

CHEMICAL STOCKPILE DISPOSAL PROGRAM SYSTEMS CONTRACTS

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CHAPTER 1. INTRODUCTION

1.1 General.

a. *Purpose.* This plan presents and prescribes the basic duties, responsibilities, policies, procedures, and essential information for guiding Resident Engineers and their staff in contract administration relative to the construction mission of **U.S. Army Engineering & Support Center**, Huntsville (USAESCH) in the Chemical Stockpile Disposal Program (CSDP). Primarily, these instructions are intended for managing fixed-price construction.

b. *Scope.* This plan does not supersede the requirements of law, governing regulations, or the specific provisions of contracts. It supplements Federal Acquisition Regulations and references FAR clauses that are mandatory for contract management. Together with EP 415-1-260, *Construction/Resident Engineer Management Guide*, this plan fulfills the Memorandum of Agreement between USAESCH and **Operations Support Command (OSC)** for managing CSDP contracts. However, this plan nor the EP can cover all possible conditions and requirements that develop in contract administration. Operating conditions may vary on different projects or sites; therefore, certain field office policies and procedures must be formulated by the Resident Engineer to meet the varying conditions. When guidance is incomplete or not applicable, the Resident Engineer should request assistance from the Directorate office.

c. *Applicability.* All personnel of the Huntsville Center, Chemical Demilitarization **Directorate**, who are responsible for contract administration will use this plan. Other Directorate personnel and personnel of the Directorate of Chemical Demilitarization Program Management will follow this plan to interface with the Construction Directorate.

1.2 Program Organization.

a. Exhibit 1*1 shows the organization for the Chemical Stockpile Disposal Program. USAESCH Chemical Demilitarization **Directorate (CD)** serves as the single point of contact and life cycle project manager for all Corps of Engineer activities for the CSDP. The **OSC** Procurement Contracting Officer has delegated Administrative Contracting Officer authority to USAESCH to perform the task of administering the firm fixed-price (FFP) phases (equipment acquisition, construction, and equipment installation) of the CSDP systems contract. The administrative role is unique in that the Procurement Contracting Officer is headquartered in the **Operations Support Command, OSC**.

b. The Director, Chemical Demilitarization Directorate, is responsible for the job site administration of all FFP construction. This construction will be accomplished through a designated Resident Engineer and staff located at each Chemical Demilitarization Disposal Site. In addition to staff supervision and coordination of Resident Office functions, the **Chemical Demilitarization Directorate** is responsible for cost control, manpower, selecting personnel, personnel actions and assignments, and administrative actions (see exhibit 1*2). The Chemical Demilitarization Directorate, CEHNC-CD, is organized as follows:

<u>STAFF OFFICE</u>	<u>SYMBOL</u>
Office of the Director	CEHNC-CD
Technical Support Team	CEHNC-CD-TS
a. Quality Assurance	CEHNC-CD-TS-QA

b. Contract Administration
Alternate Technologies Team
Incineration Team
Operations Support Team
Russian Team

CEHNC-CD-TS-CA
CEHNC-CD-AT
CEHNC-CD-IN
CEHNC-CD-OP
CEHNC-CD-RT

c. Project Management Chemical Demilitarization is performed through a liaison office at Edgewood Arsenal.

d. The Resident Engineer (RE) is the manager of the field office and is responsible to the CD Directorate. The RE supervises the field organization and manages functions delegated by the CD Directorate. Other Resident Engineer functions are summarized in exhibit 1*3.

The interrelationships of the U.S. Army Chemical Material Destruction Agency (USACMDA), U.S. Army Material Command (AMC), **OSC**, the U.S. Army Corps of Engineers (USACE), and **U. S. Army** Engineering and Support Center **Huntsville** (USAESCH) must be clearly understood to accomplish the program mission. Partnering agreements with these agencies have been executed. It is important that all managers understand the importance of the program mission and the need to foster and promote a team approach for the program execution. The acquisition strategy dictates that the PCO must be kept informed with regard to the construction schedule and cost control. The Resident Engineer and staff are the focal points for construction execution.

1.3 ACO/COR AUTHORITIES. The current CSDP acquisition strategy provides for **OSC** to have Contracting Officer Authority for the CONUS systems contracts starting with the Anniston Chemical Agent Disposal Facility (ANCDF). The **OSC** will retain Procuring Contracting Officer, **(PCO)**, authority for the project control portion of the systems contract throughout the life of the contract. As stated earlier, ACO authority has been delegated to USAESCH for the construction, equipment acquisition, and equipment installation portions of the systems contracts. **HNC-CT has the role of PCO on some contracts and has been designated primary ACO authority for construction and equipment installation phases of other fixed price contracts. The Resident Engineer has limited ACO authority on the firm fixed price incineration contracts.** However, **OSC** will assume authority when systemization begins. Contracting authorities and limitations are discussed in detail in chapter 7.

a. *Administrative Contracting Officer (ACO).* The **primary** ACO resides in the Directorate of Contracting in Huntsville Center, **HNC-CT**, and will administer the firm fixed-price CSDP construction phases of the systems contract. **The Resident Engineer has limited ACO authority at the construction site.** However, it is the Procurement Contracting Officer (PCO) who is ultimately responsible for the contract throughout its life cycle. ACO's are appointed by the Principle Assistant Responsible for Contracting (PARC).

b. *Contracting Officer's Representative (COR).* The Director, Chemical Demilitarization Construction, USAESCH, and the Resident Engineer have been appointed authorized representatives of the Contracting Officer. The appointment authorizes the COR to take actions required of the Contracting Officer, but only actions at the job site. The authority specifically excludes any action, which would result in changing the contract price or completion dates. If the Resident Engineer desires a staff member to act in the COR capacity, or if he has a staff member act in his absence, the Resident

Engineer must submit a recommendation to the CD Directorate. Personnel will sign documents as:

John J. Smith
Authorized Representative
of the Contracting Officer

or

John J. Smith
Acting Resident Engineer

The roles of the Resident Engineer, the ACO, and Contracting Officer Representatives are different in some respects, but all support the PCO.

