UAI 5152.236-9011, Design-Build Construction Contracts, in all design-build solicitations and contracts.

Subpart 5136.6 – Architect-Engineer Services

UAI 5136.601-3-100 Applicable contracting procedures. Professional A-E services acquisitions will be procured under the Brooks Act, the provisions outlined in FAR subpart 36.6, the procedures provided in EP 715-1-7, and memorandum, Updated Procedures for the Selection of Task Orders on Architect-Engineer (A-E) Indefinite Delivery Contracts (IDCs), dated 9 Mar 2023. To the extent that any interpretation of the memorandum conflicts with EP 715-1-7, the memorandum takes precedence. To the extent that any interpretation of this memorandum conflicts with law or regulation, the law or regulation will take precedence.

UAI 5136.601-3-90-100 Limitations. If a task order can be issued under more than one available indefinite delivery contract, see memorandum, Updated Procedures for the Selection of Task Orders on Architect-Engineer (A-E) Indefinite Delivery Contracts (IDCs), dated 9 Mar 2023.

UAI 5136.602 Selection of firms for A-E contracts.

UAI 5136.602-1 Selection criteria.

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

UAI 5136.602-3 Evaluation board functions. The Center Director/District Commander is delegated the authority under FAR 36.602-3 to direct the evaluation board's performance of functions listed in FAR 36.602-3(a)-(d). The Center Director/District Commander may further delegate, on a case-by-case basis, this authority in writing to the Center/District Chief of Engineering, the CoCO, or other appropriate officials, not below the level of the CoCO.

UAI 5136.602-4 Selection authority.

(a) Reference Head of the Contracting Activity Delegation of Selection Authority for Architect-Engineer Contracts, effective 16 September 2020. USACE Center Directors/District Commanders are authorized to delegate, to the Center/District Chief of Engineering, the CoCO, or other appropriate officials not below the level of the CoCO, the authority under AFARS 5136.602-4(a) to make the final selection decision in accordance with all appropriate source selection guidance.

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

(b)(2) Reference Head of the Contracting Activity Delegation of Selection Authority for Architect-Engineer Contracts, effective 16 September 2020. USACE Center Directors/District Commanders are authorized to delegate, to the Center/District Chief of Engineering, the CoCO, or other appropriate officials not below the level of the CoCO, the authority under AFARS 5136.602-5(b)(2) to approve the selection report or return it to the chairperson for appropriate revision.

UAI 5136.609 Contract clauses.

UAI 5136.609-1 Design within funding limitations.

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

UAI – PART 5137

SERVICE CONTRACTING

(Revised November 2021)

Subpart 5137.1 – Service Contracts – General

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

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

(iii)(A)(2) The SCO is delegated the authority under AFARS 5137.104(b)(iii) (A)(2) to approve the proposed personal services contract pursuant to 10 U.S.C. 129b(d).

UAI 5137.113 Severance payments to foreign nationals.

UAI 5137.113-1 Waiver of cost allowability limitations.

(a) The SCO is delegated the authority under AFARS 5137.113-1(a) to waive the cost allowability limitations listed in the Federal Acquisition Regulation (FAR) 31.205-6(g)(6) on severance payments to foreign nationals on contracts that provide significant support services for members of the armed forces stationed or deployed outside the United States or employees of an executive agency posted outside the United States and will be performed in whole or in part outside the United States.

UAI 5137.170 Approval of contracts and task orders for services.

UAI 5137.170-2 Approval requirements.

(a)(1) The SCO is delegated the authority under AFARS 5137.170-2(a)(1) to approve acquisition of services through a contract or task order that is not performance based at or below \$100 million.

Subpart 5137.2 – Advisory and Assistance Services

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

Subpart 5137.5 – Management Oversight of Service Contracts

UAI 5137.590 Scope of section.

UAI 5137.590-3 Review thresholds.

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

(ii) The Chief of the Contracting Office (CoCO) is delegated the authority under AFARS 5137.590-3(a), AFARS Appendix GG (Services Category IV), Army Acquisition of Services Categories, to approve acquisition strategies for acquisitions of services with an estimated total value of \$10 million or more, but less than \$100 million. If the CoCO is the contracting officer, the SCO is delegated the authority under AFARS 5137.590-3(a), AFARS Appendix GG (Services Category IV), to approve acquisition strategies for acquisitions of services with an estimated total value of \$10 million or more, but less than \$100 million.

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

UAI 5137.590-100 Management and oversight of service contracts.

(a) *USACE Command Services Executive (CSE)*. Refer to Director of Military Programs Memorandum, Command Services Executive (CSE) Delegation of Requirement Validation Authorities, dated 24 August 2021, for additional information.

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

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

(b) *Services Acquisition Workshop (SAW)*. The completion of a SAW is required for all services acquisitions valued at the thresholds established in Department of Defense Instruction 5000.74, Defense Acquisition of Services, unless a waiver is granted. The waiver is required before the acquisition strategy will be approved by the Deputy Assistant Secretary of Army (Procurement)(DASA(P)) or the Senior Services Manager (SSM).

Subpart 5137.74 – Services at Installations Being Closed

UAI 5137.7401 Policy.

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

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Version 5 dated 3 JUNE 2019

UAI – PART 5138

FEDERAL SUPPLY SCHEDULE CONTRACTING

Reserved

UAI – PART 5139

ACQUISITION OF INFORMATION TECHNOLOGY

(Revised 21 November 2022)

Subpart 5139.1 – General

UAI 5139.101 Policy.

UAI 5139.101-90 Policy.

UAI 5139.101-90-100 USACE Policy.

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

(1) USACE activities shall coordinate with the local Chief of Information Management (IM)/Chief of Information Technology (IT) to provide the requirements and justification for their acquisition requests. All activities are required to obtain USACE Chief Information Officer (CIO)-delegated review and approval prior to submitting acquisition packages requiring procurement of any IM/IT hardware, services, non-standard equipment, and software. The acquisition of IM/IT hardware, services, non-standard equipment, and software destined for delivery to an external customer, partner, organization, or agency requires approval in accordance with the external organization's CIO office.

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

(a) Office of the Chief Information Officer (OCIO)/G-6 Acquisition Tools (e.g., OCIO/G-6 Surge, OCIO/G-6 Radios, OCIO/G-6 OrderTrak, OCIO/G-6 Wireless Web Portal).

(b) Army Computer Hardware, Enterprise Software and Solutions (CHESS).

(c) Other vehicles, only in event of unavailability from OCIO/G-6 Acquisition Tools and non-availability in CHESS (procurement package must include CHESS Statement of Non-Availability (SONA)).

(3) USACE IM/IT Acquisition Checklist and Information Technology Approval System (ITAS) process.

USACE Acquisition Instruction (UAI)
Version 5 dated 3 JUNE 2019

(a) For all acquisitions not utilizing the OCIO/G-6 Acquisition Tools, the Acquisition Requestor (USACE Customers/Requestors, OCIO/G-6 IT Chief (ITC)/Chief of IM, Information Technology Operations Officer (ITOO), OCIO/G-6 Enterprise, or USACE CIO/G-6 representatives) shall:

- (1) Complete the USACE IM/IT Acquisition Checklist.
- (2) Utilize CHES for contracts, regardless of dollar value or appropriation.
- (3) The IT Engineer signed quote received during the IT Acquisition Checklist process shall be submitted during the ITAS waiver request.
- (4) Initialize an ITAS waiver request at <https://cprobe.army.mil/enterprise-portal/web/itas/home>.
 - All requests for IT procurement initiated in ITAS must be associated with an IT investment recorded in the Army Portfolio Management Solution (APMS) at <https://cprobe.army.mil/enterprise-portal/web/apms> and assigned an Army Information Technology Registry (AITS) number.
 - Submit the acquisition package to the CIO-delegated approval authority. The acquisition package will be routed to the appropriate approval authority based on request within the system.

(b) The Checklist and ITAS waiver are for requesting approval, prior to purchase of USACE-approved configurations and services through Army CHES or other sources using local contracting offices or government purchase cards (GPCs). Sites may request other acquisition vehicle approvals only when hardware or services are unavailable from the OCIO/G-6 Acquisition Tools and a Statement of Non-Availability (SONA) is obtained from CHES.

- Non-standard USACE and CHES configurations and volume purchase size exception to policy (ETP) requests must be documented IAW HQDA CIO memorandum, subject: Revisions to Information Technology (IT) Category Management (CM) Policies, dated 1 June 2022.
- The ETP approval memorandum must be included with the ITAS waiver request and procurement/requirements package.

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

(d) Use of the Checklist and ITAS is not required when the acquisition vehicle is an OCIO/G-6 Acquisition Tool, such as OCIO/G-6 Surge, OCIO/G-6 Radio, OCIO/G-6 OrderTrak, or OCIO/G-6 Wireless Web Portal because these tools already have delegated approval, tracking, and reporting functionality built into their processes.

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

(a) Acquisition of IT Consumables (paper, toner, maintenance kits) through FedMall at fedmall.mil.

(b) For ITAS waivers only – Computer peripheral devices such as cables, keyboards, mice, and common access card (CAC) readers, which cost less than \$500 per purchase do not need an ITAS waiver. (Monitor and Printer purchases require ITAS waiver.)

(c) Software requests (approved and unevaluated) are not part of this policy and must follow the Software Request process on the OCIO/G-6 Software App Portal.

(b) *Points of Contact.*

(1) For APMS questions: OCIO/G-6 Portfolio Integration Division/Capital Planning, CapitalPlanningTeam@usace.army.mil.

(2) For ITAS questions: OCIO/G-6 Engineering, Carey.C.OLeary@usace.army.mil.

(3) For Acquisition Checklist questions: DLL-ACE-ITAcquisitions@usace.army.mil.

(4) For Software questions: SoftwareManagement@usace.army.mil.

UAI – PART 5140

Reserved

UAI – PART 5141

ACQUISITION OF UTILITY SERVICES

(Revised September 2017)

Subpart 5141.2 – Acquiring Utility Services

UAI 5141.202 Procedures.

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

UAI 5141.204 General Services Administration (GSA) areawide contracts.

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

UAI – PART 5142

CONTRACT ADMINISTRATION AND AUDIT SERVICES

(Revised November 2021)

Subpart 5142.2 – Assignment of Contract Administration

UAI 5142.202 Assignment of contract administration.

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

- (1) Responsibility for payments under the contract.
- (2) Responsibility for contract changes, shop drawing approvals, approval of shop and model tests, and approval of delivery schedules.

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

Subpart 5142.3 – Contract Administration Office Functions

UAI 5142.302-100 Contract administration functions.

(d) The contracting officer may appoint an administrative contracting officer (ACO) to be responsible for the administration of construction contracts. The ACO may issue contract modifications up to the amount delegated and pursuant to clauses specified in their ACO delegation letter. See UAI 5101.603-3-100 and EP 415-1-260 for the authorities and limitations in a typical designation letter. The ACO shall routinely confer with the contracting officer on the status of each of their assigned contracts.

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

UAI 5142.302(S-75) Monitoring contractor costs.

(c)(1)(i)(C) The Senior Contracting Official (SCO) is delegated the authority under Defense Federal Acquisition Regulation Supplement (DFARS) Procedures, Guidance,

and Information (PGI) 242.302(a)(S-75)(c)(1)(i)(C) to direct departments and agencies to conduct a formal program of Government monitoring of contractor policies, procedures, and practices for controlling costs at contractor locations where significant Government business exists.

Subpart 5142.15 – Contractor Performance Information

UAI 5142.1502 Policy.

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

(a) Construction: Reference AFARS Subpart 5142.15 Contractor Performance Information, for contractor performance assessments for an Assessing Official (AO). As per the Office of the Deputy Assistant Secretary of the Army for Procurement (ODASA(P)), as part of the U.S. Army Corps of Engineers (USACE) business practice, the Contracting Officer (KO) may delegate the AO role as appropriate through nomination. The USACE business process does not change the responsibilities of the KO. The Engineering Regulation (ER) 415-1-17, Construction Contractor Performance Evaluations, sets forth the roles, responsibilities, and time requirements for construction contractor performance assessments for a Reviewing Official (RO).

(b) Architect-Engineer: Reference AFARS Subpart 5142.15 Contractor Performance Information, for contractor performance assessments for an AO. As per the ODASA(P), as part of the USACE business practice, the KO may delegate the AO role as appropriate through nomination. The USACE business process does not change the responsibilities of the KO. The Engineering Pamphlet (EP) 715-1-7, Architect-Engineer (A-E) Contracting in USACE, sets forth the roles, responsibilities, and time requirements for A-E contractor performance assessments for a RO.

UAI 5142.1503 Procedures.

UAI 5142.1503-90 Policy.

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

(1) Services Acquisition Assessing Official (AO): Reference AFARS 5142.15, Contractor Performance Information. As per the ODASA(P), as part of the USACE business practice, the KO may delegate the AO role as appropriate through nomination. The USACE business process does not change the responsibilities of the KO.

(2) Services Acquisition Reviewing Official (RO): The RO shall be at minimum one level above the AO assigned to the contract.

Subpart 5142.71 – Voluntary Refunds

UAI 5142.7100 General.

(4) The SCO is delegated the authority under DFARS PGI 242.7100(4) to approve solicitation of voluntary refunds.

UAI – PART 5143

CONTRACT MODIFICATIONS

(Revised 04 February 2022)

Subpart 5143.2 – Change Orders

UAI 5143.204 Administration.

UAI 5143.204-70 Definitization of change orders.

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

UAI 5143.204-70-100 Policy.

(b) In addition to the requirements of DFARS 243.204-70 (as applicable), the policy and procedures at [DFARS 217.74](#) shall be used to the maximum extent practicable for within scope unpriced change orders (UCOs) that are not "undefinitized contract actions" (UCAs) as defined by DFARS 217.7401(3). Out of scope UCOs are considered UCAs. For UCOs, a D&F, signed by the PCO prior to issuance of any such modification, shall contain, as a minimum, the following:

- (1) The reason normal contract modification procedures and lead times are not practicable;
- (2) The date the requirement was first identified;
- (3) The consequences of missing the required delivery date;
- (4) The definitization schedule for the contract modification;
- (5) An explanation for any deviation from the definitization schedule;
- (6) The percentage of contract modification work completed by the contractor prior to definitization;
- (7) The NTE price.

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

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UAI – PART 5144

SUBCONTRACTING POLICIES AND PROCEDURES

Reserved

UAI – PART 5145

GOVERNMENT PROPERTY

(Revised November 2021)

Subpart 5145.1 – General

UAI 5145.102 Policy.

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

(4) Government-furnished property identification.

(ii)(B) The SCO is delegated the authority under Army Federal Acquisition Regulation Supplement (AFARS) 5145.102(4)(ii)(B) to determine exceptions to the item unique identification requirement to tag, mark, and label items used to support a contingency operation; or to facilitate defense against or recovery from nuclear, biological, chemical, or radiological attack. This authority may not be delegated.

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

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

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

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

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

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

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

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

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

Subpart 5145.3 – Authorizing the Use and Rental of Government Property

UAI 5145.301 Use and rental.

USACE Acquisition Instruction (UAI)

Version 5, 3 JUNE 2019, Update 2 dated 30 NOV 2021

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

UAI – PART 5146

QUALITY ASSURANCE

(Revised November 2021)

Subpart 5146.4 – Government Contract Quality Assurance

UAI 5146.401 General.

(1) See Engineering Regulation (ER) 1110-3-12 Quality Management, and Engineering Pamphlet (EP) 715-1-7, Architect-Engineer (A-E) Contracting in USACE, for quality assurance procedures on A-E contracts.

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

Subpart 5146.7 – Warranties

UAI 5146.710 Contract clauses.

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

UAI – PART 5147

TRANSPORTATION

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

UAI 5147.574 Solicitation provisions and contract clauses.

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

UAI – PART 5148

VALUE ENGINEERING

(Revised November 2021)

Subpart 5148.1 – Policies and Procedures

UAI 5148.102 Policies.

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

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

(c) Before advertisement of a solicitation, Contracting Officers shall request a signed certification by the Program/Project Manager and signed verification by the District/Center Value Engineering Officer to validate that the statutory and regulatory requirements for value engineering have been documented in accordance with ER 11-1-321.

UAI 5148.104 Sharing arrangements.

UAI 5148.104-3 Sharing collateral savings.

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

Subpart 5148.2 – Contract Clauses

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

UAI – PART 5149

TERMINATION OF CONTRACTS

Reserved

UAI – PART 5150

EXTRAORDINARY CONTRACTUAL ACTIONS AND THE SAFETY ACT

Reserved

USACE Acquisition Instruction (UAI)
Version 5 dated 3 JUNE 2019

UAI – PART 5151

USE OF GOVERNMENT SOURCES BY CONTRACTORS

Reserved

UAI – PART 5152

SOLICITATION PROVISIONS AND CONTRACT CLAUSES

(Revised June 2019)

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

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

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

- (a) Funds are not available at the inception of this contract to cover the entire contract price. The liability of the Government is limited by this clause notwithstanding any contrary provision of the "Payments to Contractor" clause or any other clause of this contract, except the Termination for Convenience clause. The sum of \$----- [Each fiscal year (FY) of contract execution, Contracting Officer shall insert the specific dollar amount that is reserved for this contract and available for payment to the contractor during the current FY. The Contracting Officer shall modify that amount to reflect any funds added to or subtracted from the contract during a current FY] has been reserved for this contract and is available for payment to the Contractor during the current FY. It is expected that Congress will make appropriations for future FY from which additional funds, together with funds provided by one or more non-federal project sponsors, will be reserved for this contract.
- (b) Failure to make payments in excess of the amount currently reserved, or that may be reserved from time to time, shall not be considered a breach of contract and shall not entitle the Contractor to a price adjustment under the terms of this contract.
- (c) The Government may at any time reserve additional funds for payments under the contract if there are funds available for such purpose. The Contracting Officer will promptly notify the Contractor of any additional funds reserved for the contract by issuing an administrative modification to the contract.
- (d) If earnings will be such that funds reserved for the contract will be exhausted before the end of any FY, the Contractor shall give written notice to the Contracting Officer of the estimated date of exhaustion and the amount of additional funds which will be needed to meet payments due or to become due under the contract during that FY. This notice shall be given not less than 120 days prior to the estimated date of exhaustion. Unless informed in writing by the Contracting Officer that additional

funds have been reserved for payments under the contract, the Contractor shall stop work upon the exhaustion of funds.

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

(f) Any suspension, delay, or interruption of work arising from exhaustion or anticipated exhaustion of funds shall not constitute a breach of this contract and shall not entitle the Contractor to any price adjustment under the "Suspension of Work" clause or in any other manner under this contract.

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

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

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

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

(End of clause)

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

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

(a) Funds are not available at the inception of this contract to cover the entire contract price. The liability of the Government is limited by this clause

notwithstanding any contrary provision of the "Payments to Contractor" clause or any other clause of this contract. The sum of \$----- [Each fiscal year (FY) of contract execution, Contracting Officer shall insert the specific dollar amount that is reserved for this contract and available for payment to the contractor during the current FY. The Contracting Officer shall modify that amount to reflect any funds added to or subtracted from the contract during a current FY] has been reserved for this contract and is available for payment to the Contractor during the current FY. It is expected that Congress will make appropriations for future FY from which additional funds, together with funds provided by one or more non-federal project sponsors, will be reserved for this contract.

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

UAI 5152.236-9011 Design-Build Construction Contracts

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

DESIGN-BUILD CONSTRUCTION CONTRACTS (MAR 2019)

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

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

i. Betterments: Any portions of the accepted proposal which both conform to and exceed the requirements of the Solicitation.

ii. The requirements of the Solicitation. (See also FAR 52.236-21, Specifications and Drawings for Construction)

iii. All other elements of the accepted proposal.

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

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

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

- (1) The standard of care for all design services performed under this agreement shall be the care and skill ordinarily used by members of the architectural or engineering professions practicing under similar conditions at the same time and locality. Notwithstanding the above, in the event that the contract specifies that portions of the Work be performed in accordance with a performance standard, the design services shall be performed so as to achieve such standards.
- (2) Neither the Government's review, approval or acceptance of, nor payment for, the services required under this contract, shall be construed to operate as a waiver of any rights under this contract or of any cause of action arising out of the performance of this contract. The Contractor shall be and remain liable to the Government in accordance with applicable law for all damages to the Government caused by the Contractor's negligent performance of any of these services furnished under this contract.
- (3) The rights and remedies of the Government provided for under this contract are in addition to any other rights and remedies provided by law.

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

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

(e) *Deviating from the Accepted Design.* The Contractor must obtain the approval of the Designer of Record and the Government's concurrence, in the form of supplemental agreement to the contract, for any Contractor-proposed revision to the professionally stamped-and-sealed and Government-reviewed final design that has been released for Construction before proceeding with the revision. The Government reserves the right to disapprove such a revision.

- (1) The Government reserves the right to non-concur with any revision to the final design that has been released for construction, including those which may impact furniture, furnishings, equipment selections or operations decisions that were made, based on the reviewed design.
- (2) Any Contractor-proposed revision to the design which deviates from the contract requirements (i.e., the Request for Proposal (RFP) and the accepted proposal), will require a bilateral modification (e.g. supplemental agreement) to the contract before any work commences.
- (3) Unless the Government initiates a change to the contract requirements, or the Government determines that the Government furnished design criteria are incorrect and must be revised, any Contractor initiated proposed change to the contract requirements, which results in additional cost, shall strictly be at the Contractor's expense.
- (4) The Contractor shall track all approved revisions to the reviewed and accepted design and shall incorporate them into the as-built design documentation, in accordance with agreed procedures. The Designer of

Record shall document its professional concurrence on the as-builts for any revisions in the stamped and sealed drawings and specifications.

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

- (1) The Government may consider a VECP for those "prescriptive" aspects of the Solicitation documents, not addressed in the Contractor's accepted contract proposal or addressed but evaluated only for minimum conformance with the Solicitation requirements.
- (2) For purposes of this clause, the term "performance oriented" refers to those aspects of the design criteria or other contract requirements, which allow the offeror or Contractor certain latitude, choice of and flexibility to propose in its accepted proposal a choice of design, technical approach, design solution, construction approach or other approach to fulfill the contract requirements. Such requirements generally tend to be expressed in terms of functions to be performed, performance required or essential physical characteristics, without dictating a specific process or specific design solution for achieving the desired result.
- (3) In contrast, for purposes of this clause, the term "prescriptive" refers to those aspects of the design criteria or other Solicitation requirements wherein the Government expressed the design solution or other requirements in terms of specific material, approaches, systems, and/or processes to be used. Prescriptive aspects typically allow the offerors little or no freedom in the choice of design approach, materials, fabrication techniques, methods of installation, or any other approach to fulfill the contract requirements.

