



**US Army Corps
of Engineers®**

ENGINEERING AND CONSTRUCTION BULLETIN

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Subject: Architect-Engineer Responsibility Management Program (AERMP)

Applicability: Information

1. We have received and analyzed the FY02 AERMP reports from all MSCs and Centers, which are required by Chapter 7 of EP 715-1-7, Architect-Engineer Contracting. The following observations are made:

a. The total amount of A-E liability settlements received in FY02 was \$857,000. This is a significant increase over FY01 (\$124,000) and FY00 (\$140,000), although less than the annual average recovery since 1990 of about \$1,300,000. The reduction from previous historical levels is attributed to the increased use of design-build, which shifts the liability for design errors to the constructor contractor, and greater emphasis on design quality control and assurance processes.

b. Eighteen liability cases were settled in FY02. The negotiated settlements were about 93% of the original computed damages, which is far above the historical average of about 45%.

c. In FY02, about 13 cents in investigation and recovery (I&R) costs were spent for each dollar of A-E settlement. Since FY97 when we started collecting I&R cost data, about 6 cents in I&R costs were spent for each dollar of A-E settlement. Reasonable I&R costs are part of the assessable damages.

d. The backlog of liability cases (and associated dollars) carried over into FY03 is about the same as carried over into FY02. Most of the backlog is due to three very large cases. We have an important responsibility to our customers to pursue A-E liability cases in a timely manner.

2. Based on the FY02 reports, MSCs and districts seem to be very aware of the requirements of the AERMP and have effective programs in place. The FY03 MSC AERMP reports are due to CECW-ETE by 30 November 2003. Districts are required to report quarterly to their MSC on the progress of each case. The following points should be considered when reporting:

a. All design deficiencies are not A-E liability cases. It is only a case if the A-E firm is liable for the damages and we decide to pursue recovery. See EP 715-1-7, para. 7-7.h and the flowchart at Appendix BB.

b. The reports must include I&R costs, which are part of the total assessable damages. It is also important to track I&R costs as a measure of the effectiveness of the AERMP in each command.

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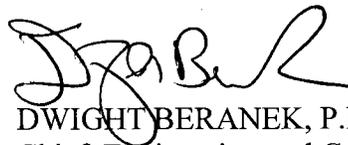
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c. The value of any work-in-kind (i.e. A-E services) performed by an A-E firm as "payment" for a liability claim must also be reported. (Of course, this does not include the effort for an A-E to correct its own mistakes.) Also, an A-E firm cannot perform the construction required to correct a design deficiency. See EP 715-1-7, para. 7-7.c.

d. If an A-E settlement is made without the need for a letter of intent, a case report is still required and the settlement amount included in the annual report. See footnote 6 on page 7-8 of EP 715-1-7.

3. The Deputy Commander's memorandum, dated 24 September 2002, subject: Enforcing Quality in Architect-Engineer Contracts, advised that we were coordinating with our military customers to allow the use of planning and design (P&D) funds for the investigation and pursuit of A-E liability. The Directorate of Military Programs will issue a policy memorandum soon on supervision and administration and design during construction costs, which will address when P&D funds can be used for pursuing A-E liability.

4. HQUSACE point of contact for the AERMP is Don Evick, CECW-ETE, 202-761-4227.



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