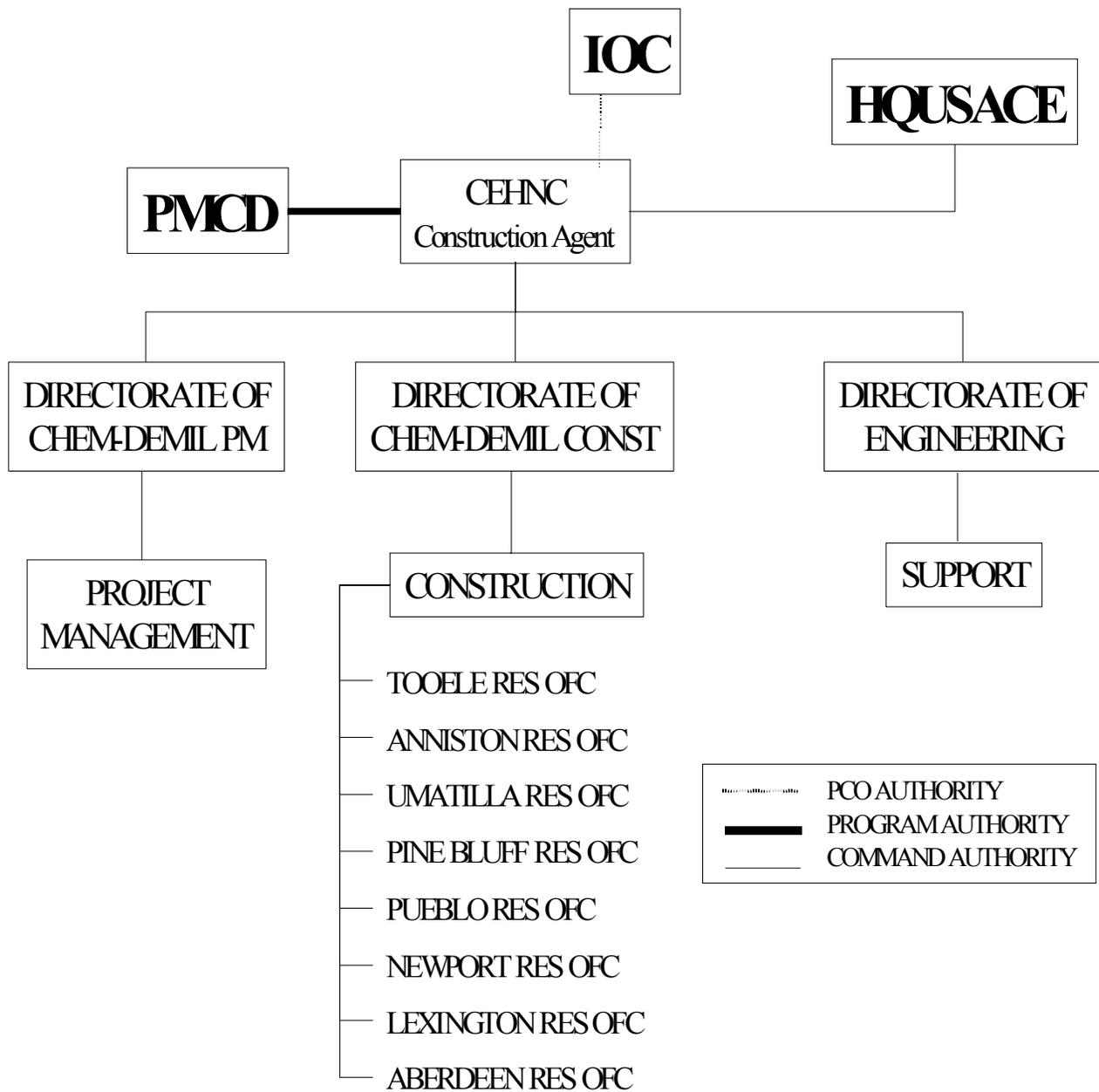


Exhibit 1*1. Chemical Demilitarization Directorate

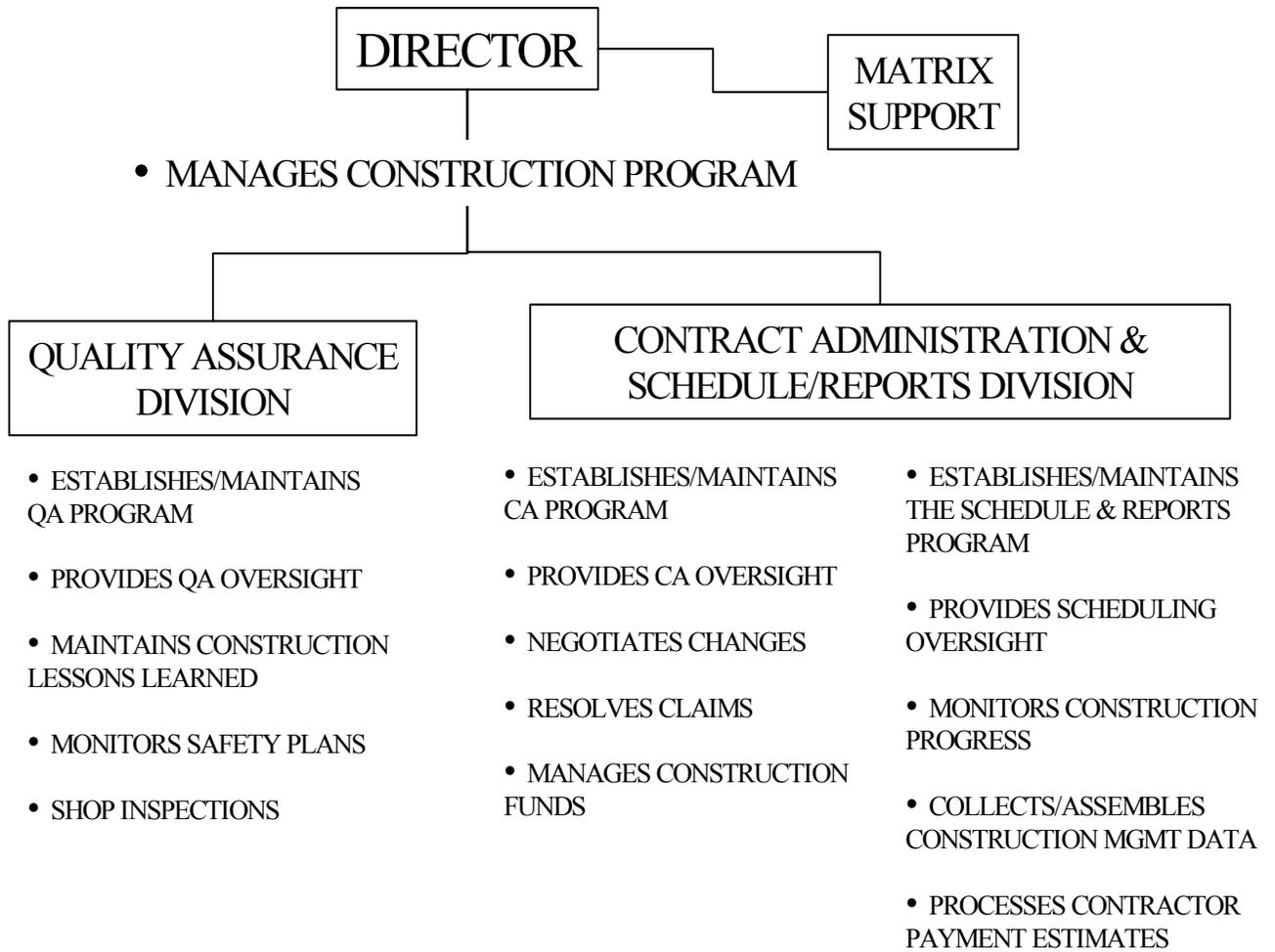


Exhibit 1*2. Chemical Demilitarization Directorate - Organization and Functions.