(g) *Warranty of Design.* The Contractor warrants that the design shall be performed in accordance with the contract requirements. Design and design related construction not conforming to the Contract requirements shall be corrected at no additional cost to the Government. The standard of care for design is defined in paragraph c of this clause, Responsibility of the Contractor for Design.

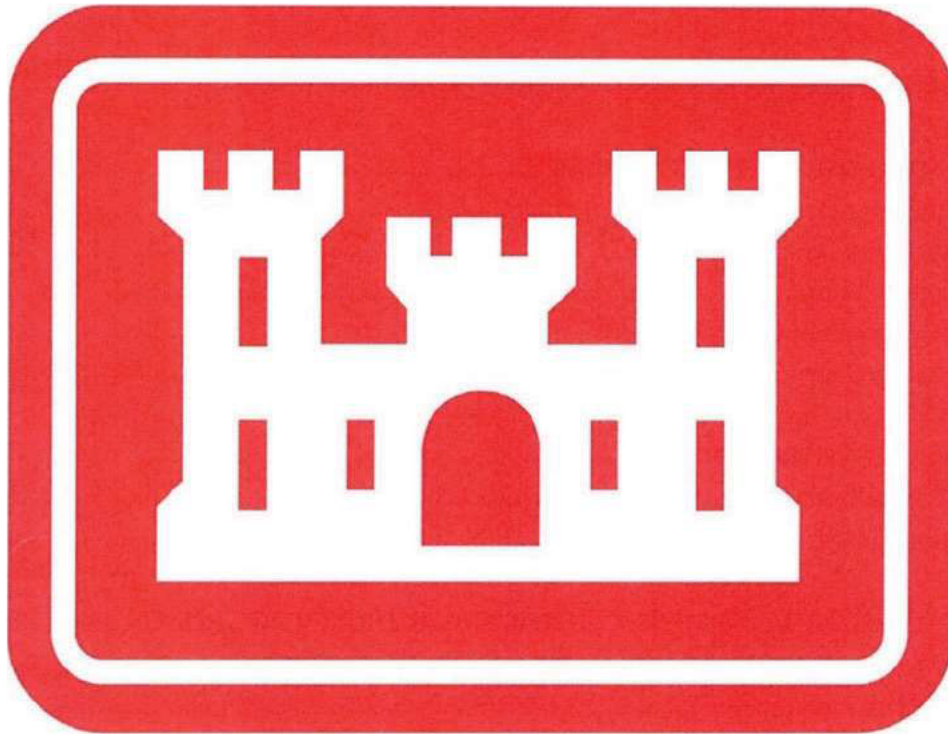
- (1) The period of this warranty shall commence upon final completion and the Government's acceptance of the work, or in the case of the Government's beneficial occupancy of all or part of the work for its convenience, prior to final completion and acceptance, at the time of such occupancy.

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

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

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

(End of clause)



U.S. ARMY CORPS OF ENGINEERS (USACE)

DESK GUIDE

A handwritten signature in black ink that reads "Denver S. Heath".

DENVER S. HEATH
Head of the Contracting Activity

SUMMARY OF CHANGES

Date	Description of Current Change
Effective 3 June 2019, Update 2: 30 NOV 2021 Prior Revisions: Feb 2022, May 2022, Jun 2022, Nov 2022 Current Revision: 4 Mar 2024	This major revision makes changes – - Table of Contents; - UDG PARTS: 5101, 5111; and - UDG ATTACHMENTS: 1, 2, 6, 8, 11

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UDG – PART 5101

FEDERAL ACQUISITION REGULATION SYSTEM

(Revised 4 March 2024)

UDG 5101.104 Applicability. All changes to this document applies to new solicitations issued after date signed.

UDG 5101.170 Peer reviews.

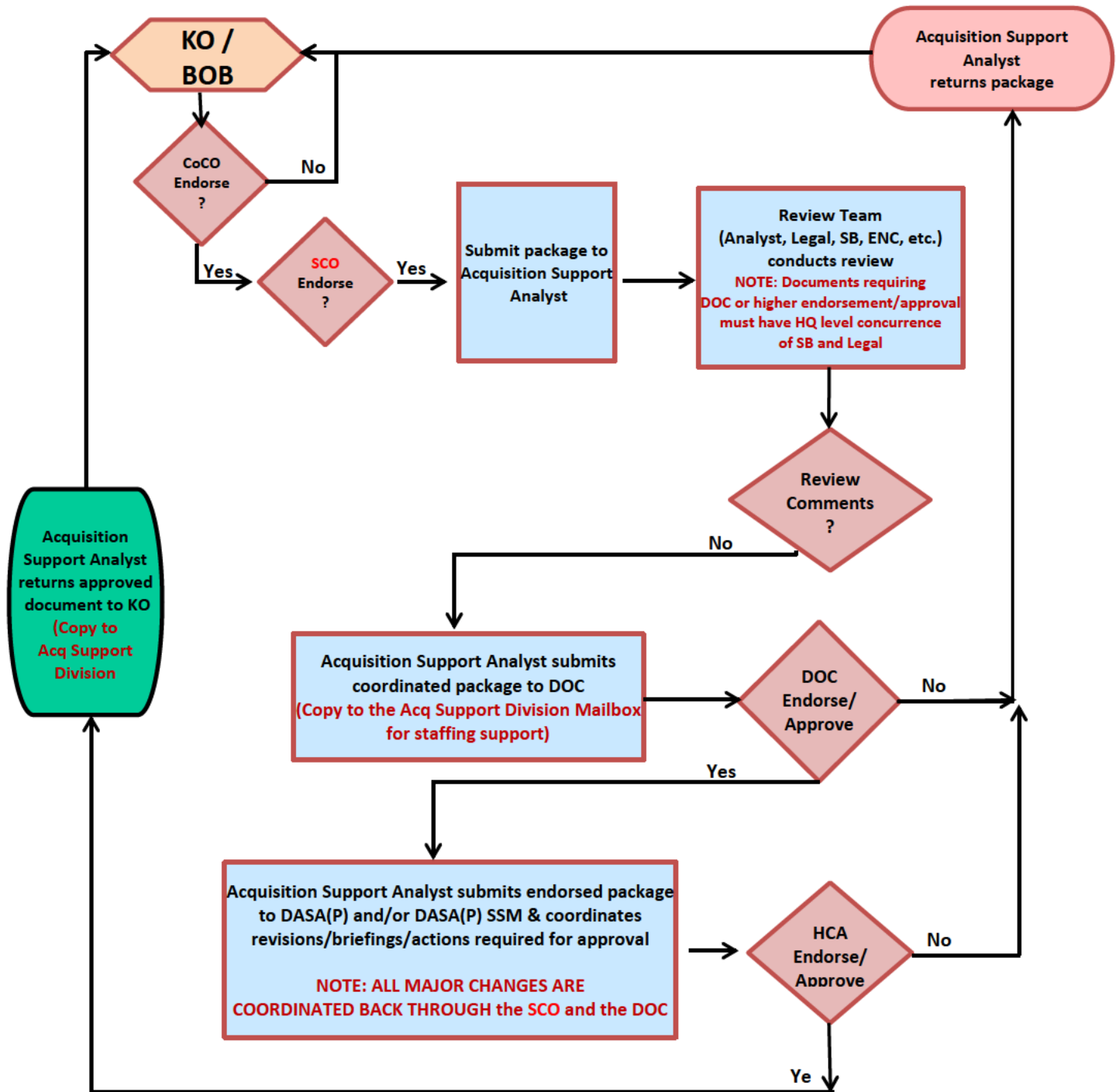
(a) Peer reviews at the pre-solicitation, pre-award, and post-award phases shall have the required documents and elements to address listed in Defense Federal Acquisition Regulation Supplement (DFARS) Procedures, Guidance, and Information (PGI) 201.170-4 available for review. Peer reviews conducted at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

(b) Utilize the list of suggested questions formulated by Defense Pricing and Contracting (DPC) for peer review team members as a guide for peer review discussion.

UDG 5101.290 HQ USACE acquisition review and approval process.

HQ USACE CECT Acquisition Review & Approval Process

(All Actions Requiring Approval At or Above DOC/HCA)



UDG 5101.604 Contracting officer's representative (COR)

(1) COR certification and training.

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

(b) All COR nominations and appointments shall be initiated, reviewed, approved, signed, stored, and terminated in the Joint Appointment Module (JAM) within Procurement Integrated Enterprise Environment (PIEE) at <https://wawf.eb.mil>. The COR online file is in the Surveillance and Performance Monitoring (SPM) Module within PIEE which includes COR management, oversight, surveillance, and performance monitoring.

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

(d) *COR certification and training requirements.* COR certification and training requirements are specified at three different type levels: A, B, and C. Like all other contracting and technical decisions, appropriate professional judgment on the part of the PCO is required to ensure effective selection and appointment of CORs. See Attachment 2 for the COR Certification and Training Requirements and DoDI 5000.72, DoD Standard for Contracting Officer's Representative (COR) Certification.

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

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

responsibilities are typically of increased technical, administrative, and financial complexity over Type A.

(iii) **Type C** – Type C COR training is applicable to highly complex, critical and very large dollar value contract requirements that typically necessitate attributes such as a professional license, specialized administrative and/or technical training, and extensive experience beyond the Type B competencies. Such contract requirements might include work such as: major, complex environmental remediation; large hospital construction; complex water resources infrastructure construction; complex watershed-wide planning studies services; Early Contractor Involvement; complex, large overseas contingency construction or services; enterprise-wide IT services; or sophisticated cost-type pricing arrangements for high value contracts. COR duties and responsibilities are typically highly complex and high impact from technical, administrative, and managerial viewpoints. For USACE PDBP, Introduction and Overview (762), see the interim website at: <https://usace.dps.mil/sites/KMP-PPM/TMTrainingMaterials/Forms/AllItems.aspx?RootFolder=%2Fsites%2FKMP%2DPPM%2FTMTrainingMaterials%2F1%20%2D%20Interim%20DL%20Course%20762&FolderCTID=0x012000429EDCB58060304D9CC14B1958200847>. There is currently a temporary waiver for USACE PDBP, Working with PDBP (763) effective through 30 September 2024.

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

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

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

(ii) CORs must satisfy training requirements in EP 715-1-7 and comply with Engineering Regulation (ER) 1110-3-12, Military Engineering and Design Quality Management.

(g) *Process for appointment of CORs.* Requiring activity nominating officials shall be the division or branch level chiefs/supervisors of the COR's respective organization. The nominating official shall nominate the COR in the Joint Appointment Module (JAM). Upon receipt of the nomination in JAM, the PCO will review the

nomination. This will include verification that the nominated individual meets the specified Certification Level: Type A, B, or C based on all the factors related experience and training discussed herein and set forth in the enclosure. Final determination of the Certification Level Type A, B, or C shall be made by the PCO after having considered the complexity of the requirement. Pursuant to DODI 5000.72 Enclosure 3, paragraph e, the PCO will hold a face-to-face (may be telephonic, webex, skype, etc.) discussion with the COR nominee/designee on each contract.

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

UDG – PART 5102

DEFINITIONS OF WORDS AND TERMS

Reserved

UDG – PART 5103

IMPROPER BUSINESS PRACTICES AND PERSONAL CONFLICTS OF INTEREST

(Revised June 2019)

UDG 5103.203 Reporting suspected violations of the Gratuities clause.

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

UDG – PART 5104

ADMINISTRATIVE MATTERS

(Revised June 2019)

UDG 5104.403 Responsibilities of contracting officer.

All Contracting and Program personnel who utilize the DD Form 254, Department of Defense (DoD) Contract Security Classification Specification, should 1) review the Headquarters Department of the Army (HQDA) G-2 Defense Security Service (DSS) online guides; 2) review the HQDA G-2 DD Form 254, Preparation Guide; and 3) complete the DSS online training, which is accessible at the following link:
<http://www.dami.army.pentagon.mil/site/industsec/Training.aspx>.

UDG – PART 5105

PUBLICIZING CONTRACT ACTIONS

(Revised June 2019)

Subpart 5105.4 – Release of Information

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

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

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

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

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

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

UDG – PART 5106
COMPETITION REQUIREMENTS
(Revised June 2019)

Subpart 5106.3 – Other than Full and Open Competition

UDG 5106.302-2 Unusual and compelling urgency.

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

(a) Prior to taking any action on an acquisition under this authority, the Chief of the Contracting Office (CoCO) or the Procuring Contracting Officer (PCO) must obtain verbal approval of the approving official in order to proceed. The approving official shall maintain a record of verbal approvals and may be required to provide a report of verbal approvals to the U.S. Army Corps of Engineers (USACE) Advocate for Competition (AFC). The requestor, when contacting the AFC, must describe:

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

(ii) Estimated dollar value; and

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

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

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

(ii) Estimated dollar value; and

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

After-The-Fact J&A Upward Reporting

1. Contracting Officer:	_____
E-Mail:	_____
Telephone No.:	_____
2. Chief of the Contracting Office (CoCO): E-Mail:	_____
Telephone No.:	_____
3. Technical Point of Contact:	_____
Mail:	_____
Telephone No.:	_____
4. Description of urgent requirement:	_____
• Goods/services to be procured:	_____
• Explain the unusual and compelling urgency circumstances of this procurement action (include impact on quality of life, readiness, or loss to the Government (see DFARS PGI 206-302-2).	_____
• Explain why a J&A cannot be prepared and submitted at prior to contract award.	_____
• Estimated Dollar Value:	_____
• Contract type (e.g., FFP, T&M):	_____
• Date of Award:	_____
5. Date verbal approval received:	_____
6. Date notification form submitted to AFC:	_____
7. Date J&A will be submitted to Approval Authority:	_____

UDG – PART 5107

ACQUISITION PLANNING

(Revised 04 February 2022)

Subpart 5107.1 – Acquisition Plans

UDG 5107.105 Contents of written acquisition plans.

UDG 5107.105-100 Contents of written acquisition plans - Enterprise and Regional Acquisitions

References:

- a. Engineer Regulation, ER 5-1-10, USACE Work Assignments and Responsibility, 16 March 2021.
- b. Engineer Regulation, ER 5-1-11, USACE Business Process, 31 July 2018.
- c. Engineer Regulation, ER 1140-1-211, Support for Others: Reimbursable Services, 10 September 2020.
- d. Memorandum (CEMP-ZB), Revalidation of Mission Assignments - Directorate Policy Note 5-1-1, 01 October 2021.
- e. Memorandum (CEMP-ZB), Interim Guidance for Engineer Regulation 5-1-10 USACE Work Assignments and Responsibility, 30 November 2021.

(a) Procedures.

(1) Where Enterprise and Regional contracts are deemed necessary, program leads should collaborate across programs and inter-regionally where missions align to assess both in-process contracting tools that have yet to be awarded, as well as the establishment of new contract vehicles. These contract vehicles should encompass necessary capacity and flexibility to execute known requirements and also include capacity for reasonably anticipated future requirements. While MSCs have distinct military and civil boundaries, acquisition planning need not be limited to those boundaries when the requirements and market research support broader application.

(b) Guidance to Contracting Officers:

(1) The Contracting Officer must discuss the geographical boundaries with the PDT to determine if extended coverage is required. If so, for acquisitions that will cross MSC boundaries, the PM will ensure the extended geographical coverage is coordinated with the MSC(s) prior to initiating coordination for mission assignment

approval and CSE review and approval (as applicable). The mission assignment and CSE approval memoranda should be maintained in the contract file.

(2) Enterprise and Regional Acquisition must be compliant with applicable law, regulations, and policies. They are not exempt from the requirement to conduct market research (FAR Part 10) or comply with Consolidation and Bundling requirements (FAR Part 7). This analysis and documentation must address the entire geographical coverage that may be allowed under the resultant contract.

(3) The Contracting Officer may include the following example language in acquisition plans/strategies, solicitations, and resultant contracts where enhanced geographic boundaries will be included (for procurements that will require SCO or HCA-level approval such as those crossing geographic boundaries of another MSC, early engagement with these offices is highly encouraged):

Example language: The primary geographic boundary for work executed under this contract is [X]. However, the Government may execute task orders beyond this geographic area in limited circumstances where the Contracting Officer makes a written determination that the intended delivery method is within the technical scope of the contract, was considered in the contract prices and in the evaluation determination for award, and otherwise complies with the contract's terms and conditions and all applicable laws and regulations. The absolute boundary of this contract is [Y].

X = Location, District, Center, Division

Y = State(s), other description

(4) The Contracting Officer will adjust Ordering clause 52.216-19 to state that the contractor is not required to submit a task order proposal for any action to be executed outside the primary geographic area of the contract.

(5) Prior to task order solicitation, the Contracting Officer must evaluate the scope of the project requirement to determine if it is technically within scope of the IDC (ordering limitation, delivery method, evaluation determination, pricing, magnitude and scope).

(6) In determining which contractor pool to solicit for a given task order, the Contracting Officer, in consultation with the PDT will consider - (i) the complexity of the work, (ii) contract task order limitation, (iii) on-going work, (iv) bonding capacity, and any other task order specific requirement.

(7) Prior to task order solicitation, the Contracting Officer will coordinate with the existing IDC contractor(s), to ascertain their interest and capability to perform any project requirement beyond the primary geographic area of the IDC. The contractor cannot be compelled to perform outside the primary geographic area of the contract.

(8) To ensure the set-aside pools are given adequate consideration, coordination with and approval by Small Business representatives is required for each project requirement exceeding \$10,000.

(9) Geographic scopes that include the United States and its territories as well as other countries are likely impracticable. For any contract contemplating performance overseas, the Contracting Officer must review and document all applicable international agreements in accordance with FAR 25.802, confirm that the contract was solicited with applicable OCONUS clauses and provisions, and also verify compliance with all of the applicable international agreements. Because there is heightened risk of noncompliance with international requirements, the contracting office must coordinate with counsel and the SCO's office prior to OCONUS implementation.

Subpart 5107.5 – Inherently Governmental Functions

UDG 5107.503 Policy.

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

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

UDG – PART 5108

REQUIRED SOURCES OF SUPPLIES AND SERVICES

Reserved

USACE Desk Guide (UDG)
Version 2 dated 3 JUNE 2019

UDG – PART 5109

CONTRACTOR QUALIFICATIONS

Reserved

USACE Desk Guide (UDG)
Version 2 dated 3 JUNE 2019

UDG – PART 5110

MARKET RESEARCH

(Revised 4 April 2017)

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

USACE Desk Guide (UDG)
Version 2 dated 3 JUNE 2019

UDG – PART 5111

RESERVED

USACE Desk Guide (UDG)
Version 2 dated 3 JUNE 2019

UDG – PART 5112

ACQUISITION OF COMMERCIAL ITEMS

Reserved

USACE Desk Guide (UDG)
Version 2 dated 3 JUNE 2019

UDG – PART 5113

SIMPLIFIED ACQUISITION PROCEDURES

Reserved

UDG – PART 5114

SEALED BIDDING

Subpart 5114.2 – Solicitation of Bids

UDG 5114.201-1 Uniform Contract Format.

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

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

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

UDG – PART 5115

CONTRACTING BY NEGOTIATION

UDG 5115.404-73 Alternate structured approaches.

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

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

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

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

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

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

(c) *Size of job.* Work estimated up to \$100,000 shall be weighted at 0.12. Work estimated between \$100,000 and \$5,000,000 shall be proportionately weighted from 0.12 to 0.05. Work from \$5,000,000 to \$10,000,000 shall be weighted at 0.04. Work in excess of \$10,000,000 shall be weighted at 0.03. It should be noted that control of fixed expenses generally improves with increased job magnitude.

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

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

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

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

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

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

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

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

(b) *Technical complexity factor* will vary from 0.05 for low complexity (design of simple road repaving or routine boundary survey verification) to 0.10 for high complexity (design of nuclear chemistry laboratory or the design of the remediation of a very unusual and complex hazardous waste site). Consider the nature of the work, degree of management involvement required, schedule constraints, amount of Government assistance, and availability of design criteria.

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

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

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

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UDG – PART 5116
TYPES OF CONTRACTS

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SPECIAL CONTRACTING METHODS

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UDG – PART 5118

EMERGENCY ACQUISITIONS

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SMALL BUSINESS PROGRAMS

Reserved

UDG – PART 5120

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UDG – PART 5121

Reserved

UDG – PART 5122

APPLICATION OF LABOR LAWS TO GOVERNMENT ACQUISITIONS

(Revised March 2024)

UDG 5122.503-1 Project Labor Agreement (PLA) Frequently Asked Questions (FAQs)

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

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

(2) Are there special market research considerations for use of a PLA?

Yes, FAR 36.104(c) provides that market research for large-scale construction contracts involve a current and proactive examination of the market conditions in the project area to determine national, regional, and local entity interest in participating on a project that requires a PLA, and to understand the availability of unions, and unionized and non-unionized contractors. Therefore, seeking the views of both prospective offerors and union representatives could provide useful information in the determination of additional appropriate terms and conditions for a particular PLA, or whether an exception to use of a PLA applies. USACE Contractor Industrial Relations Specialists (CIRS) are generally in the best position to identify the appropriate points of contact among the respective labor organizations in the initial considerations regarding the use of a PLA. Note that any contact with labor organizations must be clearly done for informational purposes only. As provided in FAR 22.504(c), the agency may not require contractors or subcontractors to enter into a project labor agreement with any particular labor organization.

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

No. Federal agencies may be the owner of the facilities, but they are not the employer of the contractor work forces employed to construct the facilities. Therefore, a Federal agency should not participate in collective bargaining agreement terms and conditions of employment or become party to labor agreements such as PLAs.

(4) What projects are included in the Executive Order (EO)?

EO 14063, Use of Project Labor Agreements for Federal Construction Projects, issued 04 February 2022, provides that it shall be the policy of the Federal Government to use PLAs in connection with large-scale construction projects (defined as projects where the total estimated cost of the construction contract to the Federal Government is

\$35 million or more (using appropriated funds)) to promote economy and efficiency in Federal procurement.

(5) Are contracts for construction projects that involve less than \$35 million also covered?

EO 14063 does not preclude agencies from requiring use of a PLA on projects less than \$35 million in value. Thus, USACE has the discretion to require use of PLAs on projects where the total costs are expected to be less than \$35 million if use of a PLA will promote efficiency and economy. However, there isn't a requirement that USACE consider or use PLAs below this threshold.

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

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

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

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

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

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

(9) Is a PLA required for solicitations issued prior to 22 January 2024?

No. EO 14063, Section 12, states it shall apply to all solicitations for contracts issued on or after the effective date of the final regulations issued by the FAR Council. The effective date of the final regulations was 22 January 2024.

(10) Does the PLA rule include Foreign Military Financing (FMF) and Foreign Military Sales (FMS is U.S. dollars – FMS is other partner dollars)?

No. The EO applies to Federal construction projects located within the United States if the total cost to the Federal Government is \$35 million or more (appropriated funds). As used in the EO and in FAR Subpart 22.5, “United States” means the 50 States and the District of Columbia. If FMF funded actions and FMS programs involve construction awards performed outside the United States, the EO would not apply.

UDG 5122.503-2 PLA Exception Determination Tool

(1) PLAs are required for all construction projects with a total estimated cost to the Federal Government of \$35 million or more (using appropriated funds), unless an exception applies, as provided at FAR 22.504(d). This PLA Exception Determination Tool will assist contracting officers in determining whether an exception to using a PLA should be requested for a specific construction project. This tool is structured in two parts:

(a) Market Research: Understanding the nature of the project under consideration, the geographic region, the labor market, and recent project history are all key components to making informed decisions. See FAR 22.504(d)(2) and 36.104(c). This section of the tool will help contracting officers gather pertinent information to determine whether a request for an exception to using a PLA is appropriate for a given project.

(b) Review Checklist: This section will help the contracting officer determine whether a request for an exception to using a PLA is appropriate for the project. Note: The “Review Checklist” Memorandum within this tool and accompanying project-by-project Market Research Report shall be included in every applicable contract file and submitted as part of supporting documentation if an exception to EO 14063 will be requested.

(2) A PLA is defined as a pre-hire collective bargaining agreement with one or more labor organizations that establishes the terms and conditions of employment for a specific construction project and is an agreement described in 29 U.S.C. § 158(f). See FAR 22.503 Policy for details.

(3) In addressing projects outside the scope of EO 14063, contracting officers may undertake a labor market survey as part of their PLA evaluation process in deciding whether the use of a PLA is appropriate for a construction project where the total estimated cost to the Federal Government is less than \$35 million, following the criteria offered in the FAR 22.503(c)(2).

(4) For contracting officers conducting market research, the following information may be helpful in making an informed decision:

(a) Sources of Information: Contracting officers who undertake this assessment may consider the following sources for detailed information about data to consider when making a determination. This information can be gathered through a “sources sought” notification, email, or phone contact, or through a survey.

(i) Project owners and users: Owners of local construction projects in the vicinity of the project under consideration may have had to decide whether to use a PLA. As such, local and/or state government agencies can provide relevant information on the factors they have considered when making a determination on non-Federal public projects. In addition, private sector firms or owners have increasingly used PLAs to manage complex projects and can be a similar resource.

(ii) Government data sources: Federal and state Departments of Labor (or similar workforce agencies) provide data about wages, economic trends, and labor availability in the region to employers, developers, and other stakeholders. Local Career One Stop Centers may have additional data on the labor force availability.

(iii) Construction community, to include:

1) Local Building and Construction Trades Councils provide essential coordination and support to the work of its affiliated national and international unions. (<https://nabtu.org/about-nabtu/official-directory/building-trades-local-councils-overview/>)

2) Associated Builders and Contractors offers numerous local offices that represent merit shop contractors, subcontractors, material suppliers and related firms in the United States. (<https://www.abc.org/chapterlocator.aspx>)

3) Associated General Contractors includes a nationwide network of local chapters which represent more than 33,000 leading firms in the industry, including general contractors, specialty contractors and service providers and suppliers. (<https://www.agc.org/connect/chapters>)

(b) Scan of Recent Construction Projects in Target Labor Market: A sources sought notice (or a similar relevant agency tool) may be issued as part of market research to obtain data on the recent history of construction projects in the local labor market of the project under consideration.

(i) Market research sources sought notices shall include, at a minimum, the following standard USACE questions:

1) Do you have knowledge that a PLA has been used in the local area on projects of this kind? If so, please provide supporting documentation.

2) Are you aware of skilled labor shortages in the area for those crafts that will be needed to complete the referenced project? If so, please elaborate and provide supporting documentation where possible.

3) Are you aware of time sensitive issues/scheduling requirements that would affect the rate at which the referenced project should be completed? If so, please elaborate and provide supporting documentation where possible.

4) Identify specific reasons why or how you believe a PLA would advance the Federal Government's interest in achieving economy and efficiency in Federal procurement.

5) Identify specific reasons why you do not believe a PLA would advance the Federal Government's interest in achieving economy and efficiency in Federal procurement.

6) Identify any additional information you believe should be considered on the use of a PLA on the referenced project.

7) Identify any additional information you believe should be considered on the non-use of a PLA on the referenced project.

(ii) The information gathered in this exercise should include the following information on projects completed in the last 2-5 years (or other timeframe, as appropriate):

- 1) Project Name and Location
- 2) Detailed Project Description
- 3) Initial Cost Estimate vs. Actual Final Cost
- 4) Was the project completed on time?
- 5) Number of craft trades present on the project
- 6) Was a PLA used?
- 7) Were there any challenges experienced during the project?

(c) Current Project Details: For the project under consideration, the Federal acquisition team can fill in the following table to detail the factors needed to consider when deciding whether an exception to PLA requirements may be requested:

Project Description	
Estimated cost, duration, deadline, and complexity	
Which trade or trades are expected to be employed on the projects?	
Does the project involve specialized construction work that is available from only a limited number of contractors or subcontractors?	
What market share does union labor have in the geographic area for this project or type of construction?	
Does the local market contain the sufficient number of available skilled workers for this project? Are the other projects in the vicinity going to limit the pool of skill labor available for your project?	
Has a project like this been done before in the local market?	
Will the completion of the project require an extended period of time or have sensitive deadlines?	
Is the need for the project is of such an unusual and compelling urgency that a project labor agreement would be impracticable? (See, e.g., FAR 6.302-2.)	
Have PLAs been used on comparable projects undertaken by the public or private sector in this geographic region?	
Have PLAs been used on this type of project in other regions?	
Are there collective bargaining agreements (CBAs) that are likely to expire during the course of the project under consideration that might cause delays?	
How do open shop and union wage rates influence prevailing wage rates in the local market and compare to Davis Bacon rates? What impact does unionization in the local market have on wages?	
<p>Could a PLA contribute to cost savings in any of the following ways:</p> <ul style="list-style-type: none"> Harmonization of shifts and holidays between the trades to cut labor costs? Minimizing disruptions that may arise due expiration of CBA? Availability of trained, registered apprentices, efficient for highly skilled workforce? Allowing for changes in apprentice to journeyman ratio. Serving as a management tool that ensures highly skilled workers from multiple trades are coordinated in the most efficient way. 	
Could a PLA minimize risk and contribute to greater efficiency in any of the following ways:	

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Mechanisms to avoid delays Complying with labor standards, safety rules and EEO and OFCCP laws. Ensuring a steady supply of skilled labor in markets with low supply or high competition for workers.	
Are there ways in which a PLA might increase costs on this particular project?	

Project Labor Agreement (PLA) Exception Memorandum Template

Name of Project: _____

Total Estimated Cost of Project: _____

Duration of Project: _____

Executive Order 14063, Use of Project Labor Agreements for Federal Construction Projects, issued 04 February 2022, requires the use of PLAs in connection with large-scale construction projects (defined as projects where the total estimated cost to the Federal Government of the construction contract is \$35 million or more) to promote economy and efficiency in Federal procurement, unless an exception applies, as provided by FAR 22.504(d).

Based upon the market research and other information gathered for this project (attached), an exception to use of a PLA applies to [Project Name] *[check appropriate exceptions below]*:

____ (i) Requiring a PLA on the project would not advance the Federal Government's interests in achieving economy and efficiency in Federal procurement. The exception shall be based on one or more of the following factors:

____ (A) The project is of short duration and lacks operational complexity.

____ (B) The project will involve only one craft or trade.

____ (C) The project will involve specialized construction work that is available from only a limited number of contractors or subcontractors.

____ (D) The agency's need for the project is of such an unusual and compelling urgency that a PLA would be impracticable.

____ (ii) Market research indicates that requiring a PLA on the project would substantially reduce the number of potential offerors to such a degree that adequate competition at a fair and reasonable price could not be achieved. (See 10.002(b)(1) and 36.104).

____ (iii) Requiring a PLA on the project would otherwise be inconsistent with Federal statutes, regulations, Executive orders, or Presidential memoranda.

The above exception to use of a PLA on [Project Name] is appropriate because *[insert detailed and specific written explanation supporting the condition(s) for the exception here. All market research and other information used to arrive at this determination must be attached. Note that for exception (ii), a likely reduction in the number of potential offerors is not, by itself, sufficient to except a contract from a PLA unless it is*

coupled with the finding that the reduction would not allow for adequate competition at a fair and reasonable price.]

Signed by:

Contracting Officer: _____ Date _____

Requirements Official: _____ Date _____

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UDG – PART 5123

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

Reserved

UDG – PART 5124

PROTECTION OF PRIVACY AND FREEDOM OF INFORMATION

Subpart 5124.1 – Protection of Individual Privacy

UDG 5124.103 Procedures.

(1) Sample Personally Identifiable Information (PII) requirements language for insertion into the performance work statement.

PERSONALLY IDENTIFIABLE INFORMATION (PII)

Sections *(insert applicable sections of work statement)* of this Performance Work Statement require the Contractor to design, develop, or operate a system of records on individuals, to accomplish an agency function subject to the Privacy Act of 1974, Public Law 93-579, December 31, 1974 (5 U.S.C. 552a). The Contractor shall comply with the Privacy Act and all applicable agency regulations on individual privacy, to include DoD Directive 5400.11, DoD Privacy Program, and DoD 5400.11-R, Department of Defense Privacy Program.

Systems Access

When requested by the Government, the contractor shall provide access to and information regarding the systems that the contractor operates or maintains on behalf of the Government under this contract.

Systems Security

The contractor shall encrypt all contractor-owned laptops or other portable media storage devices that process or store PII, in accordance with National Institute of Standards and Technology (NIST) Federal Information Processing Standard (FIPS) 140-2 (or successor).

The contractor shall require FIPS 140-2 (or successor) encryption of any sensitive PII when transmitted electronically across the internet or other public networks.

Data Security

The contractor, unless otherwise authorized by the Government, shall limit access to PII to those employees and subcontractors who require the information in order to perform their official duties under this contract.

The contractor, contractor employees, and subcontractors shall physically or electronically protect PII when not in use and/or under the control of an authorized individual.

During the course of contract performance, when PII is no longer needed or required

to be retained under applicable Government records retention policies, the contractor shall coordinate with the contracting officer to either turn over the PII to the Government, or destroy it through means that will make the PII irretrievable (i.e., permanently unavailable for access by any person).

The contractor shall only use the PII obtained under this contract for the purpose of the contract, and shall not collect or use such information for any other purpose without the prior written approval of the contracting officer.

At expiration or termination of this contract, the contractor shall coordinate with the contracting officer to either turn over all PII managed under the contract that is in its possession to the Government or successor contractor, or if the Government so directs, destroy the PII.

(2) Sample PII data breach response and notification.

PERSONALLY IDENTIFIABLE INFORMATION (PII) BREACH OF CONTRACT

The contractor shall adhere to the reporting and response requirements for PII set forth in Memorandum, Office of the Secretary of Defense, Subject: Safeguarding Against and Responding to the Breach of Personally Identifiable Information (PII), June 5, 2009, ALARACT 05/2009, DoD 5400.11-R, and any amendments.

The contractor or its subcontractor shall immediately notify *(insert requiring activity and phone number or email address)* upon discovery that a suspected or actual breach of PII has occurred. The notification shall include, to the greatest extent possible the identification of each individual who's PII has been or possible has been breached. In addition, the contractor or its subcontractor shall provide *(insert requiring activity and phone number or email address)* with any other available information that must be included in required breach reporting and notifications. The contractor shall provide this information at the time of the initial notification to the Government or promptly thereafter as information becomes available.

The Government will determine whether a breach of PII has occurred, and whether breach notification to affected individual is required. If breach notification to affected individuals is required, the Government will determine if the contractor shall make the required notification. If the contractor is to notify the impacted population, it shall submit the notification letters to *(insert requiring activity and phone number or email address)* for review and approval.

UDG – PART 5125
FOREIGN ACQUISITION

(Revised Apr 2020)

Subpart 5125.3 – Contracts Performed Outside the United States

UDG 5125.3 Contracting reachback in support of forward districts operating in an Overseas Contingency Operation (OCO) within the U.S. Central Command (CENTCOM).

(1) *Pre-award.*

(a) *Project acceptance.* Procuring contracting officers (PCOs) and contract specialists will NOT accept projects or provide any reachback assistance unless the requested function has already been accepted by the reachback districts.

(b) *Kick-off meeting.* The PCO and contract specialists for both the supported forward district and the supporting reachback district must attend the project kick-off meetings at the start of each project. Responsibilities to the project delivery team (PDT) include advice on contract type, source selection method, use of “set-asides,” bonding level recommendations, risks inherent in that particular acquisition, special requirements that must be considered in the project milestone schedule, and other critical items that could impact successful contract award.

(c) *Systems registration.* In order to avoid delaying critical approvals and contract award, PCOs and contract specialists must be registered in appropriate systems databases early in the acquisition process.

(d) *Contract file initiation.* All contract documents will be kept in the Paperless Contract File (PCF) system.

(e) *Pre-solicitation TBC.* The PCO in the reachback district must receive an approved preliminary Theater Business Clearance (TBC) prior to executing a solicitation for the project. See the Defense Pricing and Contracting website for TBC guidance.

(2) *Award.* Contract award will be made by the reachback PCO in the contract writing system of the forward supported district.

(a) *Final TBC.* Final TBC approval must be provided by the TBC Office prior to making a contract award. The final TBC request is submitted through the Joint Contingency and Expeditionary Services (JCXS) in the same method as the interim TBC request. The final TBC approval will come with an approval number that will be

automatically be posted to the Synchronized Predeployment and Operational Tracker (SPOT) system. The SPOT system will not accept Letters of Authorization (LOA) requests without approved Government Furnished Life Support (GFLS) and final TBC clearance. Submit the same GFLS that was approved prior to solicitation. If there have been changes (e.g., number of contractor personnel receiving life support), a new GFLS will be required.

(b) *Vendor vetting.* Prior to making contract award, the reachback district must ensure the apparent successful offeror, if a foreign firm, has been vetted and is rated within the acceptable risk limits set by CENTCOM. Vendor vetting is accomplished through the JCXS website. Refer to the JCXS – TBC User Guide for additional information.

(c) *Peer reviews and other approvals.* All peer reviews, business clearances, legal sufficiency reviews, and any other required pre-award approvals will be made through the reachback district's organic channels.

(d) *Notice of Award and Notice of Unsuccessful Offeror(s).* The PCO for the reachback district will issue both the Notice of Award for the apparent successful offeror and the Notice to Unsuccessful Offerors. The Notice of Award shall contain the following requirements for the awarded contractor:

- (i) Acknowledgement of Notice of Award.
- (ii) Evidence of Defense Base Act (DBA) insurance policy for the contract.
- (iii) Adequate performance and payment bonds as required by the contract.
- (iv) Military Extraterritorial Jurisdiction Act (MEJA) acknowledgement, if applicable.
- (v) Any other plans or documents required by the Notice of Award.

(e) *Protests.* All pre-award and award protests will be adjudicated by the reachback district.

(3) *Post-award.* Reachback districts will continue to execute PCO authority through Notice to Proceed (NTP). All documents required through the Notice of Award notification to the contractor must be received and approved by the reachback contracting officer prior to issuing NTP.

(a) *SPOT.* The Government authorized individual will initiate the contract information into the SPOT system. Do not execute an NTP on the project until the contractor has loaded its company information into SPOT and has prepared LOA

requests for all required employees. All LOAs will be approved by the PCO at the forward supported district.

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

(c) *PCF and other file transfers*. After issuance of NTP, the reachback district contracting System Administrator will transfer the PCF cabinet to the Transatlantic Division (TAD) PCF cabinet for forward support district administration. Coordination with the Middle East District (TAM) contracting System Administration may be necessary to ensure the cabinet is transferred properly.

(d) *Transfer PCO authority*. Concurrent with issuance of the NTP, the PCO at the reachback district will execute a modification transferring successor PCO authority to the Contracting Division of the supported forward district. Do not transfer authority to an individual in the forward district due to the transient nature of personnel assignments in the OCO Theater.

(e) *Contract administration*. Except on rare occasions, reachback-awarded contracts will be administered by the forward supported district. Occasionally, questions arise during contract administration related to the actions that occurred during the pre-award and award phases of an acquisition. Reachback contracting personnel must be available to resolve these issues and questions to the maximum extent possible during contract administration.

(f) *Contract closeout*. Contract closeout will generally occur at the forward supported district. However, reachback support may be required in certain instances in order to properly close contracts originally awarded using reachback procedures.

Subpart 5125.77 – Acquisitions in support of operations in Afghanistan

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

(1) Procedures.

(a) The use of the authority at DFARS Subpart 225.77 is encouraged whenever it is appropriate and consistent with regulation, mission needs, and prudent business judgment. The use of this authority will contribute directly to the long-term stability, security, and economic development of Afghanistan.

(b) USACE contracting offices must develop procedures to promote competition and ensure transparency in the procurement process when utilizing this authority. USACE contracting offices shall develop lists of qualified sources for solicitation,

utilizing a variety of market research tools, to include sources sought notices posted to local and other electronic points of interface with industry. Contracting offices shall also develop procedures by which interested firms may easily nominate themselves for inclusion on list(s) of qualified sources. Contracting offices shall further ensure that solicitations are equitably distributed between firms, to include tracking how many times a particular firm has been solicited for work.

(c) In selecting the firms to compete when using the limited competition procedures, USACE contracting offices must ensure that thorough documentation exists to explain the basis for selecting a particular firm(s). Such documentation includes, but is not limited to, documentation concerning the firm's prior experience on similar USACE projects, satisfactory past performance on similar projects, and demonstrated expertise with a particular type of work. Recommendations from field personnel to solicit particular source(s), in lieu of verifiable information supporting a firm's capabilities to perform the solicited work, are inadequate to justify selecting a firm to participate in a limited competition. Except in rare cases, contracting offices will not conduct sole source acquisitions using this authority. The selection of a particular source to compete as part of a limited competition or receive an award on a sole source basis will be fully justified in the written determination as prescribed in DFARS 225.7703-2 with rationale for selecting the particular source(s).

(d) Procurements utilizing the authority at DFARS Part 225, Subpart 225.77 are not exempt from the requirements to conduct market research (FAR Part 10), to prepare acquisition plans (FAR Part 7), and to synopsise (FAR Part 5). However, depending on the dollar value and nature of the acquisition (i.e., whether it is for supplies, services, or construction), a valid exception to synopsise may apply (e.g., FAR 5.202(a)(12)). If an exception to synopsise does apply, the contract file must be appropriately documented with both the applicable exception and also the methods utilized by the contracting office to otherwise publicize the acquisition.

(2) *Senior Contracting Official (SCO) Coordination.* Prior to use of the authority at DFARS 225.77, coordinate the contract action with your SCO.

(3) *Quarterly Reports.* A report on the use of the authority in DFARS Subpart 225.77 shall be provided to SCO-ALX quarterly. The quarterly reports shall document the number of actions solicited and awarded, discuss which aspect of the authority was utilized, the dollar amounts of awards, and evidence demonstrating the District/Center's promotion of competition and transparency when using this authority.

(4) *Source Determination Criteria.* DFARS 225.7703-1(a)(3) provides authority to use other than competitive procedures to award a contract to a particular source or sources from Afghanistan. A source from Afghanistan is defined at DFARS 225.7701. Criteria as follow shall be considered in determining whether a source is located in Afghanistan:

(a) The source must be incorporated in Afghanistan or must have its principal place of business in Afghanistan, as indicated in the source's licensing or registration documentation. Contracting officers may request information from an offeror to demonstrate compliance with this criterion, either as part of the proposal submission requirements or through the responsibility determination required by FAR Subpart 9.1. Contracting officers should consult legal counsel when determining the adequacy of documentation submitted by an offeror.

(b) An Afghan source must hold a current operating license by a Government of the Islamic Republic of Afghanistan (GIROA) licensing authority with a physical address in Afghanistan. Several GIROA entities issue licenses, depending on the type of enterprise. These license-issuing entities include, but are not limited to: Afghanistan Investment Support Agency (AISA); Ministry of Commerce and Industries; Ministry of Agriculture, Irrigation and Livestock; Ministry of Communications; Ministry of Economy; Ministry of Finance; Ministry of Information and Culture; Ministry of Interior; Ministry of Justice; Ministry of Mines and Industry; Ministry of Public Health; Ministry of Rural Rehabilitation and Development; Ministry of Transportation and Civil Aviation; and Ministry of Urban Affairs.

(c) An Afghan source must hold an Afghan Tax Identification Number (TIN).