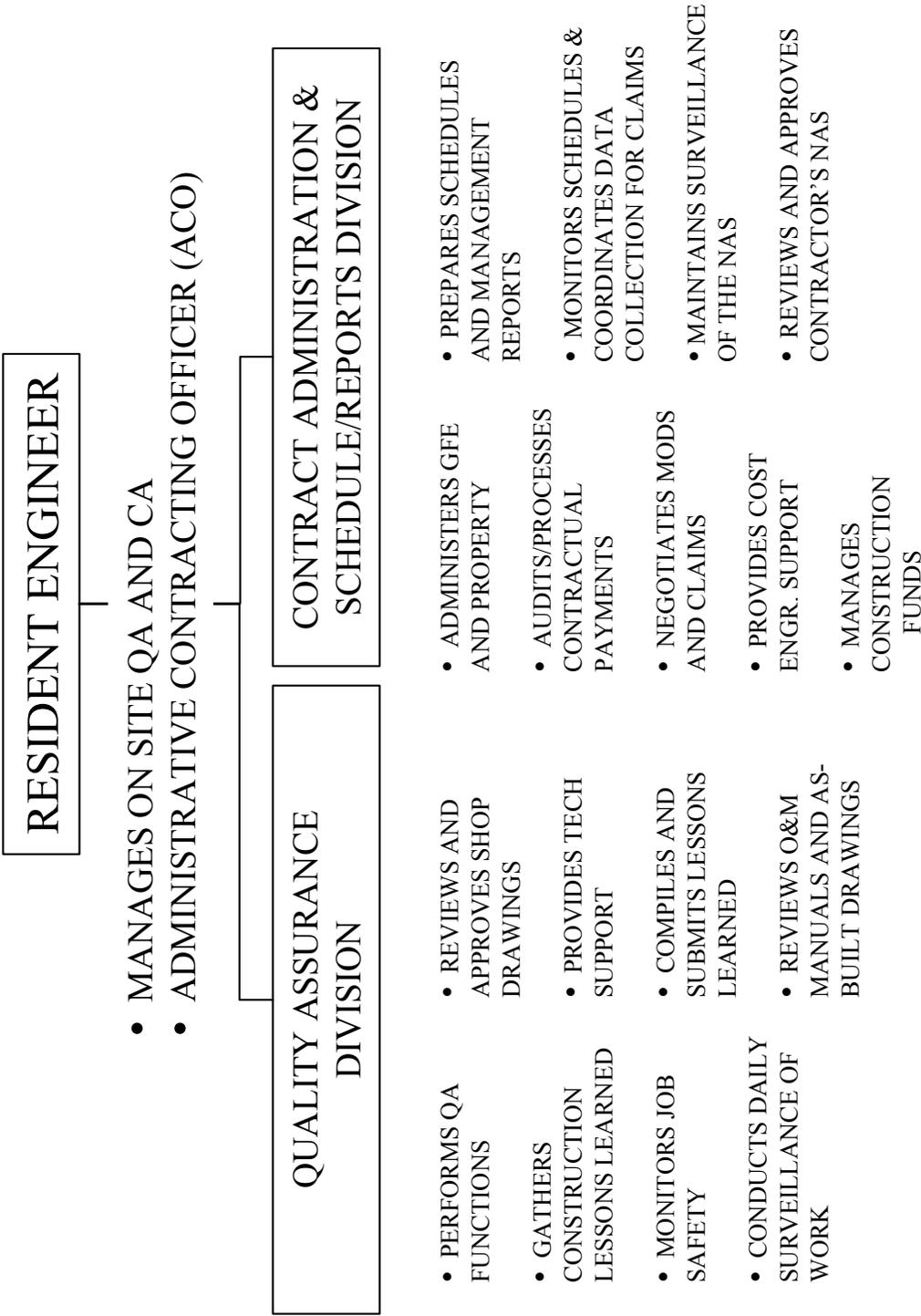


Exhibit 1*3. Resident Engineer Office – Organization and Functions

Chapter 2. Office Documentation Management

2.1 Purpose. The purpose of this section is to provide guidance in the receipt, distribution, and filing of various pieces and types of construction correspondence at the Resident Engineer Office. Each Resident Engineer shall establish their own procedure by which routine contract documents can be logged-in, date stamped, copied (number of copies), distributed, and tracked. A major portion of these contracts documents, except for the more routine, are detailed in specific chapters of this manual. Those chapters should be referenced when detailed questions arise.

It is imperative that proper and expeditious handling, copying, and processing of all correspondence be conducted in order to insure that thorough and accurate reviews are conducted within statutory time requirements. And, the required distributions, implementation, written responses to correspondence and filing of documents are conducted upon their review and approval.

2.2 References.

- a. AR 25-1
- b. AR 25-50, Preparing and Managing Correspondence
- c. AR 25-400
- d. AR 25-400-2
- e. CEHND Supplement 1 to AR 25-400-2, The Army Files System
- f. CEHND Supplement 1 to AR 340-1, Records Management
- g. CEHND Supplement 1 to AR 340-18, Records Management
- h. CEHNDP 25-30-3-1, Appendix A, preparation of Huntsville Division Publications
- i. CEHNDP 25-30-3-2, Index of Huntsville Division Policy Memorandums
- j. CEHNDP 25-30-3-3, Index of Huntsville Division Policy Memorandums
- k. CEHNDR 25-30-3-1, Publication Media
- l. CEHNDR 25-50-3-1, Correspondence Management
- m. CEHNDR 25-50-3-2, Signature Authority
- n. CEHND 25-50-3-4, Guide to Completed Staff Actions
- o. CEHNDR 310-1-2, Printing and Reproduction Services
- p. CEHNDR 310-1-3, Blank Forms
- q. CEHNDR 1180-1-6, Official Contract Files
- r. DA PAM 600-70, Effective Writing for Army Leaders
- s. EP 415-1-260 Chapter 2, Office Administration
- t. ER 25-1-74, Electronic Mail
- u. ER 715-1-14, Official Control Files
- v. Policy Memorandum 88-7, Trip Report
- w. The Gregg Reference Manual, Latest Edition
- x. USACE Supplement 1 to AR 340-18, The Army Function Files System
- y. U.S. Government Printing Office Style Manual, Latest Edition

2.3 Correspondence Control. The amount of paperwork will be exceedingly large on Chemical Demilitarization projects and will require more coordination than is usually required on standard military or civil construction projects. The Resident Engineer needs to firmly establish, prior to start of construction, the procedures and methods of handling this paperwork. Document Control shall be established so the Resident Engineer can identify all incoming correspondence and identify the action that was taken. An audit loop must be available for all correspondence in and out of the office to ensure that all actions are properly followed up and accounted for during the construction process. The method of maintaining this Document Control System should be a part of the office automation tasks under the planning phase schedule of events.

The field Resident Engineer Office-ultimately the Resident Engineer- is responsible to generate Standard Operating Procedures (SOPs)/policies for the receipt, handling, preparation and filing of all routine, local, day-to-day documentation.