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UDG – PART 5126

OTHER SOCIOECONOMIC PROGRAMS

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UDG – PART 5127

PATENTS, DATA, AND COPYRIGHTS

Reserved

UDG – PART 5128

BONDS AND INSURANCE

UDG 5128.305-2 Required documentation for open market DBA insurance carriers. Defense Base Act (DBA) insurance carriers and their respective brokers require detailed information prior to quoting and/or setting prices for DBA insurance policies. In order to ensure contractors forward DBA insurance brokers a complete and detailed application, and to avoid delays in the application process, contracting officers shall ensure contractors are aware of the information required, which includes, but is not limited to, the following:

- Full Name of Insured or Company and Complete Mailing Address
- Telephone Number and Fax Number
- Contact Person
- Email for Contact Person
- Coverage Effective Date
- Contract or Task Order Number
- Clear description of operations (scope/statement of work, etc.)
- Performance location(s)
- Estimated size of payroll (total labor cost)
- Description of security measures at each site, if applicable
- Description of medical facilities at each site, if applicable
- Description of evaluation plans, if applicable
- Description of loss (claims) information, if applicable

UDG – PART 5129

TAXES

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UDG – PART 5130

COST ACCOUNTING STANDARDS ADMINISTRATION

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UDG – PART 5131

CONTRACT COST PRINCIPLES AND PROCEDURES

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CONTRACT FINANCING

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UDG – PART 5133

PROTESTS, DISPUTES, AND APPEALS

(Revised June 2019)

Reserved

UDG – PART 5134
MAJOR SYSTEM ACQUISITION

Reserved

USACE Desk Guide (UDG)
Version 2 dated 3 JUNE 2019

UDG – PART 5135

RESEARCH AND DEVELOPMENT CONTRACTING

Reserved

USACE Desk Guide (UDG)
Version 2 dated 3 JUNE 2019

UDG – PART 5136

CONSTRUCTION AND ARCHITECT-ENGINEER CONTRACTS

Reserved

USACE Desk Guide (UDG)
Version 2 dated 3 JUNE 2019

UDG – PART 5137
SERVICE CONTRACTING
(Revised June 2019)

Reserved

USACE Desk Guide (UDG)
Version 2 dated 3 JUNE 2019

UDG – PART 5138

FEDERAL SUPPLY SCHEDULE CONTRACTING

Reserved

UDG – PART 5139

ACQUISITION OF INFORMATION TECHNOLOGY

Reserved

UDG – PART 5140

Reserved

UDG – PART 5141

ACQUISITION OF UTILITY SERVICES

Reserved

UDG – PART 5142

CONTRACT ADMINISTRATION AND AUDIT SERVICES

Reserved

UDG – PART 5143
CONTRACT MODIFICATIONS

Reserved

USACE Desk Guide (UDG)
Version 2 dated 3 JUNE 2019

UDG – PART 5144

SUBCONTRACTING POLICIES AND PROCEDURES

Reserved

USACE Desk Guide (UDG)
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UDG – PART 5145

GOVERNMENT PROPERTY

Reserved

USACE Desk Guide (UDG)
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UDG – PART 5146
QUALITY ASSURANCE

Reserved

UDG – PART 5147
TRANSPORTATION

Reserved

USACE Desk Guide (UDG)
Version 2 dated 3 JUNE 2019

UDG – PART 5148
VALUE ENGINEERING

Reserved

UDG – PART 5149
TERMINATION OF CONTRACTS

Reserved

UDG – PART 5150

EXTRAORDINARY CONTRACTUAL ACTIONS AND THE SAFETY ACT

Reserved

USACE Desk Guide (UDG)
Version 2 dated 3 JUNE 2019

UDG – PART 5151

USE OF GOVERNMENT SOURCES BY CONTRACTORS

Reserved

UDG – PART 5152

SOLICITATION PROVISIONS AND CONTRACT CLAUSES

Reserved

USACE DESK GUIDE



ATTACHMENT 1 – DOCUMENT REVIEW AND APPROVAL MATRIX

USACE ACQUISITION DOCUMENT REVIEW AND APPROVAL MATRIX (Revised 4 March 2024)

This matrix is a guide to assist Acquisition Personnel in preparing and submitting acquisition documents for review and approval; it is not intended to substitute exercising due diligence. This matrix includes the most common acquisition documents executed by USACE that require review and approval above the Contracting Officer - it is not all inclusive. Contracting Officers shall ensure compliance with all FAR, DFARS, AFARS, and applicable DoD/Army policy requirements.

In the absence of the SCO, the documents will be submitted for HCA approval.
 The below time frames are provided for planning purposes only. Specific time frames can be negotiated on a case by case basis with the appropriate approving official during the project planning phase.

NOTE:

For acquisition milestone planning purposes, "Approximate Total Approval Days" means "business days".

DOCUMENT AND REGULATORY CITE(S)	DOLLAR THRESHOLD	APPROVAL AUTHORITY	APPROX. TOTAL APPROVAL DAYS
ACQUISITION PLAN / ADDENDUM TO THE ACQUISITION PLAN			
Acquisition Plans - Construction (stand-alone and indefinite-delivery, indefinite-quantity (IDIQ)) AFARS 5107.103(d)(ii), UAI 5107.103 *SCO may designate a procurement for formal acq plan regardless of dollar value.	<\$100M* (informal acq plan)	KO	10
	≥\$100M (formal acq plan)	SCO	40
Acquisition Plans - Services (Exclusive of ECI Acquisition Plans) DFARS 207.103(d)(i)(B), AFARS 5107.103-90(a)(2), AFARS Appendix GG, UAI 5107.103-90(a)(2)	≥\$25M for any FY (non-PEO/direct-reporting program manager acquisitions)	SCO	40
	≥\$50M for all years (non-PEO/direct-reporting program manager acquisitions)	SCO	40
	Special Interest	HCA	40
Acquisition Plans - (Programs assigned to program executive officers (PEOs) or program managers reporting directly to the Army Acquisition Executive) DFARS 207.103(d)(i)(B), AFARS 5107.103-90(a)(1), AFARS Appendix GG	≥ \$25M for any FY	Cognizant PEO or Direct-Reporting Program Manager	40
	≥ \$50M for all years		40

DOCUMENT AND REGULATORY CITE(S)	DOLLAR THRESHOLD	APPROVAL AUTHORITY	APPROX. TOTAL APPROVAL DAYS
Acquisition Plans using Early Contractor Involvement (ECI) for any MILCON actions - Required approvals outside the contracting chain <i>UDG Attachment 10, ECI</i>	> \$0	Coordination and Approval by MSC Program Director and Chief, Program Integration Division (CEMP-I) to use ECI	40
Acquisition Plans using Early Contractor Involvement - contracting chain approvals <i>UAI 5107.103(d)(i)(D), UAI 5107.103-90(a)(2), UDG Attachment 10, ECI</i>	> \$0	SCO	40
	Special Interest	HCA	40
Acquisition Plans - Research and Development (R&D) acquisitions <i>DFARS 207.103(d)(i)(A), AFARS 5107.103-90(a)(2), UAI 5107.103-90(a)(2)</i>	≥\$10M	SCO	40
	Special Interest	HCA	40
Addendum to the Acquisition Plan	Approval at Same Level as Acq Plan		12

DOCUMENT AND REGULATORY CITE(S)	DOLLAR THRESHOLD	APPROVAL AUTHORITY	APPROX. TOTAL APPROVAL DAYS
ACQUISITION STRATEGY			
Acquisition Strategy <i>AFARS 5137.590-3(a), UAI 5137.590-3(a)</i>	≥\$SAT to <\$10M	CoCO* (*If CoCO is KO, Approval Authority is SCO)	10
	≥\$10M to <\$100M	CoCO*	40
	≥\$100M to <\$250M	SCO	40
	≥\$250M	DASA(P) or SSM	45
APPOINTMENTS			
Award Fee Determining Official Appointment <i>AFARS 5116.405-2(2)(B)</i>	> \$0	SCO	10
Contracting Officer (KO) and Grants Officer Warrants <i>AFARS 5101.603-1(3), UAI 5101.603-1(3)(i)</i>	> \$0	SCO	10
Use of contractor support (Non-Government Advisors) in a source selection evaluation <i>AFARS 5137.204, UAI 5137.204</i>	> \$0	SCO	15
Source Selection Authority Appointment <i>AFARS 5115.303(a)(i), UAI 5115.300-100(c)(1)</i>	<\$100M	SCO* (*If PCO is not SSA, SCO appoints SSA)	7
	≥\$100M to ≤\$500M	SCO	7
	>\$500M (Other than services)	SCO	7
	>\$500M (Services)	DASA(P)	20

DOCUMENT AND REGULATORY CITE(S)	DOLLAR THRESHOLD	APPROVAL AUTHORITY	APPROX. TOTAL APPROVAL DAYS
ACQUISITION OF SERVICES - COST BENEFIT ANALYSIS to Support Army Enterprise Decision Making on Service Requirements			
Approval of a cost benefit analysis <i>DASA(P) Policy Alert 14-36 Rev 1</i>	≥ \$10M	Same Approval Authorities as for Acquisition Strategies	Same Approval Days as for Acquisition Strategies
COMPLIANCE REVIEWS			
Every contract action <i>UAI 5101.170-100</i>	> \$0	KO	15

DOCUMENT AND REGULATORY CITE(S)	DOLLAR THRESHOLD	APPROVAL AUTHORITY	APPROX. TOTAL APPROVAL DAYS
CONGRESSIONAL NOTIFICATION			
Congressional notification <i>DFARS 205.303(a)(i), AFARS 5105.303(a)(ii)</i>	> \$7.5M	DASA(P)	3
Urgent congressional notification <i>DFARS 205.303(a)(i), AFARS 5105.303(a)(4), AFARS 5105.303(a)(3)</i>	> \$7.5M	DASA(P)	1
CONTINGENCY CONTRACTING			
Contingency Contracting Micro-purchase Threshold (awarded/performed /purchased OCONUS) <i>FAR 2.101, FAR 18.201 and 18.202, UAI 5118.2</i>	\$35K	HCA determines the acquisition of supplies or services to support a contingency operation or to facilitate defense against or recovery from nuclear, biological, chemical, or radiological events.	
Contingency Contracting Simplified Acquisition Threshold (awarded/performed/purchased OCONUS) <i>FAR 2.101, FAR 18.201 and 18.202, UAI 5118.2</i>	\$1.5M	HCA determines the acquisition of supplies or services to support a contingency operation or to facilitate defense against or recovery from nuclear, biological, chemical, or radiological events.	
For products or services to be used <u>only</u> by the military forces, police, or other security personnel of Afghanistan <i>DFARS 225.7703-2(a)</i>	> \$0	KO	7
For an <u>Individual Acquisition</u> of products or services <u>not limited</u> to use by the military forces, police, or other security personnel of Afghanistan <i>Class Deviation 2020-O0002, DFARS 225.7799-2(b)(1)</i>	< \$93M ≥ \$93M	KO HCA	40 70
For a <u>Class of Acquisitions</u> of products or services <u>not limited</u> to use by the military forces, police, or other security personnel of Afghanistan <i>Class Deviation 2020-O0002, DFARS 225.7799-2(b)(1)</i>	> \$0	HCA	70

DOCUMENT AND REGULATORY CITE(S)	DOLLAR THRESHOLD	APPROVAL AUTHORITY	APPROX. TOTAL APPROVAL DAYS
DETERMINATION - ACQUISITION STRATEGY FOR NON-PERFORMANCE BASED ACQUISITIONS			
Acquisition of Services - not performance based <i>DFARS 237.170-2(a)(1) and (2), AFARS 5137.170-2(a)(1), AFARS Appendix GG, UAI 5137.170-2(a)(1)</i>	≤ \$100M	SCO	40
	> \$100M	SPE	45
DETERMINATION - CONSOLIDATION			
Determination of Consolidation of Contract Requirements AFARS <i>5107.107-2, AFARS Appendix GG, UAI 5107.107-2-100</i> <i>*Construction Exception for stand-alone and indefinite-delivery, indefinite-quantity (IDIQ) construction acquisitions.</i>	>\$2M to <\$25M for any FY or <\$50M for all years <\$100M*	CoCO	20
	≥\$25M for any FY or ≥\$50M for all years to <\$500M	SCO	30
	≥\$100M to <\$500M*		
	≥\$500M	DASA (P)	40
DETERMINATIONS AND FINDINGS (D&F) AND DETERMINATIONS - CONTRACT TYPE			
D&F for Justification of Contract Type - Cost-Reimbursement <i>DFARS 216.301-3(2), AFARS 5116.301-3, UAI 5116.301-3</i>	> \$25M	SCO	30
D&F for Justification of Contract Type - Incentive Contracts <i>FAR 16.401(d), UAI 5116.401(d)</i>	> \$0	CoCO	20
D&F for Justification of Contract Type - Award-Fee Contracts <i>FAR 16.401(d), UAI 5116.401(e)(iii)</i>	> \$0	SCO	30
Use of Time and Material (T&M) Contract and Labor-hour Contract prior to execution of the base period or any option periods of three years or less <i>FAR 16.601(d)(1)(i), DFARS 216.601(d)(i)(A)(1)</i>	≤ \$1M	CoCO* (*If CoCO is KO, Approval Authority is SCO)	10
	> \$1M	SCO	20
Use of T&M Contract and Labor-hour Contract prior to execution of the base period when the base period plus options exceeds three years <i>FAR 16.601(d)(1)(ii), DFARS 216.601(d)(i)(A)(2)</i>	> \$0	HCA	30
Use of letter contracts (undefinitized contract actions) <i>FAR 16.603-3, DFARS 217.7404-1, UAI 5117.7404-1</i>	> \$0	SCO	10
Other than full and open competitions for International Agreement competitive restriction <i>UAI 5106.302-4(c)</i>	> \$0	CoCO	30

DOCUMENT AND REGULATORY CITE(S)	DOLLAR THRESHOLD	APPROVAL AUTHORITY	APPROX. TOTAL APPROVAL DAYS
DETERMINATIONS - MISCELLANEOUS			
Determination to reject offers suspected of being collusive if the disclosure was made for the purpose or had the effect of restricting competition <i>FAR 3.103-2(b)(2)</i>	> \$0	CoCO	30
Determination, for that particular solicitation, that a number greater than five offerors is in the Government's interest and is consistent with the purposes and objectives of the two-phase design-build selection procedures <i>FAR 36.303-1(a)(4), UAI 5136.303-1(a)(4)</i>	< \$4M	KO	30
	≥ \$4M	SCO	40
DETERMINATION - ORGANIZATIONAL CONFLICTS OF INTEREST			
Organizational Conflict of Interest (OCI) written analysis to avoid, mitigate, or neutralize a potential or actual OCI <i>FAR 9.506(b); See also "Waivers for OCI" Below</i>	> \$0	CoCO	10
DETERMINATION - SINGLE AWARD TASK ORDER CONTRACTS			
Determination for use of Single Award Task Order Contract (SATOC)/Single Source <i>FAR 16.504(c)(1)(ii)(D)(1), DFARS 216.504(c)(1)(ii)(D)(1), AFARS 5116.504(c)(1)</i> <i>EXCEPTION: IAW DFARS 216.504(c)(1)(ii)(D)(3), Determination is not required when a justification has been executed IAW FAR Subpart 6.3 and DFARS Subpart 206.3</i>	> \$100M	SCO	40

DOCUMENT AND REGULATORY CITE(S)	DOLLAR THRESHOLD	APPROVAL AUTHORITY	APPROX. TOTAL APPROVAL DAYS
DETERMINATIONS TO OBTAIN CERTIFIED COST OR PRICING DATA BELOW THE THRESHOLD			
Authorize KO to obtain certified cost or pricing data on actions below the threshold <i>FAR 15.403-4(a)(2)</i>	< \$750K* (*contract awarded on or before 30 Jun 18) < \$2M	HCA	30
INTERAGENCY ACQUISITIONS			
Concurrence to use non-DoD contract prior to public announcement of the requirement. <i>AFARS 5117.770, AFARS Appendix GG</i>	≥ SAT to < \$50M	KO	5
	≥ \$50M to < \$250M	CoCO	10
	≥ \$250M	SCO	30
JUSTIFICATION AND APPROVALS			
Justification and Approval <i>FAR 6.304(a), FAR 8.405-6(d), FAR 16.505(b), UAI 5106.304(a)</i>	≤ \$750K	KO	7
	> \$750K to ≤ \$15M	CAFC/Alternate AFC	14
	> \$15M to ≤ \$100M	HCA	30
	> \$100M	SPE	40
Justification for Sole Source Award to 8(a) <i>FAR 6.204(b), 6.302-5(b)(4) and 6.303-1(b)</i>	> \$100M	HCA	30
MISCELLANEOUS ACTIONS			
Endorse documents related to procurement matters that require approval by HQDA <i>AFARS 5101.290(a)(1), UAI 5101.290(a)(1)</i>	Per Regulation	HCA	Per Document Type Approval
Approve individual deviations to FAR, DFARS, and AFARS <i>AFARS 5101.403(1), UAI 5101.403(1)</i>	Per Regulation	SCO	Per Document Type Approval
Award without equal employment opportunity preaward clearance <i>FAR 22.805(a)(8), UAI 5122.805(a)(8)</i>	> \$0	CoCO	30
Use of Letter Contracts Limitations <i>FAR 16.603-3, UAI 5116.603-3</i>	> \$0	SCO	7
Use of Unfinalized Contract Actions <i>DFARS 217.7404-1, UAI 5117.7404-1</i>	> \$0	SCO	7
Appeal by the Small Business Administration procurement center representative of the contracting officer's rejection of a set-aside recommendation decision <i>FAR 19.505(b), DFARS 219.505(b), UAI 5119.505(b)</i>	> \$0	CoCO	10
Release of long range acquisition estimates <i>FAR 5.404-1(a), AFARS 5105.404-1(a), UAI 5105.404-1(a)</i>	> \$0	CoCO	14

DOCUMENT AND REGULATORY CITE(S)	DOLLAR THRESHOLD	APPROVAL AUTHORITY	APPROX. TOTAL APPROVAL DAYS
Violations or possible violations of Procurement Integrity Act <i>FAR 3.104-7, AFARS 5103.104-7, UAI 5103.104-7</i>	> \$0	HCA	30
No share of collateral savings under the Value Engineering Clause and use of the clause's Alternate I <i>FAR 48.104-3(a), UAI 5148.104-3(a)</i>	> \$0	CoCO	14
Award/Extension of contracts for >18 months for a vessel, aircraft or vehicle lease, charter or similar agreement <i>DFARS 207.470(b), UAI 5107.470(b)</i>	> \$0	CoCO	30
Use of Fixed-Ceiling-Price Contract with Retroactive Price Redetermination – for R&D only <i>FAR 16.206-3 (a), (d)</i>	≤ \$150K	HCA	14
Use of alternate structured approach in determining profit or fee objectives <i>DFARS 215.404-4(c)(2)(C)(2), UAI 5115.404-4(c)(2)(C)(2)</i>	> \$0	CoCO	14
Deny contractor request for relief under Public Law 85-804 <i>FAR 50.102-1(b), DFARS 250.102-1(b)</i>	≤ \$75K > \$75K	HCA ASA	30
Approve substitution of a surety bond <i>FAR 28.106-2 (a), UAI 5128.106-2(a)</i>	> \$0	CoCO	14
Issuance of a Personal Services Contract <i>DFARS 237.104(b)(iii)(A)(2), AFARS 5137.104(b)(iii)(A)(2), UAI 5137.104(b)(iii)(A)(2)</i>	> \$0	SCO	30
Exceptions to Policy <i>FAR 3.602, AFARS 5103.602</i>	> \$0	HCA	30
Receive notice of suspected violations of Gratuities clause received from military commander over the contract (exempt report, Army Regulation 335-15, paragraph 5-2) <i>AFARS 5103.203(a)(ii), UAI 5103.203(a)(ii)(C)</i>	> \$0	HCA	30
Buy American - Supplies Individual Determinations for Public Interest Exceptions <i>AFARS 5125.103(a)(ii), UAI 5125.103(a)(ii)(B)</i>	≤ SAT	One level above KO	10
	> SAT to ≤ \$1.5M	SCO	30
	> \$1.5M	HCA	40
Buy American - Supplies Individual Determinations for Non-Availability Exception <i>AFARS 5125.103(b)(ii), UAI 5125.103(b)(2)(i)</i>	≤ SAT	One level above KO	10
	> SAT to ≤ \$1.5M	CoCO	30
	> \$1.5M	SCO	40
Buy American - Construction Materials Individual Determinations for Impracticable Exception <i>AFARS 5125.202(a)(1), AFARS Appendix GG</i>	> \$0	HCA	30
Buy American - Construction Materials Individual Determinations for Public Interest Exception <i>AFARS 5125.202(a)(1), AFARS Appendix GG</i>	> \$0	ASA(ALT)	40

DOCUMENT AND REGULATORY CITE(S)	DOLLAR THRESHOLD	APPROVAL AUTHORITY	APPROX. TOTAL APPROVAL DAYS
Buy American--Construction Materials Non-Availability Exception AFARS 5125.202(a)(2), AFARS Appendix GG, UAI 5125.202(a)(2)	≤ SAT	One level above KO	10
	> SAT to ≤ \$1.5M	CoCO	30
	> \$1.5M	SCO	40
Approve exception to prohibition against issuance of a solicitation for R&D contract incrementally funded over successive years AFARS 5132.702(a)(ii)(D), UAI 5132.702(a)(ii)(D)	> \$0	SCO	30

DOCUMENT AND REGULATORY CITE(S)	DOLLAR THRESHOLD	APPROVAL AUTHORITY	APPROX. TOTAL APPROVAL DAYS
PEER REVIEWS			
Approval to waive peer reviews <i>AFARS 5101.170 (b)(v)(C), UAI 5101.170(c)(6)</i>	Waiver peer review authority is commensurate with the peer review level (see below)		
PEER REVIEWS - PRE-AWARD			
Prior to solicitation issuance and prior to contract award (Competitive acquisitions) <i>AFARS 5101.170(c), UAI 5101.170(c)</i>	≥ \$50M to < \$100M*	CoCO (*If CoCO is not the SSA) SCO	10
	≥ \$100M to < \$1B	SCO	15
Non-Competitive acquisitions – prior to entering negotiations and prior to contract award <i>DFARS 201.170(a)(1)(ii), AFARS 5101.170(c), UAI 5101.170(c)</i>	≥ \$50M to < \$1B	SCO	15
	≥ \$1B	DPC	55
Competitive acquisitions – prior to solicitation issuance, prior to requesting final proposal revisions, and prior to contract award <i>DFARS 201.170(a)(1)(i), PGI 201.170-2, AFARS 5101.170(c), UAI 5101.170(c)</i> <small>* ≥ \$1B: applicable only to major defense acquisition programs where Under Secretary of Defense for Acquisition and Sustainment (USD(A&S)) is the milestone decision authority and USD(A&S) special interest programs. **HCA: except for DASA(P) special interest acquisitions</small>	> \$100M to < \$1B	SCO	15
	≥ \$1B	HCA**	55
	≥ \$1B*	DPC	55
PEER REVIEWS - INDEPENDENT MANAGEMENT REVIEWS			
Service acquisitions <i>AFARS 5101.170(c)(v), and UAI 5101.170(c)(v)</i>	≥ \$100M to < \$1B	SCO	30
UNAUTHORIZED COMMITMENTS			
Ratify Unauthorized Commitments <i>FAR 1.602-3(b)(3), AFARS 5101.602-3(b)(3), UAI 5101.602-3(b)(3)</i>	≤ \$10K	CoCO	7
	> \$10K to ≤ \$100K	SCO	14
	> \$100K	HCA	30
Approval of Quantum Meruit nonratifiable commitments under Contract Disputes Act <i>UAI 5101.602-100(a)</i>	≤ \$10K	CoCO	7
	> \$10K to ≤ \$100K	SCO	14
	> \$100K	HCA	30

DOCUMENT AND REGULATORY CITE(S)	DOLLAR THRESHOLD	APPROVAL AUTHORITY	APPROX. TOTAL APPROVAL DAYS
WAIVERS			
Waive requirement to use forward pricing rate agreement rates <i>DFARS 215.407-3(b)(i), UAI 5115.407-3(b)(i)</i>	When such rates are available	CoCO	14
Waiver of a general rule or procedure within FAR subpart 9.5 regarding Organizational and Consultant Conflict of Interest <i>FAR 9.506(d)(3), AFARS 5109.503</i>	> \$0	HCA	30
Waive requirement to include FAR clause 52.214-27, Price Reduction for Defective Certified Cost or Pricing Data - Modifications - Sealed Bidding OR FAR clause 52.214-28, Subcontractor Certified Cost or Pricing Data - Modifications - Sealed Bidding in a Contract with a Foreign Government or Agency of that Government <i>FAR 14.201-7(b)(2) and (c)(2), UAI 5114.201-7(b)(2) and (c)(2)</i>	> \$0	SCO	14
Waive requirement to include FAR clause 52.228-7, Insurance-Liability to Third Persons <i>DFARS 228.311-1, UAI 5128.311-1</i>	> \$0	SCO	30
Waive requirement for submission of certified cost or pricing data <i>FAR 15.403-1(c)(4)</i>	< \$750K* (*contract awarded on or before 30 Jun 18) < \$2M	HCA	14

USACE DESK GUIDE



ATTACHMENT 2 – COR CERTIFICATION AND TRAINING STANDARDS

USACE STANDARD FOR CERTIFICATION OF CONTRACTING OFFICER'S REPRESENTATIVES FOR ALL ACQUISITIONS

(Revised 4 March 2024)

TYPE A

NATURE OF WORK	REQUIRED COMPETENCY TOPICS	REQUIRED COMPETENCIES	EXPERIENCE/TRAINING REQUIREMENTS
<p>Fixed-Price requirements without incentives, low to medium performance risk with minimal complexity.</p> <p>Attributes of such requirement might include:</p> <ul style="list-style-type: none"> * Lack of technical or administrative complexity * No identifiable risk factors * Limited requirement for technical expertise * Low likelihood of modification * Effort is follow-on to an existing contract. <p>COR duties and responsibilities are generally limited to minimal technical and/or administrative monitoring of the contract.</p> <p>USACE Contract Types requiring Type A COR Training include:</p> <p>* Firm Fixed Price</p> <p>Note: USACE KOs may require Type B or C training on Firm Fixed Price contracts, depending on the technical complexity, contract value, or other relevant factors.</p>	<p><u>General:</u></p> <ul style="list-style-type: none"> * Attention to detail * Decision making * Flexibility * Oral and written communication * Problem solving and reasoning * Self-management and initiative * Teamwork <p><u>Technical:</u></p> <p>Competent via training and experience in the technical aspects of the contract requirements and demonstrates administrative and technical competencies in the following areas:</p> <ul style="list-style-type: none"> * Business ethics * Effective communication of contract requirements * Effective contract performance management * Effective COR performance 	<p>Upon completion of mandatory training, COR should be able to perform at least the following competencies in a manner consistent with the nature of Type A work or requirements:</p> <ul style="list-style-type: none"> * Assist in acquisition planning * Assist in contract award process * Establish and maintain COR file with all required documentation * Identify and prevent unethical conduct and instances of fraud, waste, and abuse * Perform technical/administrative monitoring and reporting duties in accordance with the letter of designation and surveillance plan * Recommend contract changes and monitor modifications * Monitor contract expenditures and payments * Monitor contract schedule compliance * Perform liaison duties between KO and Contractor for management of contract * Inspect and accept or reject deliverables during contract performance and at close-out in conformance with contract * Monitor the control and disposition of Government furnished assets * Perform surveillance in a contingency environment, when applicable 	<p><u>Experience:</u></p> <ul style="list-style-type: none"> * Agency experience: Timeframe as per DoDI 5000.72, DoD Standard for Contracting Officer's Representative (COR) Certification. * Relevant technical experience: As recommended by the COR's supervisor and determined by the KO * General competencies: As recommended by the COR's supervisor and determined by the KO <p><u>Initial Training:</u></p> <ul style="list-style-type: none"> * DAU CLC 106, Contracting Officer's Representative with a Mission Focus * DAU CLC 206, COR in a Contingency Environment, when applicable * Army JAG School Fiscal Law Training or equivalent (check with local RM) * USACE Prospect Course 366, CORs on Construction Contracts (Recommended) * Combating Trafficking in Persons <p>Note: CORs on A-E contracts must also satisfy training requirements in EP 715-1-7 and comply with provisions of ER 1110-3-12.</p> <p><u>Annual Training (including 1st Year):</u></p> <ul style="list-style-type: none"> * Ethics training (e.g., DAU or USACE-provided) * USACE Learning Network Fiscal Law Refresher Training or equivalent (check with local RM) <p><u>Refresher Training:</u></p> <ul style="list-style-type: none"> * Minimum of 8 hours COR-specific training every 3 years for appointed/serving CORs. The minimum 8 hours COR-specific training is required if the individual being appointed has not served as a COR within the previous 24 months of appointment. * Combating Trafficking in Persons 3 years (DoDI 5000.72, Change 2 (6 Nov 20)) <p><u>Other:</u></p> <p>CORs serving on A-E contracts are required to be registered professional engineers or architects unless Center/District Chief of Engineering waives the requirement in writing.</p>

USACE STANDARD FOR CERTIFICATION OF CONTRACTING OFFICER'S REPRESENTATIVES FOR ALL ACQUISITIONS

(Revised 4 March 2024)

TYPE B			
NATURE OF WORK	REQUIRED COMPETENCY TOPICS	REQUIRED COMPETENCIES	EXPERIENCE/TRAINING REQUIREMENTS
<p>Service requirements where there is medium to high performance risk with greater complexity than Type A.</p> <p>Attributes of such requirement might include:</p> <ul style="list-style-type: none"> * Nature of work is more complex * Effort will be performed in multiple regions and/or remote geographic locations * Need for increased surveillance * Magnitude of the requirement * Contract contains incentive arrangements or cost sharing provisions <p>COR duties and responsibilities are increased complexity over Type A.</p> <p>USACE Contract Types requiring Type B COR Training include:</p> <ul style="list-style-type: none"> * Firm Fixed Price * Fixed Price with Economic Price Adjustment * Fixed Price Level of Effort * Fixed Price Incentive Fee * Fixed Price Award Fee * Time and Materials * Labor Hours <p>Note: USACE KOs may require Type C training on the above contract types, depending on the technical complexity, contract value, or other relevant factors.</p>	<p>General:</p> <ul style="list-style-type: none"> * Attention to detail * Decision making * Flexibility * Influencing and persuasive interpersonal skills * Oral and written communication * Planning and evaluating * Problem solving and reasoning * Self-management and initiative * Teamwork <p>Technical: Competent via training and experience in the technical aspects of the contract requirements and demonstrates administrative and technical competencies in the following areas:</p> <ul style="list-style-type: none"> * Business ethics * Defining Government requirements * Understanding and knowledge of contract type * Effective analytic skills * Effective communication of contract requirements * Effective contract performance management * Effective COR performance * Project management * Strategic planning * Understanding the marketplace 	<p>Upon completion of mandatory training, COR should be able to perform at least the following competencies in a manner consistent with the nature of Type B work or requirements:</p> <ul style="list-style-type: none"> * Assist in acquisition planning * Assist in contract award process * Establish and maintain COR file with all required documentation * Identify and prevent unethical conduct and instances of fraud, waste, and abuse * Review technical deliverables and ensure compliance with SOW or SOO in accordance with letter of designation and surveillance plan * Perform administrative monitoring and reporting duties in accordance with the letter of designation and surveillance plan * Recommend contract changes and monitor modifications * Monitor contract expenditures and payments * Monitor contract schedule compliance * Perform liaison duties between KO and Contractor for management of contract * Inspect and accept or reject deliverables during contract performance and at close-out in conformance with contract * Review and validate that contractor payment requests are commensurate with performance * Monitor the control and disposition of Government furnished assets * Perform surveillance in a contingency environment, when applicable 	<p>Experience:</p> <ul style="list-style-type: none"> * Agency experience: Timeframe as per DoDI 5000.72, DoD Standard for Contracting Officer's Representative (COR) Certification. * Relevant technical experience: As recommended by the COR's supervisor and determined by the KO * General competencies: As recommended by the COR's supervisor and determined by the KO <p>Initial Training:</p> <ul style="list-style-type: none"> * DAU CLC 222, Contracting Officer's Representative, or equivalent * DAU CLC 206, COR in a Contingency Environment, when applicable * Army JAG School Fiscal Law Training or equivalent (check with local RM) * USACE Prospect Course 366, CORs on Construction Contracts (Recommended) * Combating Trafficking in Persons <p>Note: CORs on A-E contracts must also satisfy training requirements in EP 715-1-7 and comply with provisions of ER 1110-3-12.</p> <p>Annual Training (including 1st Year):</p> <ul style="list-style-type: none"> * Ethics training (e.g., DAU or USACE-provided) * USACE Learning Network Fiscal Law Refresher Training or equivalent (check with local RM) <p>Refresher Training:</p> <ul style="list-style-type: none"> * Minimum of 16 hours COR-specific training every 3 years for appointed/serving CORs. The minimum 16 hours COR-specific training is required if the individual being appointed has not served as a COR within the previous 24 months of appointment. * Combating Trafficking in Persons 3 years (DoDI 5000.72, Change 2 (6 Nov 20)) <p>Other: CORs serving on A-E contracts are required to be registered professional engineers or architects unless Center/District Chief of Engineering waives the requirement in writing.</p>

USACE STANDARD FOR CERTIFICATION OF CONTRACTING OFFICER'S REPRESENTATIVES FOR ALL ACQUISITIONS

(Revised 4 March 2024)

TYPE C			
NATURE OF WORK	REQUIRED COMPETENCY TOPICS	REQUIRED COMPETENCIES	EXPERIENCE/TRAINING REQUIREMENTS
<p>Unique or complex contract requirements that necessitate a professional license, higher education or specialized training beyond the Type B requirements.</p> <p>Such requirements might include, for example:</p> <ul style="list-style-type: none"> * Environmental remediation * Major systems acquisitions * Medical/Dental/Veterinarian services * Early Contractor Involvement * Major construction <p>COR duties and responsibilities are of increased complexity over Type B.</p> <p>USACE Contract Types requiring Type C COR Training include:</p> <ul style="list-style-type: none"> * Firm Fixed Price * Cost Plus Fixed Fee * Cost Plus Incentive Fee * Cost Plus Award Fee * Cost Sharing * Early Contractor Involvement * Fixed Price Incentive 	<p>General:</p> <ul style="list-style-type: none"> * Attention to detail * Decision making * Flexibility * Influencing and persuasive interpersonal skills * Oral and written communication * Planning and evaluating * Problem solving and reasoning * Self-management and initiative * Teamwork <p>Technical: Competent via training and experience in the technical aspects of the contract requirements and demonstrates administrative and technical competencies in the following areas:</p> <ul style="list-style-type: none"> * Business ethics * Defining Government requirements * Understanding and knowledge of contract type * Effective analytic skills * Effective communication of contract requirements * Effective contract performance management * Effective COR performance * Project management * Strategic planning * Understanding the marketplace 	<p>Upon completion of mandatory training, COR should be able to perform at least the following competencies in a manner consistent with the nature of Type C work or requirements:</p> <ul style="list-style-type: none"> * Assist in acquisition planning * Assist in contract award process * Establish and maintain COR file with all required documentation * Identify and prevent unethical conduct and instances of fraud, waste, and abuse * Review technical deliverables and ensure compliance with SOW or SOO in accordance with letter of designation and surveillance plan * Perform administrative monitoring and reporting duties in accordance with the letter of designation and surveillance plan * Recommend contract changes and monitor modifications * Monitor contract expenditures and payments * Monitor contract schedule compliance * Perform liaison duties between KO and Contractor for management of contract * Inspect and accept or reject deliverables during contract performance and at close-out in conformance with contract * Review and validate that contractor payment requests are commensurate with performance * Monitor the control and disposition of Government furnished assets * Perform surveillance in a contingency environment, when applicable 	<p>Experience:</p> <ul style="list-style-type: none"> * Agency experience: Timeframe as per DoDI 5000.72, DoD Standard for Contracting Officer's Representative (COR) Certification. * Relevant technical experience: As recommended by the COR's supervisor and determined by the KO * General competencies: As recommended by the COR's supervisor and determined by the KO <p>Initial Training:</p> <ul style="list-style-type: none"> * DAU CLC 222, Contracting Officer's Representative, or equivalent * DAU CLC 206, COR in a Contingency Environment, when applicable * Army JAG School Fiscal Law Training or equivalent (check with local RM) * USACE Prospect Distributed Learning Courses: <ul style="list-style-type: none"> - USACE PDBP, Introduction and Overview (762) - USACE PDBP, Working with PMBP (763) NOTE: PDBP 763 is currently waived thru 30 Sep 2024 * USACE Prospect Course 366, CORs on Construction Contracts (Recommended) * Combating Trafficking in Persons <p>Note: CORs on A-E contracts must also satisfy training requirements in EP 715-1-7 and comply with provisions of ER 1110-3-12.</p> <p>Annual Training (including 1st Year):</p> <ul style="list-style-type: none"> * Ethics training (e.g., DAU or USACE-provided) * USACE Learning Network Fiscal Law Refresher Training or equivalent (check with local RM) <p>Refresher Training:</p> <ul style="list-style-type: none"> * Minimum of 24 hours COR-specific training every 3 years for appointed/serving CORs. The minimum 24 hours COR-specific training is required if the individual being appointed has not served as a COR within the previous 24 months of appointment. * Combating Trafficking in Persons 3 years (DoDI 5000.72, Change 2 (6 Nov 20)) <p>Other: CORs serving on A-E contracts are required to be registered professional engineers or architects unless Center/District Chief of Engineering waives the requirement in writing.</p>

USACE DESK GUIDE



ATTACHMENT 3 – IGE SIGNATORY MATRIX

MATRIX-DEVELOPMENT, REVIEW AND APPROVAL OF GOVERNMENT ESTIMATES			INDEPENDENT GOVERNMENT ESTIMATE (IGE) ¹		
CONTRACT TYPE	CONTRACT VALUE	MEASUREMENT	PREPARATION	REVIEW	APPROVAL OR VALIDATION ²
Construction Contracts	Less than Simplified Acquisition Threshold ³	Price Reasonableness Method ⁴	per PCO discretion	per PCO	per PCO discretion
	greater than SAT (Note: all unilateral contract actions regardless of size)	IGE Required	Cost Engineering Organization ⁵	Chief, Cost Engineering Organization ⁵ or their Delegated Authority	District Commander or their Delegated Authority ^{5b}
Construction Contracts - Military Programs Sustainment, Restoration, and Modernization (SRM) ⁸	Less than \$2,000,000 for which a risk analysis has been conducted and evaluated to be "low risk" ⁹	IGE Required	Cost Engineering Organization or Area/Resident Engineer staff ⁵	Chief, Cost Engineering Organization ⁵ or their Delegated Authority	District Commander or their Delegated Authority ^{5b}
Construction Contract Modifications and Claims	Less than Simplified Acquisition Threshold ³	Price Reasonableness Method ⁴	per PCO or ACO discretion	per PCO or Area/Resident's Engineer's discretion	per PCO or Area/Resident's Engineer's discretion
	SAT to \$500,000	IGE Required	Area/Resident Engineer staff or Cost Engineering Organization ⁵	Chief, Cost Engineering Organization ⁵ or their Delegated Authority ^{5a}	District Commander or their Delegated Authority ^{5a}
	greater than \$500,000	IGE Required	Cost Engineering Organization ⁵ w/support of Area/Resident Engineer staff	Chief, Cost Engineering Organization ⁵ or their Delegated Authority	District Commander or their Delegated Authority ^{5b}
Supply / Services without Construction Activities	Less than Simplified Acquisition Threshold		per PCO's discretion	per PCO's discretion	per PCO's discretion
	Equal to or greater than Simplified Acquisition Threshold	IGE Required	Project Delivery Team ⁶	Competent individual employed by the Government, one management level above or organizationally independent of the "IGE preparer"	District Commander or their Delegated Authority
Supply / Services with Construction Activities ⁷	Less than Simplified Acquisition Threshold	Price Reasonableness Method ⁴	per PCO's discretion	per PCO's discretion	per PCO's discretion
	Equal to or greater than Simplified Acquisition Threshold	IGE Required	Cost Engineering Organization ⁵	Chief, Cost Engineering Organization ⁵ or their Delegated Authority	District Commander or their Delegated Authority ^{5b}
Architect Engineer Contract	Less than Simplified Acquisition Threshold	Price Reasonableness Method ⁵	per PCO's discretion	per PCO's discretion	Section Chief or 1st Line Supervisor
	More than Simplified Acquisition Threshold and less than \$500,000	IGE Required	Design Manager or equivalent technical position	Competent individual employed by the Government, one management level above or organizationally independent of the "IGE preparer;"	Chief, Cost Engineering Organization or Branch Chief or 2nd Line Supervisor
	More than \$500,000	IGE Required	Design Manager or equivalent technical position	Competent individual employed by the Government, one management level above or organizationally independent of the "IGE preparer;"	Engineering Division Chief
Information Technology	Less than Simplified Acquisition Threshold	Price Reasonableness Method ⁴	per PCO's discretion	per PCO's discretion	per PCO's discretion
	Equal to or greater than Simplified Acquisition Threshold	IGE Required	Project Delivery Team ⁶	Competent individual employed by the Government, one management level above or organizationally independent of the "IGE preparer;"	District Commander or their Delegated Authority
¹ "IGE" is an formal official government document prepared in accordance with ER 1110-1-1300 Cost Engineering Policy and General Requirements.					
² IGE Approver shall <u>not</u> be the PCO or ACO for the acquisition					
³ SAT is as defined in FAR 2.101.					
⁴ "Price Reasonableness Method" as defined within regulations with determination of services and construction items made by the KO and the PDT with cost engineering representation. The PCO may request IGE if deemed necessary or appropriate. FAR 31.201					
⁵ "Cost Engineering Organization" - is the single cost engineering group located in a district/center/division designated to perform the cost engineering function. IGEs must be accurately prepared using the corporate automated cost estimating systems, e.g., latest approved version of Microcomputer Aided Cost Estimating System (MCACES) or a system previously approved by the chief of the cost engineering office. ^{5a} Delegated Authority is intended to be the appropriate member of the technical division performing construction contract administration and the management of that function. ^{5b} Delegated Authority is intended to be the appropriate member of the technical division managing the Chief of the Cost Engineering Organization.					
⁶ "Project Delivery Team" estimates prepared by the PDT shall be developed by members qualified to estimate their respective portion of the effort. Cost Engineering Organization PDT member is a viable option.					

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

⁸ **"Construction Contracts - Military Programs Sustainment, Restoration, and Modernization (SRM)"**, reference Director's Policy Memorandum Military Programs (DPM MP) 2020-04, Military Programs Sustainment, Restoration, and Modernization (SRM) Simplified Project Execution Using Risk-Informed Decisions. Those who develop SRM IGEs must be trained and experienced in cost engineering to follow policy and guidance pertinent to cost estimates. This includes use of Micro-Computer Aided Cost Estimating System (MCACES) software.

⁹ **"Low risk"**, this term and its application to SRM projects are defined in Director's Policy Memorandum Military Programs (DPM MP) 2020-04, Military Programs Sustainment, Restoration, and Modernization (SRM) Simplified Project Execution Using Risk-Informed Decisions, reference specifically the risk analysis required by paragraph 5.e.4. The Chief of Cost Engineering must sign the risk analysis.



**ATTACHMENT 4 – NAVFAC/USACE PAST PERFORMANCE QUESTIONNAIRE
(PPQ) INSTRUCTIONS AND FORM**

**INSTRUCTIONS FOR IMPLEMENTATION OF
NAVFAC/USACE PAST PERFORMANCE QUESTIONNAIRE (PPQ) FORM**

1. **Background:** In many source selections and MATOC task order evaluations, the RFP encourages the Offeror to have their clients provide a completed PPQ directly to the contract specialist. In addition, throughout USACE, various formats of PPQs are being utilized. Industry expressed concern regarding the process by which PPQs are submitted, that completing multiple PPQs for the same type projects over time places a significant burden on their clients, and seeking a standard process and format to be implemented across USACE and NAVFAC.

2. **Discussion:** Based on input from industry, NAVFAC and USACE will still allow Offerors to submit PPQs with their proposal but will not require them to be sent directly from the client to the contracting office. In addition, NAVFAC and USACE will utilize a standard PPQ format for all requirements, when required as part of an evaluation. The standard PPQ form and process will allow Offerors to obtain clients' completed PPQ at the completion of a contract or task order, and the Offeror may retain PPQs in its files for submission on future procurements. In cases where the validity of the completed PPQ is questioned, the contract specialist/contracting officer may contact the reference for verification or additional information. The standard PPQ for NAVFAC and USACE is Form PPQ-0 (9/30/11). NAVFAC/USACE does not intend to create and maintain a database of PPQs submitted by Offerors. Therefore, it will be the Offerors responsibility to insure the submission of the relevant PPQs in its files for each solicitation. Alternatively, the Offeror may obtain an updated/new PPQ from its client(s) for submission. This new process does not preclude the Government from utilizing previously submitted PPQ information in the past performance evaluation as a source of information. Also, as the completion of Contractor Performance Assessment Reports (CPARS) is required, Contracting Officers should search CPARS to determine if a relevant and recent evaluation is on file when one is not provided by the offeror. Recognizing CPARS evaluations are just one tool for assessing past performance, these evaluations are expected to be considered by the Contracting Officer. Discrepancies between CPARS evaluations and information provided in PPQs will be resolved by the Contracting Officer during the source selection evaluation process.

In completing the PPQ form, representatives that have direct knowledge of the Offerors past performance are encouraged to complete the PPQ (i.e., Administrative Contracting Officers, Contracting Officer Representatives, Project Engineers, etc., who had direct oversight/involvement with the project).

ACTIONS: Effective immediately, for all procurements that are using PPQs in the evaluation process:

1. Form PPQ-0 shall be utilized for all evaluations that require a PPQ. Offerors shall submit the PPQ with their proposal submission to the Contracting Office designated proposal submission location. The contract specialist or Contracting Officer shall not require the PPQ to be sent directly from the client. Solicitations that have previously been issued do not need to be amended to include this requirement.

2. RFPs utilizing PPQs shall incorporate language from the "Sample Solicitation Submittal Requirement" (below) stating, at a minimum, the following: "Completed Past Performance Questionnaires should be submitted with your proposal as required by RFP Section XXXXX. Offerors shall not incorporate by reference into their proposal PPQs previously submitted for other RFPs. This does not preclude the Government from utilizing previously submitted PPQ information in the past performance evaluation. While the Government may elect to consider data from other sources, the burden of providing detailed, current, accurate and complete past performance information rests with the Offeror."