2.4 Information /Documentation/Correspondence. Following is a list of the most common correspondence types we will be processing. The lists are not inclusive. Additional items are included in references with action given in the other applicable references.

a. General Documentation/Correspondence List:

- Mail (General Correspondence)
- Routing and distribution of mail
- Filing and record keeping
- Partial Progress Payment Estimate-ENG FORM 93
- RFIs
- Submittal and Shop Drawings
- ECPs
- Modifications/Change Orders/Contractor's Claims
- PQAP
- SAFE
- GFE
- Property related/accountability
- Daily reports
- Quality Control test reports and related documentation
- Architect-Engineer correspondence (Title II Support)
- Red Line and As-Built drawings
- Lessons learned
- 1354s
- Warranty Implementation

b. Special Documentation/Correspondence List and Special Items:

- Faxes
- Express or Airborne Mail
- Electronic mail
- VIP visitors
- Congressional and other Political Correspondence

c. Other Documentation/Correspondence Items and Considerations:

- Documentation control area
- Documentation Control Responsible Person
- Technical Library Management
- Vehicle Management
- Supplies Management
- Schedules
- MIS Reports
- Equipment Status Reporting
- Training Documentation
- Auditing and monitoring of Documentation/Correspondence

2.5 Responsibilities.

a. Resident Engineer Office:

The Resident Engineer shall establish a general location in the Resident Engineer Office for the logging-in/logging-out, date and time stamping, and distribution of all incoming and outgoing correspondence and contract documentation. There shall also be designated a responsible individual to oversee these tasks and to maintain a database to keep track of correspondence/documentation, its status, its suspense, and the person or persons responsible for review, response and/or approvals. General correspondence and contract daily occurrences shall be processed/handled in accordance with EP 415-1-260, Resident engineer Management Guide, chapter (2 Ref s). Other correspondence shall be handled in accordance with the applicable references.

The processing of correspondence/documentation is clearly defined in the references and shall be adhered to by the Resident Office in developing operating procedures for the handling of specific items.

Specific guidance of contract related items are provided in numbered sections of this Construction Contract Administration Plan, i.e. submittal, As-Builts, Modifications, Claims, Etc.

The Resident Engineer Office will be the Official Office of Record for all construction contract correspondence/documentation generated/received during the construction contract period.

b. Contractor Responsibilities:

The contractor shall designate a point of contact (POC) or representative that is responsible for receipt and distribution of all contractor incoming correspondence/documentation, and delivery of all contractor outgoing correspondence/documentation.

This POC/representative shall be responsible for delivery of all correspondence/documentation to the designated/responsible resident Engineer Office representative who will date and time stamp it and make proper distribution.

This POC/representative, also, shall be responsible for receipt, date and time stamping, and making proper distribution of all contractor incoming correspondence/documentation.

c. Construction Directorate:

The responsibility of the construction directorate concerning the Resident Engineer Office documentation, correspondence and related items is one of advisor or monitor. The directorate will review and monitor resident office generated standard operating procedures (SOPs) and policies and give advice when appropriate. However, physical control rests with the resident engineer office.

d. Huntsville Center:

Various Branches of the Huntsville Division will perform work relative to the Chemical Demilitarization Facility contracts. That work may be generated by routine reviews/comments requested engineering and/or major technical studies and evaluations. In either case, each branch will maintain working file copies of all work performed, and upon completion of tasks, submit original, signed copies of performed tasks, surveys, evaluations, etc. through the construction project manager to the Resident Engineer Office.

2.6 Policy and Regulatory Requirements. A timely resolution and distribution of all correspondence and/or documentation, both incoming and outgoing, and maintenance of a current suspense/status database is the primary intent of this document. However, there will be times and situations where either a resolution cannot be made on a timely basis due to required subject research, or where the correspondence/documentation is coming into the office in such quantities that a timely reply is not likely. When this situation occurs, a letter should be mailed to the requestor stating the efforts underway to comply with the correspondence/documentation request, etc., and the expected date an answer will be forthcoming.

CHAPTER 3. PERSONNEL MANAGEMENT

All field offices of Huntsville Engineering Center will follow civilian personnel regulations contained in the Supervisor's Guide to Civilian Personnel Management issued by the Directorate of Human Resources, USAESCH-HR.

Section 3 of EP 415-1-260 provides a general overview of the Resident Engineer's personnel management responsibilities. The Directorate of Chemical Demilitarization Construction, CD, is the staff manager of the Resident Engineer and is responsible for the management of Resident Office personnel. The Resident Engineer must coordinate and submit all personnel management actions through the Director.

Chapter 4. Construction Fiscal Management

4-1. Purpose. This chapter outlines and establishes Construction Directorate policy for managing the Supervision and Administration (S&A) the construction accounts at the Huntsville Center and Resident Engineer offices, and establishes CEHNC procedures for managing the construction award current working estimate. This chapter does not serve as an HNC regulation.

4-2. Introduction. Construction Directorate, in formulating a contract administration plan, initially raised the question with RM and CH-SP regarding management of project construction contingencies. Realizing that it is necessary to establish procedures for commitment accounting in managing change orders, this chapter has been prepared to present an overview of the fiscal process and to reflect a funds management plan for construction.

4-3 References.

- a. ER 5-7-1 (FR), Project Management.
- b. ER 415-1-16, Construction Fiscal Management.
- c. ER 37-2-10, Financial Administration Accounting and Reporting.
- d. ER 37-345-10, Accounting and Reporting - Military Construction.
- e. CEHNDR 37-1-3, Financial Administration.

4-4. Construction Phase Management.

a. *The reference list is not complete.* However, this chapter only presents a working outline in order that the process can be better appreciated.

b. *As an aid* to understanding the process, a glossary is attached as exhibit 4*1.

c. *Funding for the Chemical Stockpile Disposal Program* is unique in relation to normal USACE MILCON programs or projects. Funding or income to support the construction mission comes from two basic sources: Military Construction Defense (MCD) and Procurement Ammunition Army (PAA – Re-designated APROC). Note that in the FY95 Authorization Act, funding previously in the Military Construction, Army (MCA) account was re-designated as MCD funds (ANCDF was pre-funded totally with MCA funds). Instructions from HQUSACE state that MCD rules are the same as MCA. Accordingly, these procedures follow MCA requirements. MCD funds will be used for the Systems Contract awarded for construction phases II and III, and PROC funding will be used for construction/Installation of equipment, Phase IV. The Program Manager for Chemical Demilitarization (PMCD) manages the overall PROC funding, and HQUSACE manages the MCD funding.

d. *Current Working Estimate (CWE) at construction contract award:*

(1) Since construction and acquisition/installation of equipment, Phases II, III, and IV, of the Systems Contract are firm fixed-price and only a part of the contract, the normal Corps management procedures are not entirely applicable. Examples of the exceptions are as follows:

(a) The IOC will award the contract using direct funding citations for the FFP phases. CEHNC-RM will coordinate with IOC for the funding of Phases II, III, and IV. CEHNC-RM will record the obligation in Corps of Engineers Financial Management System (CEFMS).

(b) CH-SP will manage the construction award CWE and has overall funds management responsibility.

(c) The IOC has responsibility for funds management for all CPAF contract work. CH-SP will ensure that the proper accounts are established and initiate purchase requests and commitment documents. The Director of CD will manage the S&A accounts.

(2) After contract award, CH-SP will manage and report the CWE, which is the most current estimate of the construction phase and associated markups defined hereafter. The required breakouts are needed in computer applications for requesting funds and for reporting progress.

(a) Life Cycle Breakdown: The CWE calculations for the project life cycle will conform to the breakdown as listed on the DD Form 1391, i.e.,

1 Estimated cost of construction (ECC) at award:

- Primary Facility
- Support Facility
- As-Built Drawings

2 Contingency: A fixed percentage of the ECC.

3 Miscellaneous of Direct Contract Price.

- As Built Drawings
- Training and Using Agency
- Surveys for Record Purpose
- Utility Cost
- Value Engineering During Construction

4 S&A. Use the S&A Flat-Rate percent of the sum of the ECC and contingency.

(b) Further Breakdown Requirements: The CWE breakdown is required for the following:

1 Funding Source. Each funding source must have its own breakdown. After the primary funding source line items are listed and totaled for the CWE for comparison with the program amount (PA), break down other funds using the same breakdown rules as the primary appropriation.

2 Contract. Under a funding source, use separate breakdowns if more than one construction contract exists. And if a construction contract will be funded with more than one appropriation, the contract costs will appear more than once under each funding source breakdown.

(c) Breakdown at bid opening and thereafter: As a minimum, the three categories of the CWE (ECC, Contingency, and S&A) will be broken down into the following categories, **IF** the category exists. This is especially critical since it defines how much the project cost estimate is over or under the line item specified in Congressional Committee Reports or the PA.

1 Award ECC has five possible categories:

- Contract Cost
- Support Contracts
- Support Direct Labor
- Service Orders.
- As-Built Drawings

2 Contingency (total to date):

- Committed, obligated, or expended
- Uncommitted
- Management reserve
- Un-funded

3 Award Engineering During Construction (EDC).

4 S&A.

5 Miscellaneous Construction Cost.

(d) The proceeding categories are described as follows:

1 Award ECC:

- Contract Cost: Actual contract cost at award for all funds to be paid to the primary contractor and the primary contractor's subordinates whether obligated at time of award or obligated later. Line item breakouts include the following:
 - Primary Facility
 - Support Facilities
 - Additive/optional/alternate bid items

Use the full scope package combination prior to award. Include known changes (contract options to be exercised with construction funds after award of the basic contract).

Changes, other than options, must be separately considered in establishing the contingency.

- Support Contracts: Actual award costs for support contracts (work orders) anticipated at time of award. List separately. Some examples include GFM, utility contracts, surveys, and unusual specialized testing required for construction.
- Support Direct Labor. Estimated labor costs (subject to S&A) at time of award. This will include all in-house (labor) costs (not covered under S&A or EDC) that are subject to S&A anticipated at time of the award of the primary construction contract including the preparation of as-built drawings and other support labor.
- Service Orders: Labor, other organizations. Examples, telephone connections, etc.

2 Contingency (Total to Date): This amount (normally 5 percent of the award ECC) funds unforeseen changes such as criteria and customer changes, differing site conditions, and design deficiencies. After award, the contingency will be broken down into the following categories - **IF** the category exists. The intent of the contingency is to manage the contract as awarded. Consider criteria and customer changes outside this intent separately.

- Contingency committed, obligated, or expended. These are funds set up to pay for pending/actual changes and are subtracted from the below contingency categories.
- Contingency Uncommitted (normally 2 percent of the ECC at award). These are funds under the control of HNC that have not been committed.

- Management Reserve (normally 3 percent of the ECC at award). The Management Reserve may or may not be allocated to HNC at the time of award. These funds are normally controlled by the customer or HQUSACE and will not be used without specific approval of the customer or HQUSACE as appropriate.
- Contingency Un-funded. These are funds required to replace the contingency account should the anticipated changes exceed the total contingency to date established at HQUSACE or PMCD.

3 Award Engineering during Construction (EDC). This category (also considered as support direct labor, but not subject to S&A) will include preparing and reviewing plans and specifications for changes to the awarded contract and reviewing the engineering and design effort by the construction contractor where construction specifications are expressed in terms of performance standards with certain design details left to the contractor. Normally, a standard rate of 0.5 percent of the ECC plus contingency will be used for this line item. All award EDC will be listed under the contingency breakdown. **The EDC for criteria and customer changes after award must be a part of the estimated cost for increased funding.**

4 S&A. This is the S&A flat rate times the sum of the ECC (MCA/MCD), plus contingency. This represents an established Corps rate for managing all activities associated with project construction funds (ECC and contingency). After award, the amount needs to be divided between the rate on HNC-controlled funds and uncontrolled funds, i.e., Management Reserve, AE construction support services (Title II), and S&A support contract costs will be included as part of this flat rate. The closeout S&A will be the S&A flat-rate times the expended ECC.

As outlined above, S&A income is from two sources, MCD (MCA) and PROC. Management agreements have previously established a ratio of ± 60 percent MCD and ± 40 percent PROC for the total S&A. This ratio is used for budgeting and CWE reporting, and is reflected in the example hereafter. While the S&A (MCD) is set at the established rate, the S&A (PROC) is set at a negotiated amount.

4-5. Amounts not part of the CWE.

There may be appropriations related to the CSDP listed on the DD Form 1391, but not included in the PA. These funds will be displayed separately using the same CWE format.

4-6. MILCON CWE Breakdown. Exhibit 4*2 is an example of a detailed MILCON CWE breakdown.

4-7. Management Accounts.

a. *ER 37-345-10*, Financial Administration, Accounting and Reporting - Military Activities, establish Corps policy and procedures for financial administration and reporting Revolving Fund Activities. The S&A cost related to the MILCON flat rate are accumulated into a separate Revolving Fund Account, RF 65. Income is generated by applying the applicable flat rate to direct construction costs (work placement) as contract payments are made. CEHNC-RM must establish appropriate management accounts.

b. Typical accounts are as follows:

(1) MCD:

RF 65 MILCON Construction/Revolving Fund
RF 64 Resident Office/Indirect Expenses
RF 61 Construction Directorate/Departmental Overhead Account
-- EDC
-- Contingency

(2) PROC:

[To be determined.]