NAVFAC / USACE Past Performance Questionnaire (PPQ)

Form PPQ -0 (9/30/11)

3. When Past Performance Questionnaires are being permitted/sought, the following sample language will be tailored to the specific acquisition and included in the solicitation:

Sample Solicitation Submittal Requirement:

“The Past Performance Questionnaire (PPQ) included in the solicitation is provided for the offeror or its team members to submit to the client for each project the offeror includes in its proposal for Factor ____ (insert the applicable factor number, usually as “Factor 4” and insert the factor title, usually “Past Performance for the Prime Contractor”). Ensure correct phone numbers and email addresses are provided for the client point of contact. Completed Past Performance Questionnaires should be submitted with your proposal. If the offeror is unable to obtain a completed PPQ from a client for a project(s) before proposal closing date, the offeror should complete and submit with the proposal the first page of the PPQ (Attachment ____), which will provide contract and client information for the respective project(s). Offerors should follow-up with clients/references to ensure timely submittal of questionnaires. If the client requests, questionnaires may be submitted directly to the Government’s point of contact, _____ via email at _____ prior to proposal closing date. Offerors shall not incorporate by reference into their proposal PPQs previously submitted for other RFPs. However, this does not preclude the Government from utilizing previously submitted PPQ information in the past performance evaluation.

Also include performance recognition documents received within the last ____ (insert the number of years) such as awards, award fee determinations, customer letters of commendation, and any other forms of performance recognition.

In addition to the above, the Government may review any other sources of information for evaluating past performance. Other sources may include, but are not limited to, past performance information retrieved through the Contractor Performance Assessment Reporting System (CPARS), using all CAGE/DUNS numbers of team members (partnership, joint venture, teaming arrangement, or parent company/subsidiary/affiliate) identified in the offeror’s proposal, inquiries of owner representative(s), Federal Awardee Performance and Integrity Information System (FAPIS), Electronic Subcontract Reporting System (eSRS), and any other known sources not provided by the offeror.

While the Government may elect to consider data from other sources, the burden of providing detailed, current, accurate and complete past performance information rests with the Offeror.”

NAVFAC / USACE Past Performance Questionnaire (PPQ)

Form PPQ -0 (9/30/11)

NAVFAC/USACE PAST PERFORMANCE QUESTIONNAIRE (Form PPQ-0)

CONTRACT INFORMATION (Contractor to complete Blocks 1-4)

1. Contractor Information

Firm Name: _____ CAGE Code: _____
 Address: _____ DUNs Number: _____
 Phone Number: _____
 Email Address: _____
 Point of Contact: _____ Contact Phone Number: _____

2. Work Performed as: Prime Contractor Sub Contractor Joint Venture Other (Explain)

Percent of project work performed: _____

If subcontractor, who was the prime (Name/Phone #): _____

3. Contract Information

Contract Number: _____
 Delivery/Task Order Number (if applicable): _____
 Contract Type: Firm Fixed Price Cost Reimbursement Other (Please specify): _____
 Contract Title: _____
 Contract Location: _____

Award Date (mm/dd/yy): _____
 Contract Completion Date (mm/dd/yy): _____
 Actual Completion Date (mm/dd/yy): _____
 Explain Differences: _____

Original Contract Price (Award Amount): _____
 Final Contract Price (to include all modifications, if applicable): _____
 Explain Differences: _____

4. Project Description:

Complexity of Work High Med Routine
 How is this project relevant to project of submission? (Please provide details such as similar equipment, requirements, conditions, etc.) _____

CLIENT INFORMATION (Client to complete Blocks 5-8)

5. Client Information

Name: _____
 Title: _____
 Phone Number: _____
 Email Address: _____

6. Describe the client's role in the project: _____

7. Date Questionnaire was completed (mm/dd/yy): _____

8. Client's Signature: _____

NOTE: NAVFAC/USACE requests that the client completes this questionnaire and submits directly back to the offeror. The offeror will submit the completed questionnaire to USACE with their proposal, and may duplicate this questionnaire for future submission on USACE solicitations. Clients are highly encouraged to submit questionnaires directly to the offeror. However, questionnaires may be submitted directly to USACE. Please contact the offeror for USACE POC information. The Government reserves the right to verify any and all information on this form.

NAVFAC / USACE Past Performance Questionnaire (PPQ)

Form PPQ -0 (9/30/11)

*ADJECTIVE RATINGS AND DEFINITIONS TO BE USED TO BEST REFLECT
YOUR EVALUATION OF THE CONTRACTOR'S PERFORMANCE*

RATING	DEFINITION	NOTE
(E) Exceptional	Performance meets contractual requirements and exceeds many to the Government/Owner's benefit. The contractual performance of the element or sub-element being assessed was accomplished with few minor problems for which corrective actions taken by the contractor was highly effective.	An Exceptional rating is appropriate when the Contractor successfully performed multiple significant events that were of benefit to the Government/Owner. A singular benefit, however, could be of such magnitude that it alone constitutes an Exceptional rating. Also, there should have been NO significant weaknesses identified.
(VG) Very Good	Performance meets contractual requirements and exceeds some to the Government's/Owner's benefit. The contractual performance of the element or sub-element being assessed was accomplished with some minor problems for which corrective actions taken by the contractor were effective.	A Very Good rating is appropriate when the Contractor successfully performed a significant event that was a benefit to the Government/Owner. There should have been no significant weaknesses identified.
(S) Satisfactory	Performance meets minimum contractual requirements. The contractual performance of the element or sub-element contains some minor problems for which corrective actions taken by the contractor appear or were satisfactory.	A Satisfactory rating is appropriate when there were only minor problems, or major problems that the contractor recovered from without impact to the contract. There should have been NO significant weaknesses identified. Per DOD policy, a fundamental principle of assigning ratings is that contractors will not be assessed a rating lower than Satisfactory solely for not performing beyond the requirements of the contract.
(M) Marginal	Performance does not meet some contractual requirements. The contractual performance of the element or sub-element being assessed reflects a serious problem for which the contractor has not yet identified corrective actions. The contractor's proposed actions appear only marginally effective or were not fully implemented.	A Marginal is appropriate when a significant event occurred that the contractor had trouble overcoming which impacted the Government/Owner.
(U) Unsatisfactory	Performance does not meet most contractual requirements and recovery is not likely in a timely manner. The contractual performance of the element or sub-element contains serious problem(s) for which the contractor's corrective actions appear or were ineffective.	An Unsatisfactory rating is appropriate when multiple significant events occurred that the contractor had trouble overcoming and which impacted the Government/Owner. A singular problem, however, could be of such serious magnitude that it alone constitutes an unsatisfactory rating.
(N) Not Applicable	No information or did not apply to your contract	Rating will be neither positive nor negative.

TO BE COMPLETED BY CLIENT

PLEASE SELECT THE ADJECTIVE RATING WHICH BEST REFLECTS YOUR EVALUATION OF THE CONTRACTOR'S PERFORMANCE.	
1. QUALITY	
a) Quality of technical data/report preparation efforts	<input type="radio"/> E <input type="radio"/> VG <input type="radio"/> S <input type="radio"/> M <input type="radio"/> U <input type="radio"/> N
b) Ability to meet quality standards specified for technical performance	<input type="radio"/> E <input type="radio"/> VG <input type="radio"/> S <input type="radio"/> M <input type="radio"/> U <input type="radio"/> N
c) Timeliness/effectiveness of contract problem resolution without extensive customer guidance	<input type="radio"/> E <input type="radio"/> VG <input type="radio"/> S <input type="radio"/> M <input type="radio"/> U <input type="radio"/> N
d) Adequacy/effectiveness of quality control program and adherence to contract quality assurance requirements (without adverse effect on performance)	<input type="radio"/> E <input type="radio"/> VG <input type="radio"/> S <input type="radio"/> M <input type="radio"/> U <input type="radio"/> N
2. SCHEDULE/TIMELINESS OF PERFORMANCE	
a) Compliance with contract delivery/completion schedules including any significant intermediate milestones. <i>(If liquidated damages were assessed or the schedule was not met, please address below)</i>	<input type="radio"/> E <input type="radio"/> VG <input type="radio"/> S <input type="radio"/> M <input type="radio"/> U <input type="radio"/> N
b) Rate the contractor's use of available resources to accomplish tasks identified in the contract	<input type="radio"/> E <input type="radio"/> VG <input type="radio"/> S <input type="radio"/> M <input type="radio"/> U <input type="radio"/> N
3. CUSTOMER SATISFACTION	
a) To what extent were the end users satisfied with the project?	<input type="radio"/> E <input type="radio"/> VG <input type="radio"/> S <input type="radio"/> M <input type="radio"/> U <input type="radio"/> N
b) Contractor was reasonable and cooperative in dealing with your staff (including the ability to successfully resolve disagreements/disputes; responsiveness to administrative reports, businesslike and communication)	<input type="radio"/> E <input type="radio"/> VG <input type="radio"/> S <input type="radio"/> M <input type="radio"/> U <input type="radio"/> N
c) To what extent was the contractor cooperative, businesslike, and concerned with the interests of the customer?	<input type="radio"/> E <input type="radio"/> VG <input type="radio"/> S <input type="radio"/> M <input type="radio"/> U <input type="radio"/> N
d) Overall customer satisfaction	<input type="radio"/> E <input type="radio"/> VG <input type="radio"/> S <input type="radio"/> M <input type="radio"/> U <input type="radio"/> N
4. MANAGEMENT/ PERSONNEL/LABOR	
a) Effectiveness of on-site management, including management of subcontractors, suppliers, materials, and/or labor force?	<input type="radio"/> E <input type="radio"/> VG <input type="radio"/> S <input type="radio"/> M <input type="radio"/> U <input type="radio"/> N
b) Ability to hire, apply, and retain a qualified workforce to this effort	<input type="radio"/> E <input type="radio"/> VG <input type="radio"/> S <input type="radio"/> M <input type="radio"/> U <input type="radio"/> N
c) Government Property Control	<input type="radio"/> E <input type="radio"/> VG <input type="radio"/> S <input type="radio"/> M <input type="radio"/> U <input type="radio"/> N
d) Knowledge/expertise demonstrated by contractor personnel	<input type="radio"/> E <input type="radio"/> VG <input type="radio"/> S <input type="radio"/> M <input type="radio"/> U <input type="radio"/> N
e) Utilization of Small Business concerns	<input type="radio"/> E <input type="radio"/> VG <input type="radio"/> S <input type="radio"/> M <input type="radio"/> U <input type="radio"/> N
f) Ability to simultaneously manage multiple projects with multiple disciplines	<input type="radio"/> E <input type="radio"/> VG <input type="radio"/> S <input type="radio"/> M <input type="radio"/> U <input type="radio"/> N
g) Ability to assimilate and incorporate changes in requirements and/or priority, including planning, execution and response to Government changes	<input type="radio"/> E <input type="radio"/> VG <input type="radio"/> S <input type="radio"/> M <input type="radio"/> U <input type="radio"/> N
h) Effectiveness of overall management (including ability to effectively lead, manage and control the program)	<input type="radio"/> E <input type="radio"/> VG <input type="radio"/> S <input type="radio"/> M <input type="radio"/> U <input type="radio"/> N
5. COST/FINANCIAL MANAGEMENT	
a) Ability to meet the terms and conditions within the contractually agreed price(s)?	<input type="radio"/> E <input type="radio"/> VG <input type="radio"/> S <input type="radio"/> M <input type="radio"/> U <input type="radio"/> N

USACE DESK GUIDE



ATTACHMENT 5 – RESERVED



ATTACHMENT 6 – QUANTUM MERUIT GUIDANCE AND CHECKLIST

Quantum Meruit and Ratification Guidance

(4 March 2024)

When a contractor performs a service or delivers supplies without a valid written contract, compensation for such work may be allowable depending on the specific facts in each case. Recovery for the contractor may be achieved by following the ratification procedures in FAR 1.602-3; or where the elements for ratification in FAR 1.602-3 cannot be met, under a theory that the contract is implied-in-fact. If neither of these methods for recovery are met, the contractor may recover under a theory that the contract is implied-in-law (also known as “unjust enrichment” or a “quasi-contract”).

The theories of recovery under an implied-in-fact contract versus implied-in-law contract have both been commonly referred to as subsets of “Quantum Meruit” (QM). A QM is a “claim or right of action for the reasonable value of services rendered.” *United Pac. Ins. Co. v. United States*, 464 F.3d 1325, 1329 (Fed. Cir. 2006) (quoting Black’s Law Dictionary 1276 (8th ed. 2004)). The Federal Circuit recognizes both implied-in-law and implied-in-fact as QM theories. See *Cully Corp. v. United States*, 160 Fed. Cl. 360 (Apr. 14, 2022) (citing *Int’l Data Prods. Corp. v. United States*, 492 F.3d 1317, 1325 (Fed. Cir. 2007)). To eliminate confusion, however, it is more accurate to refer to each type of QM by its specific name, as the Government’s ability to provide recovery under each theory derives from different statutory authorities, and each authority requires that different elements be met.

I. Ratification:

Ratification, defined by FAR 1.602-3, is the act of an official who has the authority to bind the Government to approve a commitment made by a person who lacks authority. An unauthorized commitment (UAC) is an agreement that is not binding **solely** because the Government representative who made it lacked the authority to enter into that agreement on behalf of the Government. Ratifications under FAR 1.602-3 may only be approved when:

- 1) supplies or services have been provided to and accepted by the Government, or the Government otherwise has obtained or will obtain a benefit resulting from performance of the unauthorized commitment;
- 2) the ratifying official has the authority to enter into a contractual commitment;
- 3) the resulting contract would otherwise have been proper if made by an appropriate contracting officer;
- 4) the price is fair and reasonable;
- 5) the contracting officer recommends payment and legal counsel concurs;
- 6) funds are available and were available at the time the unauthorized commitment was made; and
- 7) the ratification is in accordance with any other limitations prescribed under agency procedures.

If one or more of these conditions is not met, the commitment cannot be ratified under ratification procedures. In such cases, another theory of recovery may be appropriate.

II. Recovery When Ratification is Not Appropriate

A. Implied-in-Fact Contracts

An implied-in-fact contract is “founded upon a meeting of minds, which, although not embodied in an express contract, is inferred, as a fact, from conduct of the parties showing, in the light of the surrounding circumstances, their tacit understanding.” *Baltimore & Ohio R. Co. v. United States*, 261 U.S. 592, 597, 43 S.Ct. 425, 426–427, 67 L.Ed. 816 (1923). The Agency’s authority to pay a contractor for work performed under an implied-in-fact contract comes from the Contract Disputes Act. 41 USC § 7102; see also *Wolzein*, ENGBCA No. 6278, 97-1 BCA ¶ 28,674. A claim seeking payment under this authority may be approved by the HCA or designee, depending on dollar value as established in UAI 5101.603-100. To demonstrate that there was an agreement implied-in-fact, to which the Government is a party, four elements must be met:

- 1) mutuality of intent to contract;
- 2) consideration;
- 3) a lack of ambiguity in offer and acceptance, and;
- 4) actual authority by the Government representative upon whose conduct the contractor relied.

Lewis v. United States, 70 F.3d 597, 600 (Fed. Cir. 1995) (quoting *City of El Centro v. United States*, 922 F.2d 816, 820 (Fed. Cir. 1990), *cert. denied*, 501 U.S. 1230 (1991)).

B. Implied-in-Law/quasi-contract/unjust enrichment

Unlike a claim based on the existence of an implied-in-fact contract, neither courts nor boards have jurisdiction to consider a claim made under a theory that there was a contract implied-in-law. However, 31 U.S.C. § 3702, the “claims settlement authority,” provides agencies with discretionary authority to consider a QM claim based on an implied-in-law theory. There is no legal obligation to pay these types of claims. See *Hocking Int’l Chem. Corp.*, B-225842, Mar. 20, 1987. A contract “implied-in-law” is not a true contract. Rather, it is a “‘fiction of law’ where ‘a promise is imputed to perform a legal duty, as to repay money obtained by fraud or duress.’” *Hercules Inc. v. United States*, 516 U.S. 417, 424 (citing *Baltimore & Ohio R. Co.*, *supra* at 597).

While historically only GAO had authority to consider these types of claims, limited authority to approve requests for payment under this theory has been delegated to the USACE Chief Counsel for claims less than \$200,000 arising out of USACE civil works and real estate activities. For claims arising out of any other activity (military, interagency, etc.) or that are \$200,000 or more arising out of a civil works or real estate activity, the authority to approve payment rests with the Army General Counsel.

Under an implied-in-law theory, an individual or firm may be paid for the reasonable value of services provided the claimant can show that:

- (1) the services would have been a permissible procurement had the formal procedures been followed;
- (2) the Government received and accepted a benefit;
- (3) the person seeking payment acted in good faith; and
- (4) the amount claimed represents the reasonable value of the benefit received.

Robert U. Bregman, M.D.-Quantum Meruit Claim for Consultant Servs., B-214529 (Jan. 19, 1988) (citing 64 Comp. Gen. 727 (1985)).

III. Application

A key distinction between an action that may be ratified using the procedures in FAR 1.602-3 and an action recoverable as an implied-in-fact contract is that a ratifiable action would have been proper but for the person committing the Government lacking authority. On the other hand, an implied-in-fact contract is executed by a person who has actual authority to take such action, but the contract was not properly formed.

The test to determine whether a contractor may recover under an implied-in-law theory is much broader than the tests established for recovery under ratification procedures or as an implied-in-fact contract. As a result, there may be situations where a fact pattern fits the tests of either ratification or an implied-in-fact contract while simultaneously meeting the elements to recover under an implied-in-law theory. However, payment of a contractor claim under the 31 U.S.C. § 3702 authority is only to be used as a last resort, when equity warrants such payment, and payment is recoverable under neither the ratifications procedures in FAR 1.602-3 nor as a contract implied-in-fact.

Quantum Meruit Checklist for Implied-In-Fact Contracts

(Revised 4 March 2024)

The Quantum Meruit (QM) Checklist supplements the QM Guidance and helps ensure the memorandums identified in the QM Guidance address all required elements listed below.

I. The Contracting Officer (KO) shall determine that the action is an implied-in-fact QM. A QM is used to compensate vendors that have delivered supplies or services when there is no contract, or pursuant to an enforceable contract.

1. Obtain a written statement from the office that received the supplies or services without a contract. The statement must detail the circumstances that led to supplier performance without a contract.
2. Obtain any correspondence or email that pertains to how the supplies or services were provided without a contract and/or what led to a lapse in contract coverage.
3. Obtain an invoice from the supplier.
4. Consult legal counsel after obtaining all information to help determine whether or not the circumstances warrant further processing as an implied-in-fact QM.

II. Justification. The KO shall ensure that the QM package contains a written justification, including the following information. (This is the memorandum referred to in paragraph 2.a. of the QM Approval Guidance.)

1. Introduction providing an overview of the QM claim.
2. Background explaining how the lapse in contract coverage occurred. Include information regarding the knowledge of the Government employees involved, what led to the supplier performing without a contract, dates of the various events as outlined in this section. Ensure the facts supporting the criteria for QM has been met. The justification must explain how the following criteria are met and not simply re-state the criteria.
 - a. mutuality of intent to contract;
 - b. consideration;
 - c. a lack of ambiguity in offer and acceptance; and
 - d. actual authority by the Government representative upon whose conduct the contractor relied.
3. An analysis paragraph explaining how the QM criteria above have been met given the facts that have been outlined.
4. A recommendation paragraph, concluding the justification with a request for relief. (This is the memorandum referred to in paragraph 2.a. of the QM Approval Guidance).
5. Corrective action. The justification must address, with supporting documentation, the corrective action taken/proposed by supervisor/commander to prevent recurrence. Address both individual corrective action and systemic corrective action. No personnel disciplinary action should be detailed in the file as this is subject to the Privacy Act.

III. The KO shall ensure that there is a valid claim from the supplier, which must be included as an attachment and summarized in the Justification. Invoices are not claims but should be in the file. The supplier needs to state why it performed without a contract, and why and under what theory it believes it is entitled to relief. Ensure the address and contact information for the supplier and its legal counsel (if applicable) are included to which the contractor notice and determination will be sent.

IV. Funding. The KO shall ensure that funding is obtained. Funding generally must be from the fiscal year in which the QM took place if such funds are available. Otherwise, currently available funds may be used. Consult with local counsel for funding questions.

V. Package Routing. The KO shall ensure that once the package is complete, the contracting office reviews and signatures are obtained, the package is sent to the local office of counsel for processing and signature, and the completed package is forwarded to the approving official for review and approval.

Quantum Meruit Approval Guidance

(Revised 4 March 2024)

Quantum Meruit (QM) Checklist shall be reviewed and completed to ensure all proper documents are provided and appropriate actions are completed.

1. The Contracting Officer (KO) shall coordinate with local legal counsel to determine whether the action can be paid under Contract Disputes Act (CDA). The KO shall collaborate with legal to develop the memorandum of the circumstances and facts surrounding the action to determine whether the action is a QM. The QM package shall be submitted to legal counsel when the KO determines the action may be a QM action. The District shall prepare, assemble and submit the package to request approval from the Chief of the Contracting Office (CoCO), Senior Contracting Official (SCO) or higher.

2. The Districts shall assemble the following documents for submittal as a minimum:

a. Memorandum from Procurement Contracting Officer (PCO) to District Counsel requesting Legal Review: The memorandum shall state the facts/circumstances and explain the history that led to a situation without a valid contract or an invalid/unenforceable contract. The PCO should also establish the opinion that an "implied-in-fact" contract exists and therefore payment can be made pursuant to the PCO's claim settlement authority under the CDA.

b. Legal Review Memorandum from Office of Counsel (OC) to PCO: This memorandum is necessary to establish the legal determination that a contract implied-in-fact exists. The memorandum should provide the background, facts, and analysis supporting that all four elements, identified below, necessary to establish a contract implied-in-fact exists are met, and that payment for work done under an implied-in-fact contract is appropriate. The memorandum must also establish that it is appropriate for the PCO to settle the QM claim using authority under the CDA (once approval is received from CoCo/SCO/Head of Contracting Agency (HCA) depending on dollar value). If we cannot determine that a contract implied-in-fact exists, payment requires approval outside of the contracting chain (e.g. if it is determined that the only authority under which a contractor may be paid is through approval of the action as one implied-in-law, counsel shall coordinate vertically with CECC-C to determine whether proceeding with such process is appropriate).

(1) mutuality of intent to contract;

(2) consideration;

(3) a lack of ambiguity in offer and acceptance; and

(4) actual authority by the Government representative upon whose conduct the contractor relied.

c. Memorandum from CoCO to SCO: This memorandum validates that the legal determination has been obtained and the CoCO recommends that payment be authorized as an implied-in-fact contract. This memorandum should also set forth the corrective action taken to prevent reoccurrence (this paragraph is not applicable if the approval authority is the CoCO).

d. Approval Memorandum: This memorandum summarizes the facts, provides concurrence that an implied-in-fact contract exists, and endorses the District's request for approval of the final payment to the contractor because all four factors required for recovery and payment under the implied-in-fact theory have been met. This memo shall be executed by the CoCO or drafted and submitted for SCO or higher approval if the value exceeds the CoCO's threshold.

e. The package should also include a final invoice from the contractor; and if the dollar value is more than \$100,000, a copy of the certified claim.