4-8. Account descriptions and activities for uniform charging procedures of construction S&A.

a. Pre-award Activities. Includes activities performed before construction contract award. These activities are a function of Construction Directorate and include conducting site visits for bidders, conferences of construction staff to establish construction sequence, and estimation of contract duration.

b. Post-award Activities. Includes managerial, technical and administrative activities, and costs which are performed/incurred after the award and are also performed by Construction Directorate. Examples include contract administration, QA Activities, and labor-related items. Also included are support by others (Engineering Directorate, Title II support), when the work requested is an extension of Construction Directorate's activities.

c. Resident Office Operations. Includes all activities and costs for operating construction field offices. Examples include all indirect expenses which cannot be identified with the specific project, transportation of things, communications, equipment maintenance, expendable items under \$5000 (items over \$5000 may not be purchased with S&A funds), utilities, and permanent change of station.

d. Construction Directorate Departmental Overhead. Includes all activities and costs at the Directorate level not identifiable to a specific project or other account. Examples include departmental overhead, Directorate General and Administrative (G&A), overhead apportioned to Construction Directorate, and labor burden.

e. EDC. Includes all activities and costs for engineering and design during construction. Examples include extensions of design, preparation of plans, specifications and cost estimates for change orders, review of contractor submittal by the designer when required to verify design assumptions, value-engineering costs which are not offset by savings, design-related visits to the construction site during construction by design personnel.

f. Contingencies. This is the amount held in reserve for use by the Resident Office/Huntsville Center to fund unforeseen changes such as criteria and customer changes, differing site conditions, quantity variations, and design deficiencies.

4-9. Funding sources. The flow diagrams, Exhibits 4*4 and 4*5 (under development), depict the funding sources for the CSDP systems contract and the structure of the award CWE. The CWE after award is also shown to indicate management and control of the following accounts:

a. Contingency. As indicated above, the contingency account is established to fund unforeseen changes, differing site conditions, quantity variations, and design deficiencies.

b. Contingency and Fund Control. Commitment accounting is required to control all funds. A Purchase Request and Commitment Document (PR&C) for each category of the contingency must be created, approved, and certified in CEFMS. The Construction Project Manager is the Site Fiscal Manager and is responsible for preparing and approving PR&C documents in CEFMS. RM certifies all PR&C documents in CEFMS, thus committing funds. All change order packages will contain a copy of the certified PR&C document.

c. S&A.

The Director of Chemical Demilitarization Construction Directorate is the fiscal manager for the S&A account and will establish a PR&C for each of the following accounts:

MCD:

RF 65, MILCON Construction/Revolving Fund
RF 64, Resident Office/Indirect Expenses
RF 61, Construction Directorate Departmental overhead Title II Support (see Exhibit 4*3)

PROC:

PROC Construction.
Construction Directorate Departmental overhead Title II Support (see Exhibit 4*3)

d. Award EDC. The site PM is the fiscal manager for the EDC Account.

4-10. Financial Management of the construction function:

a. The project manager (CH-SP) and the Director of Construction Directorate are responsible for control and financial management of the construction CWE related to the CSDP.

b. Commitment accounting is required to control all funds.

c. The Director of the Construction Directorate is the organization manager responsible for managing the CSDP S&A accounts.

d. CH-SP and CD will send funding reports to the Contracting Officer (IOC), PMCD, and HQUSACE as necessary.

GLOSSARY

As-Built Drawings	Funds must be reserved in order that a record set of as-built drawings can be prepared at the completion of the construction phases or the construction project. Must determine the specific requirements for each project.
Construction Directorate	Technical Directorate's indirect Departmental Overhead expenses - should charge departmental overhead when an expense is not identifiable to a specific project or other account.
Construction Project	A single undertaking to produce a complete and usable facility and/or a complete usable improvement to an existing facility. It includes all construction work, land acquisition, supervision, inspection, and procurement and/or installation of specific types of build-in (installed) equipment necessary to make a facility complete and usable.
Commitment	An administrative reservation of funds which authorize the creation of an obligation without further recourse to the official responsible for ensuring that funds are available. A commitment certification provides that (1) funds are available for obligation in the amount stated on the commitment request, (2) funds are appropriate for the purpose stated on the document, and (3) the proposed obligation time period is appropriate for the appropriation cited.
Contingencies	This is the amount (usually 2%) for use by the Resident Engineer, plus the Management Reserve (usually 3%) held in reserve at HQUSACE. If additional funds are required then CH-SP asks for the money.
CWE	Current Working Estimate. The official value used to establish total project cost during construction (design funds not included). Prior to construction contract award, the reported CWE is the most current estimate of the full scope of the military construction authorization act (MILCON) line item as defined by the DD Form 1391. After construction award the reported CWE is the most current estimate of the construction amount and associated markups. This is critical since it defines how much the project construction cost estimate is over or under the line item amount specified in Congressional Committee Reports or the Program Amount (PA).
ECC	Estimated cost of construction at award.

EDC	Engineering During Construction. These are expenses incurred by Engineering after the project has entered the construction cycle to perform design-related activities. For example, review of shop drawings, which are extensions of design and design changes, but not shop drawing reviews, which are extensions of Construction Directorate's mission.
Estimated Earnings	The normal pay estimates are a result of the contractor and the Resident Engineer jointly agreeing on the percent completion of the contract for the payment period. This is a date agreed upon between the contractor and Resident Engineer. If required, Construction may submit an estimate to RM in order to record earnings from any date. This should be done quarterly and must be done at year end.
Expense	Commonly used term to describe the cost accumulated in the RF65 Account. Could be RF61 accounts also and others.
Flat Rate	Sometimes called uniform flat rate accounts (RF65). The purpose is to charge all CONUS customers the same rate where by the larger projects make some money and they offset the smaller project losses. (The ChemDemil Program has an established rate higher than the uniform rate.)
Fund Cites	Sometimes called direct fund cites. The customer has control of his own money.
Income	S&ARate X Direct Construction costs, i.e., work placement as contract payments are made.
Management Reserves	This usually equates to 3% of the contract award amount which is held at HQUSACE on MCD until the Division supplies justification that it is required.
MCA	Military Construction, Army.
MCD	Military Construction, Defense.
MILCON	Military Construction; designates any congressionally appropriated new construction for DOD.
Obligation	An act, which legally binds the Government to make a payment, if the performer subsequently delivers the goods or services.
Omaha Account	Formerly located in Baltimore, this is the central clearing house for the S&A to assure that the income (placement) is on target with the projections as are the associated expenses.

Exhibit 4*1. Glossary

PCO	Procuring Contracting Officer
Placement	The amount of construction contract earnings recorded in the official accounting records.
S&A	Supervision and Administration (S&I plus Overhead)
S&A Rate	The established rate charged CONUS wide for flat rate work. Projects such as the ChemDemil may have a different rate when agreed to by the customer.
S&A Target	This is furnished by HQUSACE based on the type of placement scheduled for the FY at the Division.
S&I	Supervision and inspection costs for Construction Directorate expenses plus field office expenses.
Slippage	Term used to describe the failure to maintain the projected placement on a monthly basis.
SAFE	
RFI's	Requests for information.
ECP's	Engineering change proposed.
PQAP	Participant quality assurance plan.
GFE	Government furnished equipment.

Exhibit 4*1. Glossary

	CWE	CWE AT AWARD	CWE AFTER AWARD
AWARD ECC			
Award Primary	\$97,145,000	\$90,000,000	\$90,000,000
Award Support	29,462,000	20,000,000	20,000,000
Award Option			
As-Built Dwgs			
Award Serv. Orders			
Award ECC Total	<u>126,607,000</u>	<u>110,000,000</u>	<u>110,000,000</u>
CONTINGENCY, TOTAL TO DATE			
Contingency Oblg			
Prim Contr Mods			1,000,000
EDC Additional			500,000
Management reserve			
Transfer to Div			1,000,000
Cntrl Pend Mods			
Total Known Changes			2,500,000
Contingency Uncmt	6,330,350	2,200,000	
Division controlled		112,200,000	
Management Rsrv		3,300,000	2,300,000
Contingency Total	<u>6,330,350</u>	<u>5,700,000</u>	<u>5,700,000</u>
(Award ECC+cont)	132,937,350	115,700,000	115,700,000
AWARD EDC			
(0.5% Awrd ECC+Cont)		578,500	578,500
S&A			
6%Div Cntrld)			
(AwardECC+Cont)	7,976,241	6,025,480	6,942,000
Management Reserve		416,520	416,520
TITLE II			
		500,000	500,000
S&A TOTAL			
	<u>7,976,241</u>	<u>6,942,000</u>	<u>6,942,000</u>
HNC CONTRL CWE-----137197071138197071			
HQ CWE	140,913,591	140,913,591	140,913,591

Exhibit 4*2. Example MILCON CWE

TITLE II SUPPORT

1. Most people understand this reference since the term has been used for a long time. However, there is no legal significance to the term. A better term to use is Construction management support services (reference Construction Bulletin No. 95-13, dated 11 July 1995). Notwithstanding, and since the term Title II has been used in contract documents, the term will be used in this context. Title II services and costs are included as part of the S&A account managed by the Director of the Construction Directorate. In the CSDP, Title II services may come from two principle sources:

a. The Ralph M. Parsons Company (Parsons)

Contract DACA87-86-C-0084

Criteria Development and Design Services for the Chemical Demilitarization Facilities
[Option for Title II]

b. Teledyne Brown Engineering

Contract DACA87-95-D-0035

Engineering Service Support Contract [ESSC]
[Negotiated Delivery Orders]

2. The Ralph M. Parsons Company. This contract is managed by ED-SY-C and has pre-negotiated options for services to support the CSDP. These options are identified as Tasks/Subtasks for each site as follows:

a. Task BB - DOCUMENTS AND DRAWING REVIEWS

The purpose of this task is to identify the various types of documents and drawings reviews that shall be performed by the AE.

(1) Subtask BB-A: Document reviews of GFE Acquisition. This task is PROC funded and is usually not applicable for construction management.

(2) Subtask BB-B: Document reviews of SC support. This task is PROC funded and related to PROC activities, Phase IV of Construction.

(3) Subtask BB-C: Document reviews of MCA construction support. This task is MCD (MCA) funded.

b. Task BF - ENGINEERING DESIGN

This task is to provide engineering design services during procurement, construction, equipment installation, and checkout of the facilities. As design deficiencies are identified during these phases, the AE shall be responsible for evaluating the problem and proposing design modifications. In addition, the AE shall provide engineering services for the preparation of change orders to be issued to the contractors. These engineering design services will be predominantly from the AE's home office staff to solve engineering problems. Each design task is broken down in to subtasks for each site. For example, ANCDF Task BF-3 has the following subtasks:

Exhibit 4*3. Title II Services

TITLE II Services - continued

- (1) BF3A - Modifications during procurement.
- (2) BF3B - Modifications during construction. Subtask BA - Modifications during PROC funded construction.
- (3) BF3C - Modifications during equipment installation.
- (4) BF3D - As-Built Facility modifications
- (5) BF3E - As-Built Equipment Modifications

c. Task BG-Field Office

The purpose of this task is to establish field offices to provide engineering support during initial procurement, construction, equipment installation and checkout activities at each site. A specific site is a subtask, for example, ANCDF BG-3. Field office will not exceed 34 months after award of construction contract and an overall average of 8 people during this period. Additionally, systemization coverage will not exceed 18 months following the completion of construction and an overall average of two people during this period.

3. Teledyne Brown Engineering (TBE). This contract is managed by CH-SP in coordination with the Director of Construction Directorate. The objective of the contract is to provide CEHNC with technical and engineering support services with respect to the construction and contract administration responsibilities for the CSDP. The contract is a one, five-year (basic year plus four option years) services contract and includes ordering capability (via fixed-priced delivery orders) for a range of technical and engineering studies, cost estimation, QA, technical support, construction management and valve engineering. All costs for services requested by construction are chargeable to the S&A Account (MCD (MCA) or PROC).

CHAPTER 5. PROPERTY ADMINISTRATION

(UNDER DEVELOPMENT)

CHAPTER 6. PRECONSTRUCTION ADMINISTRATION

6.1 General.

This chapter covers the functions and responsibilities of the Resident Engineer Office and Construction Directorate on construction projects prior to award, and after award during the Limited Notice to Proceed (LNTP) period, but before the contractor's full Notice to Proceed (NTP).

6.2 Biddability, Constructability, and Operability (BCO).

a. General. BCO reviews serve to reduce costly, time-consuming modifications to the construction contract by eliminating design problems before construction begins. BCO reviews take place at 35% design completion and at 100% completion. The first review provides the construction team with an early look (familiarity) at what they will construct; the 100% review (which occurs at least 30 days before advertising for bids) is a comprehensive quality control perusal. Either step provides the review team an opportunity to incorporate lessons learned. Biddability reviews address whether any contractor can respond to the Request for Proposal and formulate a bid. The constructability portion of a BCO involves whether the facility can be constructed at all and can be built within the prescribed time limit. The operability review addresses whether the facility as designed meets the prescribed function of the program. The Construction Directorate performs BCO reviews. As stated earlier, the Resident Engineer is organizationally assigned to this Directorate. The RE staff has extensive knowledge of the construction market place and has experience in construction control, supervision, and management. Therefore, during the BCO review process the Resident Office provides an independent, non-designer, construction-oriented point of view on contract specifications and drawings. The end product of a BCO review is a good set of contract specifications and drawings that accurately reflect the requirements of the work to be performed. It is evident from past projects that problems occur in construction when poor designs are provided for bid and construction. These problems very often result in cost escalation and time delays and are legally corrected by change orders and modifications to the contract.

b. Review Process. ER 415-1-11 requires the BCO review. The BCO review team consists of the Resident Engineer and other Construction Directorate personnel and Engineering Directorate personnel. All reviewers receive Copies of the plans and specifications to review simultaneously. All review comments should either be incorporated into updates of the contract documents or, after adequate discussion, withdrawn by the reviewers making the comment. At the end of the review, the Director, Construction Directorate, and Director, Engineering Directorate will certify in writing that all appropriate BCO review comments were incorporated in the proposed solicitation document in accordance with ER 415-1-11.

c. 35% Review. The Resident Engineer and his or her office staff must ensure that the contract documents include the following:

(1) Accurate depiction of site conditions and restrictions such as access, utility availability, drainage, storage, existing underground utilities, and general layout.

(2) Adaptation of design structures and features to site conditions and constraints.