USACE DESK GUIDE



ATTACHMENT 7 – REQUEST FOR APPROVAL OF UNAUTHORIZED COMMITMENT

3. DESCRIBE BONA FIDE GOVERNMENT REQUIREMENT NECESSITATING THE COMMITMENT

4. DESCRIBE THE BENEFITS RECEIVED BY THE GOVERNMENT (*Give value of benefits and other pertinent facts*)

5. LIST AND ATTACH ALL RELEVANT DOCUMENTS (*Include orders, invoices and other evidence of the transaction. Verify accuracy and completeness of documentation.*)

6a. NAME (*Last, First MI*) / GRADE OR RANK AND TITLE OF THE INDIVIDUAL WHO MADE THE UAC

b. DATE (YYYYMMDD)

c. SIGNATURE, INDIVIDUAL WHO MADE THE UAC (*CAC signing locks Section I, Part A*)

PART B - CONTRACTUAL RATIFICATION

(The immediate supervisor of the individual who committed the UAC will complete items 1 - 4c of Section I, Part B, electronically sign, date, and forward to the Director/Chief of the individual who committed the UAC.)

1. DESCRIBE ATTEMPTS TO RESOLVE UNAUTHORIZED COMMITMENT PRIOR TO REQUESTING RATIFICATION (Such as, returning merchandise, Individual paying from personal funds, etc.)

2. DESCRIBE SPECIAL REMEDIAL CORRECTIVE ACTION AND / OR DISCIPLINARY ACTION TAKEN (Include a description of any administrative action taken under applicable personnel authority or furnish an explanation of why no disciplinary action was considered necessary.)

3. DESCRIBE ACTION TAKEN TO PREVENT RECURRENCE OF UNAUTHORIZED COMMITMENTS

4a. NAME (Last, First MI) / GRADE, RANK, TITLE AND ORGANIZATION

b. DATE (YYYYMMDD)

c. SIGNATURE, IMMEDIATE SUPERVISOR (CAC signing locks Section I, Part B)

PART C - CONTRACTUAL RATIFICATION

*(The Director/Chief of the individual who committed the UAC will complete Part C, Section I.
Please forward the completed form to the Concurring Official in Part D.)*

1a. APPROVAL OF CORRECTIVE ACTION AND / OR DISCIPLINARY ACTION TAKEN YES NO *(Explain non-concurrence in b below)*

b. EXPLAIN NON-CONCURRENCE

2a. APPROVAL OF ACTION(S) TO PRECLUDE RECURRENCE OF UNAUTHORIZED COMMITMENTS YES NO *(Explain non-concurrence in b below)*

b. EXPLAIN NON-CONCURRENCE

3. I HAVE REVIEWED PARTS A AND B OF SECTION I, VERIFIED THAT THE INFORMATION IS ACCURATE AND COMPLETE, THAT THE GOVERNMENT RECEIVED A BENEFIT AND ASSOCIATED VALUE FROM THE UNAUTHORIZED COMMITMENT, *(Select - X one):*

a. I CONCUR WITH THE RATIFICATION OF THE UNAUTHORIZED COMMITMENT.

b. I DO NOT CONCUR WITH THE RATIFICATION OF THE UNAUTHORIZED COMMITMENT. *(Explain non-concurrence in c below)*

c. EXPLAIN NON-CONCURRENCE

4. COMPLETED PURCHASE DESCRIPTION AND FUNDING DOCUMENT IS EXECUTED AND ATTACHED *(required if ratification is recommended).*
FUNDING DOCUMENT MUST SPECIFICALLY STATE THAT FUNDS WERE AVAILABLE AT THE TIME THE UNAUTHORIZED COMMITMENT WAS MADE AND THESE FUNDS ARE STILL AVAILABLE. YES NO *(action will not be ratified).*

5a. NAME *(Last, First MI)* / GRADE OR RANK, TITLE AND ORGANIZATION

b. DATE *(YYYYMMDD)*

c. SIGNATURE, DIRECTOR / CHIEF *(CAC signing locks Section I, Part C)*

PART D - CONTRACTUAL RATIFICATION

(To be completed by the District Commander of the individual who committed UAC. When completed, please forward to the Chief of the Contracting Office.)

1a. CONCUR WITH CORRECTIVE ACTION AND / OR DISCIPLINARY ACTION TAKEN YES NO *(Explain non-concurrence in b below)*

b. EXPLAIN NON-CONCURRENCE

2a. CONCUR WITH ACTION(S) TO PRECLUDE RECURRENCE OF UNAUTHORIZED COMMITMENTS YES NO *(Explain non-concurrence in b below)*

b. EXPLAIN NON-CONCURRENCE

3a. I HAVE VERIFIED THE ACCURACY AND COMPLETENESS OF THE DOCUMENTATION AND CONCUR WITH THE PURCHASE DESCRIPTION AND FUNDING FOR THE RATIFICATION ACTION. YES NO *(Explain non-concurrence in b below)*

b. EXPLAIN NON-CONCURRENCE

4a. NAME <i>(Last, First MI)</i> / GRADE OR RANK, TITLE AND ORGANIZATION OR UNIT	b. DATE <i>(YYYYMMDD)</i>	c. SIGNATURE, DISTRICT COMMANDER <i>(CAC signing locks Section I, Part D)</i>
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SECTION II - CONTRACTING OFFICER'S REVIEW

(FAR 1.602-3 and AFARS 5101.602-3-90)

THE CONTRACTING OFFICER ASSIGNED IN SECTION III SHALL REVIEW THE FILE AND PROCEED AS FOLLOWS:

1. DETERMINE THE ADEQUACY OF ALL FACTS, RECORDS, AND DOCUMENTS FURNISHED, AND OBTAIN ANY ADDITIONAL MATERIAL REQUIRED.
2. PREPARE A SUMMARY OF FACTS TO INCLUDE A RECOMMENDATION AS TO WHETHER OR NOT THE TRANSACTION SHOULD BE RATIFIED AND REASONS FOR THE RECOMMENDATION. A RECOMMENDATION NOT TO RATIFY MUST INCLUDE A RECOMMENDATION AS TO WHETHER OR NOT THE MATTER SHOULD BE PROCESSED UNDER FAR PART 50 AND DFARS PART 250 (*Pub. L. 85-804*) AS A GOVERNMENT ACCOUNTING OFFICE (GAO) CLAIM OR IN SOME OTHER APPROPRIATE WAY.
3. OBTAIN AN OPINION FROM LEGAL COUNSEL AS TO WHETHER THE ACQUISITION MAY BE RATIFIED UNDER FAR AND AFARS, WHETHER THE MATTER SHOULD BE PROCESSED UNDER FAR PART 50 AND DFARS PART 250, PROCESSED AS A GAO CLAIM, OR OTHERWISE HANDLED. (*Refer to Section IV - Legal Review before proceeding with items 4 - 10*).
4. DETERMINE WHETHER SUPPLIES OR SERVICES HAVE BEEN PROVIDED TO AND ACCEPTED BY THE GOVERNMENT, OR THE GOVERNMENT OTHERWISE HAS OBTAINED OR WILL OBTAIN AS A RESULT FROM PERFORMANCE OF THE UNAUTHORIZED COMMITMENT.
5. THE RATIFYING OFFICIAL HAS THE AUTHORITY TO ENTER INTO A CONTRACTUAL COMMITMENT.
6. DETERMINE WHETHER THE RESULTING CONTRACT WOULD OTHERWISE HAVE BEEN PROPER IF MADE BY AN APPROPRIATE CONTRACTING OFFICER.
7. STATE WHETHER THE PRICE IS CONSIDERED FAIR AND REASONABLE AND INDICATE HOW THAT DETERMINATION WAS MADE.
8. INDICATE WHETHER OR NOT THE CONTRACTING OFFICER RECOMMENDS PAYMENT AND LEGAL COUNSEL CONCURS IN THE RECOMMENDATION, UNLESS AGENCY PROCEDURES EXPRESSLY DO NOT REQUIRE SUCH CONCURRENCE.
9. DETERMINE THAT SUFFICIENT FUNDS ARE AVAILABLE, AND WERE AVAILABLE AT THE TIME THE UNAUTHORIZED COMMITMENT WAS MADE.
10. STATE WHETHER THE RATIFICATION IS IN ACCORDANCE WITH ANY OTHER LIMITATIONS PRESCRIBED UNDER AGENCY PROCEDURES.

11. CONTRACTING OFFICER'S REVIEW

(NOTE: If more space is required, Contracting Officer's statement may be attached; signature and date required below and on attachment).

12a. NAME (<i>Last, First MI</i>) / OF CONTRACTING OFFICER	b. DATE (YYYYMMDD)	c. SIGNATURE, CONTRACTING OFFICER (<i>CAC signing locks Section II</i>)
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SECTION III - LEGAL REVIEW
(Completed by Local Legal Advisor)

1. DETERMINE WHETHER THE ACQUISITION IS RATIFIABLE UNDER FAR 1.602-3 AND AFARS 5101.602-3. OR WHETHER THE MATTER SHOULD BE PROCESSED UNDER FAR PART 50 AND DFARS PART 250 (*Public Law 85-804*), AS A GAO CLAIM, OR RECOMMEND OTHER APPROPRIATE DISPOSITION. (*Return to Chief of the Contracting Office*).

(NOTE: If more space is required, legal opinion may be attached; signature and date required below and on attachment).

2a. NAME (*Last, First MI*) / OF LEGAL ADVISOR,
TITLE AND ORGANIZATION

b. DATE (YYYYMMDD)

c. SIGNATURE, LEGAL ADVISOR (*CAC signing locks Section III*)

SECTION IV - RECOMMENDATION / APPROVAL
(Completed by the Chief of the Contracting Office)

PART A - CHIEF OF THE CONTRACTING OFFICE

1. ACTION VALUED AT \$10,000.00 OR LESS, *(Select - X one)*:

- a. BASED ON THE FOREGOING DETERMINATION, RATIFICATION OF UNAUTHORIZED COMMITMENT IS APPROVED.
- b. BASED ON THE FOREGOING DETERMINATION, RATIFICATION OF UNAUTHORIZED COMMITMENT IS DISAPPROVED. *(Explain in c below)*

c. EXPLAIN DISAPPROVAL

2. ACTION VALUED OVER \$10,000.00, *(Select - X one)*:

- a. I RECOMMEND RATIFICATION OF UNAUTHORIZED COMMITMENT.
- b. I RECOMMEND UNAUTHORIZED COMMITMENT NOT BE RATIFIED. *(Explain in c below)*

c. EXPLAIN NON-RATIFICATION

3a. NAME *(Last, First MI)* OF CHIEF OF THE CONTRACTING OFFICE

b. DATE *(YYYYMMDD)*

c. SIGNATURE, CHIEF CONTRACTING OFFICE *(CAC signing locks Section IV, Part A)*

PART B - COMPLETED BY SENIOR CONTRACTING OFFICIAL (SCO)

1. ACTION VALUED OVER \$10,000 AND LESS THAN OR EQUAL TO \$100,000.00, (*Select - X one*):

- a. BASED ON THE FOREGOING DETERMINATION, RATIFICATION OF UNAUTHORIZED COMMITMENT IS APPROVED.
- b. BASED ON THE FOREGOING DETERMINATION, RATIFICATION OF UNAUTHORIZED COMMITMENT IS DISAPPROVED. (*Explain in c below*)

c. EXPLAIN DISAPPROVAL

2. ACTION VALUED OVER \$100,000.00, (*Select - X one*):

- a. I RECOMMEND RATIFICATION OF UNAUTHORIZED COMMITMENT.
- b. I RECOMMEND UNAUTHORIZED COMMITMENT NOT BE RATIFIED. (*Explain in c below*)

c. EXPLAIN NON-RATIFICATION

3a. NAME (*Last, First MI*) OF SCO

b. DATE (*YYYYMMDD*)

c. SIGNATURE, SCO (*CAC signing locks Section IV, Part B*)

SECTION V - APPROVAL

(Completed by the USACE Director of Contracting in accordance with AFARS 5101.602-3(b))

1. ACTION VALUED OVER \$100,000.00, *(Select - X one):*

- a. BASED ON THE FOREGOING DETERMINATION, RATIFICATION OF UNAUTHORIZED COMMITMENT IS APPROVED.
- b. BASED ON THE FOREGOING DETERMINATION, RATIFICATION OF UNAUTHORIZED COMMITMENT IS DISAPPROVED. *(Explain in c below)*

c. EXPLAIN DISAPPROVAL

2a. NAME *(Last, First MI)* OF USACE DIRECTOR OF CONTRACTING

b. DATE *(YYYYMMDD)*

c. SIGNATURE, USACE DIRECTOR OF CONTRACTING *(CAC signing locks Section V)*



ATTACHMENT 8 – WARRANT TRANSFER GUIDANCE

Transfer of Procurement Contracting Officer (PCO), Administrative Contracting Officer (ACO), and Grants Officer (GO) Warrant Authority Process and Guidance

(Revised 4 March 2024)

USACE warrants (PCO/ACO/GO) are issued with USACE wide authority. Therefore, even though a warrant is issued by a single Senior Contracting Official (SCO), the individual holding the warrant has enterprise wide authority to issue and award contracts. Warrants can remain active as employees change locations and/or positions if the employee's new position requires that the individual have a warrant. However, the electronic system does not permit transfer of a warrant certificate from one SCO to another within the system. Therefore, when a contracting officer permanently relocates to a new SCO AOR and the employee's new position also requires a warrant, the authority is transferred but the old warrant certificate must be terminated and a new warrant certificate must be issued. When an employee must temporarily use a warrant in another SCO's AOR, coordination between SCOs should be made as set forth below. Please follow the below administrative processes when it is necessary to invoke a transfer of warrant authority:

1. Permanent move of warrant authority between USACE offices (applicable where it is confirmed that the new position also requires a warrant):

a. The losing Chief of the Contracting Office (CoCO) shall inform the SCO of the employee's departure. The gaining CoCO shall request transfer of the warrant authority to the new District/Center. Both the gaining and losing CoCO shall enter the action into the Time at SCO System (TASS) for their respective SCO(s).

b. If the warrant will remain within a SCO's area of responsibility, the current warrant certificate will remain in effect if there is no change in the dollar value of the warrant. The SCO will document the change of the employee's location in the electronic system. If the new position requires a change to the warrant threshold, the SCO will consider the request and issue a new warrant certificate if the request is approved. In either situation, the SCO retains the discretion to conduct another Contracting Officer Review Board (CORB), particularly if a warrant of higher dollar value is requested by the gaining CoCO.

c. If the employee is relocating to a different SCO AOR, the losing SCO will provide the gaining SCO with information concerning the employee's completion of a CORB. The losing SCO will terminate the existing warrant and the gaining SCO will issue a new warrant certificate. Both parties will record these actions in the electronic system.

d. A CORB is not required for an increase in warrant authority within the same warrant band classification (Class Level I-IV). The SCO, at their discretion, may have a phone interview with the individual to discuss their experience.

2. Temporary moves between USACE offices to support contingency missions or employee developmental assignments:

a. Coordination is necessary to ensure that the SCO who issued the warrant is aware of the contracting officer's temporary assignment and is afforded the opportunity to review or discuss the employee's ability to support the mission.

b. If a warranted contracting officer will temporarily support another office within the same SCO AOR, the gaining CoCO shall informally request and obtain SCO concurrence, which may be accomplished via e-mail, with a courtesy copy to the employee's home station CoCO.

c. If a warranted contracting officer will temporarily support an office in a different SCO AOR, the gaining CoCO shall informally request concurrence from both the SCO who issued the warrant and the gaining SCO, which may be accomplished via one e-mail, with a courtesy copy to the employee's home station CoCO. Both SCOs must concur with the temporary transfer. It is not necessary for the gaining SCO to conduct a CORB or issue a new warrant, unless a higher warrant value is needed in support of the temporary mission. Temporary use of a warrant in another SCO AOR does NOT require any action in the electronic system.

3. The contract writing systems are currently established in such a way that formal action must be taken in order to give a warranted individual access to a particular location. Without access, the warranted individual cannot sign actions in the electronic writing systems. Therefore, coordination is critical in advance of the need date.



ATTACHMENT 9 – IMPLEMENTATION GUIDANCE - FORMER USACE PROVISIONS AND CLAUSES

Implementation Guidance - Former USACE Local Provisions and Clauses

1. The Office of the Deputy Assistant Secretary of the Army (Procurement) (ODASA(P)) issued a directive effective 1 October 2017, that local clauses are no longer permitted in Army contracts. The January 2017 version of the US Army Corps of Engineers (USACE) Acquisition Instruction (UAI) included 19 local clauses and provisions that were used in USACE contracts. Attachment 9 incorporates the guidance from ODASA(P) and removes local clauses used by USACE with only two exceptions: the Design-Build clauses, and the Continuing Contract clause and its Alternate. This attachment also includes language for technical provisions.
2. The former USACE Subdivided Items clause, 5152.211-9001, was typically used in Civil Works construction where a high variability of required quantity is expected. Portions of this former clause explain the process already covered in the Federal Acquisition Regulation (FAR) clause 52.218-11, Variation in Estimated Quantity, while other portions explain how USACE calculates the cost for bid evaluation. The former clause allowed a more structured method for a contractor to apply indirect costs (such as mobilization and demobilization) to the probable quantity of an item. The costs applied to the overrun quantities would then be based on direct costs and reasonable mark-ups such as overhead, profit, and bond. The former USACE provision, Evaluation of Subdivided Items, is now added at Army FAR Supplement (AFARS) 5152.211-9000, with the prescription at AFARS 5111.703(c)(i). The former USACE clause, Variation in Estimated Quantities – Subdivided Items, is now added at AFARS 5152.211-9001, with the prescription at AFARS 5111.703(c)(ii).
3. The former USACE Davis-Bacon Act software clause, 5152.222-9000, described the recommendations associated with the electronic submission of Davis-Bacon payrolls using a commercially available system. ODASA(P) staff indicated that this language is more properly included as a specification. The language of this former clause is rewritten to apply only in cases where the Government intends to make the electronic submission of payroll a mandatory contract requirement. This will typically occur only on larger projects over \$50 million. The content of the former clause may be inserted in Unified Facilities Guide Specifications (UFGS) 01.30.00 Administrative requirements or an equivalent local Division 1 specification that addresses general contract administration issues.
4. The former USACE Equipment Ownership and Operating clause, 5152.231-9000, established the USACE EP-1110-1-8 as the guide for calculating or establishing costs for construction equipment owned by a contractor or subcontractor. This guide is specifically permissible by FAR 31.105(d)(2)(i); thus, the former USACE special clause is no longer required.
5. The USACE Continuing Contract clause 5152.232-9001, and its Alternate, allow for incremental funding of Civil Works contracts. This clause and its alternate have a permanent class deviation (2009-A0004) approved by the Director, Defense

Procurement and Acquisition Policy (currently named Defense Pricing and Contracting), on 27 October 2009. This clause will be included in the solicitation following current practice. See UAI 5132.705 for further explanation, and UAI 5152.232-9001 for the text of the clause.

6. Former clause, 5152.232-9000 for payment of off-site materials operates in conjunction with FAR clause 52.232-5, Payments under Fixed-Price Construction Contracts. FAR 52.232-5(b)(2)(i) indicates payment of materials stored off-site may be taken into consideration for payment if specifically authorized in the contract. The former USACE clause identifies those items for which payment may be made and the applicable conditions for payment to be made. The content of the former clause may be inserted in UFGS 01 20 00.00 20, Price and Payment Procedures; UFGS 01.30.00 Administrative requirements; or an equivalent local Division 1 specification that addresses payment processes.

7. There were eleven clauses addressing design-build. The former clauses are removed and replaced with a new consolidated (Omnibus) Design-Build clause. The text for the Omnibus clause, Design-Build Construction Contracts, may be found at UAI 5152.236-9011. ODASA(P) has approved the use of the clause at UAI 5152.236-9011, while USACE initiates the rulemaking process to incorporate the clauses into the Defense FAR Supplement.

8. The former USACE special clause, Basis for Settlement of Proposals, 5136.249-9000 is no longer required. The former USACE Equipment Ownership and Operating Expense Schedule, 5152.231-9000 clause is no longer required; reference FAR 31.105(d)(2)(i) as an appropriate tool for establishing the cost for construction equipment.

Technical Provisions Language

(Note: All instructions in italics shall be removed before inserting text in solicitation and contract.)

1. CONTRACTOR SUPPLY AND USE OF ELECTRONIC SOFTWARE FOR PROCESSING DAVIS-BACON ACT CERTIFIED PAYROLLS - *The text below may be inserted in UFGS 01.30.00 Administrative requirements, or an equivalent local Division 1 specification that addresses general contract administration issues where mandatory use of an electronic Davis Bacon Payroll system is required.*

a. The contractor will use a commercially available electronic system to process and submit certified payrolls electronically to the Government. The Davis-Bacon Act establishes the requirements for preparing, processing, and providing certified labor payrolls.

b. The contractor shall be responsible for obtaining and providing access for all licenses and other services required to provide for receipt, processing, certifying, electronically transmitting to the Government, and storing weekly payrolls and other data required for the contractor to comply with Davis-Bacon Act and related statutes. When the contractor uses an electronic Davis-Bacon Act payroll service, it shall be used to prepare, process, and maintain the relevant payrolls and basic records for all work under the construction contract. The electronic payroll service shall be capable of preserving the payroll and related basic records for the required three years after contract completion. The contractor shall obtain and provide electronic system access including electronic review to the Government, as required to comply with the Davis-Bacon Act and related statutes through the duration of the construction contract.

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

(1) commercially available;

(2) compliant with appropriate Davis-Bacon Act payroll provisions in the FAR;

(3) able to accommodate the required number of employees and subcontractors that will be employed under the contract;

(4) capable of producing an Excel spreadsheet-compatible electronic output of weekly payroll records for export into an Excel spreadsheet to be imported into the contractor's mode of Resident Management System 3.0;

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

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

(7) able to identify erroneous entries and track the date/time of all versions of the certified Davis-Bacon Act payrolls submitted to the government over the life of the contract; and

(8) capable of generating a durable record copy in a Compact Disc (CD) or Digital Versatile Disc (DVD) and Portable Document Format (PDF) file record of data from the system database at the end of the contract closeout. This durable record copy of data from the electronic payroll processing system shall be provided to the Government during contract closeout.

d. All contractor-incurred costs related to the contractor's provision and use of an electronic payroll processing service shall be included in the contractor's price for the overall work under the contract. The costs for Davis-Bacon Act compliance using electronic payroll processing services shall not be a separately bid or reimbursed item under this contract.

2. PAYMENT FOR MATERIALS DELIVERED OFF-SITE - *The text below may be inserted in UFGS 01 20 00.00 20, Price and Payment Procedures; UFGS 01.30.00 Administrative requirements; or an equivalent local Division 1 specification that addresses payment processes.*

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

(1) Materials required by the technical provisions; or

(2) Materials that have been fabricated to the point where they are identifiable to an item of work required under this contract; or

(3) Items specifically listed below in paragraph b.

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



ATTACHMENT 10 – EARLY CONTRACTOR INVOLVEMENT

EARLY CONTRACTOR INVOLVEMENT (ECI)

1. APPROPRIATE USE OF ECI: ECI is a design-bid-build (D-B-B) delivery method for acquiring construction services using incentive contract types. D-B-B contracts are intended for use on projects that are complex and/or the time to complete is critical. The interaction of a construction contractor during the design phase is expected to produce a more timely and/or cost effective design and construction solution. It is a contract type similar to “Contract Manager at Risk” in private industry, but the difference is that D-B-B must meet the requirements of the Federal Acquisition Regulation (FAR) and the Brooks Act. FAR 36.207(a) states: Generally, firm-fixed-price contracts shall be used to acquire construction. As a result, ECI is an exception to the firm-fixed price D-B-B delivery method and shall only be employed in limited situations as provided below.

a. ECI uses contract types that may use either a Fixed Price Incentive (Firm Target) (FPFI) contract or a Fixed Price Incentive (Successive Targets) (FPIS) contract. Care must be taken to follow the incentive provisions contained in these types of contracts. Failure to properly utilize the target, ceiling, and risk sharing ratios specified in the contract may result in a de facto cost contract, which is prohibited for military construction (MILCON) projects per 10 USC 2306(c). MILCON projects have very specific funding and authorization requirements. It is important that ECI project proposals comply with all authority and fiscal requirements, and the requirements of the type of fixed price incentive contract used.

b. Depending on the scope of the A-E contract and the construction contract award, ECI permits early release of completed parts of the architect-engineer (A-E) design to the construction contractor. However, the option to release completed parts of the design is not to be used as the sole basis for selecting the delivery system. Doing so may result in significant fiscal and administrative cost risks that will make the allocation and determination of risk more complex.

c. ECI is not appropriate for situations where the stakeholder has not defined their requirement or when programming actions are incomplete. Under these circumstances, subsequent additions and changing of project scope may lead to out of scope changes that circumvent competition requirements. Significant cost increases may also occur that will require substantial reprogramming before the requirement can be executed. This could result in substantial delays. ECI is not appropriate for Operations and Maintenance (O&M) funded projects (civil and military), or renovation or repair of any kind. There are too many unknowns and O&M funding is finite and time-sensitive.

2. COORDINATION AND APPROVAL TO USE ECI: While exceptions may be considered, ECI is generally not to be used for any contract with an estimated value of less than \$20M because the increased administrative costs and staff burdens (to the A-E, Contractor, and Government) are unnecessary. If a District seeks to use ECI for any project, a business case, including economic justification, must be made for using ECI over traditional design-build (D-B) or the D-B-B method. A business case must be made prior to preparation of the Acquisition Plan (AP) via Project Delivery Team

discussions with the contracting officer, District/Center Chief of the Contracting Office, Office of Counsel, District Chief of Construction, and Chief of Engineering. Upon consensus that ECI is the proper procurement method, the business case is then documented in the AP. For all project values, Districts are required to complete coordination with their respective Major Subordinate Command Program Director and obtain headquarters Chief, Program Integration Division approval (HQ USACE CEMP-I or CECW-I) prior to using ECI on any project regardless of a programmed amount.

3. A-E CONTRACT: Since collaboration between the construction contractor and the A-E (or in-house design team) is a salient characteristic of ECI, the AP must include a narrative describing how the A-E contract (or, for in-house design, the Project Management Plan) will be structured to facilitate and encourage this collaboration. If the A-E contract is an existing instrument, describe any modifications or technical direction planned. If the A-E contract has not yet been awarded, describe how that contract will be structured, and at what point in the design (both in time and in technical content) the minimum 15% design is considered complete and ready for solicitation of the ECI construction contract. The A-E contract must be carefully crafted and administered to ensure that the designer's responsibility to the Government for design errors and omissions is preserved if early release of portions of design is authorized by the contract. You must also ensure that the construction contractor's early involvement in the design does not affect the A-E's responsibility to the Government for errors and omissions.

4. CONTRACT CLAUSES:

a. Preconstruction services and construction are included in the ECI delivery system contract. For a MILCON project, preconstruction services cannot be funded by MILCON Planning and Design (P&D) funds, and must be funded by construction funds. If preconstruction services predominate in the contract, both services and construction clauses are applicable and must be delineated appropriately. Clauses are to be grouped by type as they apply to services or construction, and identified as to which contract line item number (CLIN) they apply. If construction predominates in the base, service clauses are not required.

b. If early release of portions of the design for construction (initiation of construction subject to the FPIF or FPIS clause before the 100% design is substantially complete) is anticipated before conversion to a Firm Fixed Price (FFP) construction contract, appropriate clauses for administering the contract and controlling scope and cost must be included. Clauses shall include the consent to subcontract and the appropriate FPIF/FPIS clause to ensure that the Government obtains a complete and useable facility within the authorized amount and allowable time. The AP must include a description of how the District/Center intends to administer the contract. The description must include the composition and qualifications of the contract administration team, and the processes the team will employ to direct, monitor, and pay the contractor consistent with requirements of cost accounting and earned value.

5. BONDING: In the past, contracting officers have adjusted bonding percentages based on feedback from industry or bonding companies and consistent with the requirements of the Miller Act. If the contracting officer intends to adjust bonding, the written documentation of the reasons (including any input from industry) must be included in the AP.

6. JOINT VENTURES: Joint Ventures (JVs) have been used extensively for large (more than \$300M) ECI contracts. ECI solicitations, APs, and evaluation plans must specifically state how these JVs will be treated in the solicitation and evaluation process. For example, if only one partner is Cost Accounting Standards (CAS) compliant, has an Earned Value Management System (EVMS), and has experience with FAR Part 31, the JV proposal should explicitly state that the JV will rely on those organizational elements, processes, and procedures in executing the work.

7. BASIS OF COMPETITION: Since we are utilizing the FPI methodology as both a contract mechanism and a contract type, a clear Statement of Work (SOW) for competition is essential. The HQ Office of Chief Counsel legal opinion on ECI requires that all potential offerors compete on an even playing field, and suggests that Contracting and Engineering & Construction (E&C) determine if there is a minimum level of design definition that meets this standard. The Senior Contracting Official (SCO) and E&C representatives have determined the policy for this minimum design definition as follows: the notional 15% design minimum must include sufficiently detailed plans and specifications so that each potential offeror interprets the data in the same manner. Simply providing a narrative SOW and/or estimated materials quantities is not sufficient for meaningful competition. The SCO will discuss these matters in the AP review process. The USACE Contracting peer review process (see paragraph 16 below) will assure review of the minimum design sufficiency prior to solicitation issuance. In addition, follow-up will determine if adequate competition is being achieved during the proposal evaluation phase prior to award.

8. BASIS OF EVALUATION AND AWARD: ECI award shall be based on the evaluation of all solicitation requirements including preconstruction services and construction consistent with any legal constraints applicable to the project. Evaluation considerations for award shall include:

a. The contractor's accounting system is adequate for providing data for negotiating firm targets and a realistic profit adjustment formula, as well as later negotiation of final costs. FAR 16.403-2(c) (1). Note: DFARS 209.104-1 requires consideration of the prospective incentive contractor's accounting system and related internal controls to provide reasonable assurance that (i) Applicable laws and regulations are complied with; (ii) The accounting system and cost data are reliable; (iii) Risk of misallocations and mischarges are minimized; and (iv) Contract allocations and charges are consistent with invoicing procedures.

b. A credible and detailed small business subcontracting plan, which counts (for compliance with stated goals) awards to subcontractors only at the first tier subcontractor level. The plan is to cover all work, not just pre-construction services.

c. The pre-construction services portion of an ECI contract is evaluated based on factors such as experience with construction management and the in-house skills of the offeror. The pre-construction services portion of an ECI contract is permitted to be classified as services or construction, depending on the preponderance of work in the base contract. This does not mean that the pre-construction services is a severable or separate consideration for the purpose of evaluation and award. By advertising a FPIS contract, the Government is signaling its intent to proceed through the entire SOW, thus evaluation must be of the entire scope of work intended for construction.

d. FAR Part 31-Contract Cost Principles and Procedures and Cost Accounting Standards are necessary, and provide requirements that offerors must demonstrate in order to be eligible for award. DFARS 242.7000 requires compliance with cost accounting standards and EVM in incentive type contracts. A draft EVMS and cost accounting plan, specific to the project, must be among the required proposal elements. This requirement applies regardless of whether the Defense Contract Management Agency thresholds for EVMS at DFARS 234.201 are met; regardless of whether the potential offeror will fall under full or modified CAS coverage; and regardless of what type of program funding is used for the contract. Even if the solicitation expresses an intent not to provide for early release of portions of design, the requirements for Cost or Pricing Data, FAR Part 31, and CAS implementation are still in force, and necessary to negotiate at the production point (see paragraph 13 below).

e. Options may potentially be employed but they must conform to both the requirements of the FPIF/FPIS provisions and the option provisions in FAR 17.207(f), as well as fiscal and authorization requirements associated with the particular project. Any proposed use of options shall be detailed in the project's AP.

9. EVMS:

a. ECI is a fixed price incentive contract type, therefore, the contractor must be prepared to implement an EVMS in accordance with FAR 34.2-EVMS, and DFARS 234.2 - EVMS and the references contained therein. Full EVMS implementation is required if early release of the design by the A-E is used, or if the Government elects to pursue construction under the final profit adjustment provisions of FPIS FAR clause 52.216-17(d)(4).

b. The basic elements of the EVMS Plan provided in the offeror's proposal must be implemented, developed, and matured during the pre-construction services phase. These basic elements must include a Work Breakdown Structure, and an Integrated Master Schedule at a level commensurate and fully integrated with the A-E and Government cost estimating and scheduling efforts. These basic elements can then be used to initiate a fully developed EVMS when/if fast tracking is required, or if the Government elects to proceed under the final profit adjustment provision of the FPIS Clause.

10. COST ACCOUNTING STANDARDS AND COST OR PRICING DATA: FPIS is by definition a negotiated procurement. The initial solicitation and award represent adequate competition, provided that the above bases of competition, evaluation, and award are implemented. There must be an adequate number of responsive, responsible proposals received and changes that result are contemplated by the initial competition. Thereafter, the requirements for CAS (modified or full) and Cost or Pricing Data, along with initial proposal data which is sufficiently detailed for future negotiation, must be implemented at the time of award of any portion of an ECI contract.

11. POST AWARD CONTRACT ADMINISTRATION: Most ECI contracts contain a FFP CLIN for pre-construction services and one or more FFP CLINs for initial, fully designed construction elements (clearing, site development, etc.), and one or more FPIS CLINs for the bulk of the construction work. Administration is dependent on the contract elements awarded.

a. If the FFP CLINs are the only work elements awarded and operational before the production point is reached, those phases may be administered as a FFP (services and/or construction) contract. Ensure the contractor is maturing, updating, and detailing the Cost or Pricing Data, and EVMS elements that were provided at time of award.

b. If any FPIS CLINs are activated due to early release of design by the A-E to the construction contractor, or the work contained in these items is otherwise negotiated or directed prior to the Production point, the administration procedures must use the method addressed in the AP for monitoring and paying the contractor. The appropriate FPIS contract clauses, along with full implementation of EVMS (details determined by contract size), set out the minimum requirements for administration during this period.

c. The overall FPIS contract is not converted to FFP unless, and until, ALL elements in the SOW are converted at a properly executed production point. This is not simply an accumulation of a series of FFP contract modifications. It is the point at which the contractor's EVMS-generated cost and production data (both actual and estimated) is used to negotiate either a FFP or a firm target cost with profit formula (FPIF contract). The ceiling price should never increase unless additional scope (initially contemplated by the original competition and not new scope) is added to the project. If a contracting officer chooses to award or issue a Notice to Proceed (NTP) for early phases of the work, the NTP shall be treated as partial and incremental negotiations in support of the production point negotiations toward a FFP or firm target cost. As incremental modifications do not constitute full and final settlement under a FPIS contract, contracting officers shall include the effect of all incremental modifications when negotiating the FFP or firm target cost.

12. PRODUCTION POINT: FAR clause 52.216-17(c)(1) requires the solicitation to describe an event which the contractor has completed as the point where negotiations begin between the contractor and the Government to establish the FFP or the total firm target cost. This event is the production point. The production point has been defined relative to completion of the 100% design documents. Feedback from industry has suggested that the production point could be defined earlier. Although it is feasible that

the production point could occur prior to the 100% design, experience indicates that negotiating a FFP or firm target cost is best done when the design is complete. A complete design provides greater project certainty, reducing the amount of contingencies included in the contractor's proposal and allowing easier negotiations. If the PDT concludes the project could benefit from defining the production point earlier, and intends to establish the production point prior to design completion, the timing and details of how that would be addressed in the solicitation shall be discussed in the AP.

13. REQUIREMENTS FOR INCENTIVE CONTRACTS:

a. As part of the AP, the proposed incentive structure shall be identified. It should be specific to the type and complexity of the work, and reflect current market conditions. The contracting officer, in consultation with the PDT, should analyze the nature of the work, the estimated amount of subcontracting, the market climate, and past experience with proposed ECI profit ranges to establish the profit percentage or profit range used in the solicitation. The contracting officer may decide to include a reasonable profit range, rather than a single fixed profit percentage, if this is viewed as a better way to incentivize the contractor. This profit range/percentage would then be a fill-in at FAR clause 52.216-17(a). Offerors will select a value from within this range to apply to their initial target cost. The range shown in the solicitation will be replaced with the initial target profit percentage at the time of award. A broader range of values should then be used as the clause fill-in at FAR clause 52.216-17(d)(2). This is the portion of the clause where the contractor's maximum and minimum profit is determined relative to their ability to properly control costs throughout design and construction. If the same values are used at both (a) and (d)(2), it can create a situation where the offeror has no incentive to control cost because they proposed an initial target profit that equals the maximum profit allowed by the clause.

b. FAR Part 16.401(d) requires a Determination and Finding be completed for all incentive and award-fee contracts. If the contracting officer elects to create secondary incentives, such as the use of award fees, the reasoning and structure should be outlined in the AP. The explanation should include discussion of how these award fees will work in conjunction with the FPIS incentive structure; how the award fee program will be administered; and identify the source and amount of funding anticipated. Time-based award amounts may be considered by the contracting officer to address situations wherein the contractor might unduly delay or significantly accelerate the provision of data, which is needed to establish the FFP or a final profit adjustment formula. Secondary incentives, if used, must be fully detailed (by mathematical examples) in the solicitation so that prospective offerors are fully aware of potential fee impacts.

14. TRAINING: The composition, training, and contract administration/oversight of the entire team must be confirmed at the project planning phase to ensure accurate and adequate review of processes are maintained, and timely execution of the required contract actions are at prescribed process points. To avoid miscommunication on the processes, it is best to train the team early and together in the planning process. Team members are required to participate in an 18-hour workshop facilitated by E&C during

the acquisition planning phase to understand how the risks and benefits associated with this methodology are related to staffing and execution of the project. Team members in critical contract administration positions such as the Contracting Officer Representative, Administrative Contracting Officer, and Procuring Contracting Officer must complete the Cost Reimbursement Prospect Course 001. This course familiarizes students with the EVMS processes that are required to administer a contract under FPIS and related clauses.

15. PEER REVIEW: Three phases of peer review are required for all ECI delivery system projects: (1) prior to issuing the solicitation; (2) prior to requesting final proposal revisions; and (3) prior to award. Refer to UAI 5101.170 and UDG 5101.170 for guidance on the peer review process.



**ATTACHMENT 11 – DIRECTOR OF CONTRACTING DIRECTOR’S INCIDENT
REPORT**

Director of Contracting
Director's Incident Report
(Revised 4 March 2024)

1. The purpose of this attachment is to provide the Director of Contracting's (DoC) Director's Incident Report (DIR) procedures.
2. An incident is an event that must be reported through the Chain of Command using these DIR reporting procedures. An DIR provides the DoC situational awareness of circumstances having a significant impact on decision-making, mission accomplishment, the workforce, contract execution, and/or contractor performance.
3. This attachment applies to the contracting community under the U.S. Army Corps of Engineers (USACE) Head of the Contracting Activity authority.
4. Procedures.
 - a. Regardless of rank, grade, position, or title, employees shall immediately report the occurrence of a DIR event (Appendix A) to their supervisor through the Chain of Command. Any alleged or actual incident, event, accident, or misconduct as defined in Appendix A shall be reported.
 - b. DIR Routing. Each DIR event must be reported at <https://team.usace.army.mil/sites/HQ/PDT/DIR/default.aspx>, except as indicated at Appendix A to be reported to the DoC via encrypted email using the template in Appendix B. If the DIR contains classified information, the email must be sent through the Secure Internet Protocol Router Network. Contracting Officers shall use the template in Appendix C when submitting a DoC DIR notice of a procurement protest at the Government Accountability Office (GAO) (see template provided at <https://usace.dps.mil/sites/KMP-CTP/Templates/Forms/AllItems.aspx>).
 - c. The initiator of the DIR shall submit Interim DIRs as fact-finding occurs or additional information becomes available. After the incident is resolved, a Final DIR shall be submitted to close out the action.
5. This Contracting DIR process is not intended to replace or modify Operations Order 2015-28, USACE Commander's Critical Information Requirements.

APPENDIX A

Director of Contracting

Director's Incident Report Requirements

(DIR events in bold must be reported via encrypted email to the Director of Contracting).

1. Termination for Default. Federal Acquisition Regulation (FAR) Subpart 49.4 Termination of a contract that supports a U.S. Army Corps of Engineers (USACE), Army, or Department of Defense (DoD) mission or program.
2. Protests. Any procurement protest greater than or equal to \$1 million, or has the potential to result in mission failure to deliver critical supplies and services on time.
3. Claims. Any contract claim greater than \$100,000.
4. Settlements. Any settlement that requires concurrence and/or decision of the Engineer Chief Trial Attorney as described in USACE Acquisition Instruction 5133.204-100.
5. Stop Work Orders. Any contract delay due to a stop work order that causes a critical change in schedule, production, or delivery.
6. Union Related Contract Matters. Labor issues resulting from the contractor's noncompliance with the contract's collective bargaining or project labor agreement that is unable to be resolved at or below the Senior Contracting Official (SCO) level.
7. Contractor Walkouts/Strikes. A contractor walkout or strike involving 100 or more employees, or has the potential to disrupt support to any USACE or Army program.
- 8. Work Misconduct Procurement Fraud or Criminal Investigation Command (CID) Notification. Any alleged or actual misconduct by a Directorate of Contracting or contractor employee resulting in an allegation or arrest. Any alleged or actual fraud, waste, abuse, or corruption by any individual or organization (e.g. contracting office employee, contractor, requiring activity, and/or end-user employee) involved in the contracting process.**
9. Funding-related Matters. Any lack of funding to continue support for a USACE, Army, or DoD mission or program, anti-deficiency act violations, or unauthorized commitments above the SCO approval level.
10. Media Coverage. Event with national media coverage that negatively portrays a USACE contract, project, or incident.

- 11. Warrant termination due to misuse of authority.**
- 12. Any incident that is a risk to an individual's security clearance status.**
- 13. Sexual Harassment/Assault Response and Prevention or Equal Employment Opportunity complaint.**
14. Unauthorized disclosure of procurement sensitive information.
15. Any event or disaster that adversely impacts office operations.
16. Senior Leader recusal on any contract action.
17. Trafficking in Persons violations. Any trafficking in person violation identified in DoDI 2200.01, Combating Trafficking In Persons.
18. Requests for information from external agencies (e.g. Inspector General, Army Audit Agency, CID, and Congress), etc.
19. Other Reportable Incidents. Any other matter that may require the awareness of the DoC, as determined by the ED or SCO.

APPENDIX B

Director of Contracting



Director's Incident Report Template

1. USACE Directorate of Contracting (DoC) DIR Number (assigned by the DoC Office):
2. Title of Incident Situation:
3. Type of Incident (Initial, Follow-Up, Final):
4. Date and Time of Incident (local time):
5. Date and Time (Eastern Standard Time) Notification to Director of Contracting:
6. Location of Incident:
7. Senior Contracting Official/Executive Director Phone Number:
8. Center/District Office/Chief of the Contracting Officer Phone Number:
9. Personnel Involved (separate entry for each individual):
 - a. Name:
 - b. Rank or Grade:
 - c. Title/Position:
 - d. Security Clearance:
 - e. Center/District/Field Office Location:
 - f. Duty Status (permanent or temporary):
10. Background/Description of Incident:
11. Summary of Incident:
 - a. Who (Name of Individual/Company):
 - b. What:
 - c. Where:
 - d. When:
 - e. Contract/Solicitation Number:
 - f. Requiring Activity:
 - g. Dollar Value (including options):
 - h. Operational Impact (Minimal, Moderate, or Significant):
 - i. Operational Impact Remarks: (i.e. What can be done to minimize impact? How does the incident impact contract execution? How does the incident impact contract performance? Has the incident been verified as valid?)
 - j. Has the supporting organization forwarded an DIR? If so, when? By whom? To whom?
12. Publicity:
13. Additional Remarks:
14. Expected date/time of next update:

APPENDIX C

Director of Contracting

Director's Incident Report Protest Data Template

GAO LEVEL PROTEST	
	
DEMOGRAPHICS	NAME OF PROTESTOR: XXXXXXXX
PROJECT INFORMATION	 GROUNDS FOR PROTEST
Project Title:	1) XXX
Project Location:	2) XXX
Contract Type:	3) XXX
Contracting Method:	4) XXX
Contract Number:	5) XXX
Contractor:	
Business Size:	
Award Date:	
Award Amount:	
BACKGROUND	ACQUISITION MILESTONES
Solicitation Date:	Action
Proposals Due:	Protest Received
Contract Award:	Suspension Issued
Date of Debrief:	KO Statement of facts signed
Enhanced Debrief Question Received:	Contract Documents sent to Office of Counsel (OC)
Response Provided:	"5 day Letter" due (OC submitted letter and produced documents) to GAO
	OC prepares and submits Memorandums of Law, and Exhibits
	Agency Report (the KO statement of fact, memo of law, and exhibits)
	Deadline for the protester to file supplemental protest
	Protester comments on Agency Report Due
	GAO Decision (NLT)

POC: XXXX, Contracting Division As of XX XXX 202X