(3) A method or procedure by which design comments are documented and coordinated through the Chemical Demilitarization Facility Design Project Manager for both incorporation into the design through the AE, and incorporation into the Chemical Demilitarization programmatic lessons learned data base for consideration in designs of future facilities.

d. Final Review. This review is a quality control review. All review comments from the first review will be incorporated in the final drawings and specifications package. Any design features included since the first review are examined for coordination with the entire design. It is this review that prevents early modifications to the contract. The following items should be considered in the final review:

(1) Appropriateness of contract sequencing and relationship to other work, contract performance time, construction quality control (CQC), submittal requirements and network analysis system (NAS) provisions for the specific project in accordance with ER 1180-1-6, Construction Quality Management, ER 1-1-11 Network Analysis System, and ER 415-1-10, Contractor Submittal Procedures.

(2) Adequacy of space and access for all site contractors and government operations as well as provisions for coordination to preclude onsite operational conflicts.

(3) Coverage, clarity, and consistency of specifications.

(4) Clarity, simplicity, and essentialness of items on the bid schedule.

(5) Availability of local and special materials and labor skills.

(6) Special project configurations, design features, equipment phasing, and long lead-time requirements.

(7) Comparative economy of selected materials and structural systems to others available in the area.

(8) Inclusion of all benchmarks and baselines.

(9) Adequacy of O&M manuals, training procedures, and warranty clauses.

e. The Resident Engineer, in analyzing plans and specifications during the final BCO review, may request that a written work schedule be included in contracts where existing facilities will be enlarged, where construction is complex, or where work areas overlap. The requirement for a contractor to provide a written work schedule and to attend frequent post-award coordination meetings with all affected parties is a helpful management tools.

6.3 Considerations Prior to Award.

Solicitation documents encourage visits by prospective bidders/proposers on every construction project. A point of contact from the Engineering Directorate or at the Resident Office will be named in the solicitation for interested contractors to make a site visit appointment. A resident office representative

conducts the visits, assures that all visitors get the same information, and that the technical point of contact given in the solicitation document is advised of any special information provided during the visit. It is the responsibility of the contractor to visit the site if (s)he has questions regarding existing conditions. All solicitations are normally prefaced by the statement that it is the bidder's responsibility to verify all conditions, as provided in the solicitation documents. Questions regarding the interpretation of drawings and specifications, the request for proposal, or the invitation for bids must be requested in writing. Huntsville Center must then allow sufficient time for a reply to reach all bidders/proposers.

6.4 Award. The contracting office prepares the contract documents and mails or delivers them directly to the contractor. An authenticated copy of the contract is furnished to the Resident Engineer, who then issues a letter to the contractor providing guidance on contract and administrative items such as arrangements for the pre-construction conference, material submittals, safety, CQC, payrolls, shop drawings, or correspondence. At this time the Resident Engineer should verify that the work site is ready for construction to start.

6.5 Performance and Payment Bonds. Within five calendar days after the prescribed forms are presented to the offeror for signature acknowledging acceptance, the RE will execute a written contract. Two bonds, each with good and sufficient surety or sureties acceptable to the Government, must be delivered to the Government. The two bonds are a performance bond (Standard Form 25) and a payment bond (Standard Form 25-A). The penal sum of such bonds will be as follows:

a. Performance bond. The penal sum of the performance bond will equal 100 percent of the price of Phases II, III, and IV.

b. Payment bond.

(1) When Phases II, III, and IV are \$1,000,000 or less, the penal sum will be 50 percent of the contract price.

(2) When Phases II, III, and IV are more than \$1,000,000 but not more than \$5,000,000, the penal sum will be 40 percent of the contract price.

(3) When Phases II, III, and IV are more than \$5,000,000, the penal sum will be \$2,500,000. The contractor will furnish bonds to the Government prior to starting the contract.

6.6 Document Control. The Systems Contractor (SC) will set up a data control center for collecting, storing, retrieving, and disseminating all project-generated data, as well as any other documents determined to be useful to the program. The onsite data control center (DCC) will begin operation within 60 calendar days after contract award and be accessible by all government and SC personnel. The DCC will serve as technical library, vendor data library, and an operations data library for data generated by the data acquisition and evaluation system. For further guidance, see section C of the contract documents.

6.7 Mobilization and Orientation Limitations (Limited Notice to Proceed).

a. The SC and its subcontractors will not begin any construction or equipment installation (CLIN's 0003

and 0004) during the Limited NTP period (___ calendar days) except as described in section C of the contract documents (and its subparagraphs). This ___-day period is intended to provide the SC with planning and preparation time for preparing necessary documentation, such as the NAS, the Emergency Response Plan, etc., which are required for delivery to the Government within ___ calendar days after contract award; for mobilizing the work force; and for finalizing subcontract arrangements/purchase orders. Mobilization and orientation will include moving onto the site all materials and equipment, furnishing and erecting temporary buildings, and other construction facilities as required for the proper performance and completion of the work.

6.8 Plans and Procedures. See section C and applicable data items descriptions (DID).

6.9 Partnering - Government and Contractors. The concept of partnering involves developing a cooperative management team with key players from all organizations involved in the construction contract. The partnering concept is a team relationship that promotes the achievement of mutually beneficial goals and develops processes to keep the team working toward those goals. Mainly, partnering lessens the communication gap and maintains trust among teams during large, complex, long-term construction projects. The primary objective is to draw on the strengths of each organization in an effort to achieve a quality project the first time, within budget, and on schedule.

In an effort to more effectively accomplish this contract, the Government proposes to participate in a partnering concept with the SC and his subcontractors. This effort will be bilateral, and participation will be totally voluntary. Any costs associated with effecting this partnering effort will be agreed to and will be shared equally by all parties with no change in contract price. Accordingly, the SC will not include costs associated with this partnering effort as part of his contract, nor will such costs be allowable under the contract.

This partnering effort conveys no legally enforceable rights or duties; any changes to the contract must be made by the PCO under the terms of the written contract. This partnering effort will be governed by the principles and procedures set forth in IWR Pamphlet-910ADR-P-4 (provided in section J of the contract).

6.10 Notice to Proceed and Starting Work.

a. Notice to proceed.

(1) After the Contracting Officer receives the properly executed documents from the successful bidder, the CO issues the NTP and sends a copy to the Resident Engineer. Most often, the NTP will be delivered by certified mail, return receipt requested. The first day of the contract is the day ***following*** acknowledgment by the contractor of NTP receipt.

(2) Normally, the contract requires completion of all work within a given number of calendar days after NTP. In some cases, the contract establishes a firm completion date with a provision that if the NTP is received after a certain date, the completion date will be adjusted. In these cases, the adjusted completion date is spelled out in the contract in such a way that it is automatically established and does not require a contract modification.

b. Begin work. After the contractor acknowledges receipt of the NTP, the contract generally requires work to commence within a minimum number of days as required in FAR clause 52.212-3. For the record, the Resident Engineer informs the Construction Directorate, in writing, of the date on which the contractor begins work at the job site. If the contractor fails to commence the work, the Resident Engineer immediately files a report giving all essential facts to the Contracting Officer.

6.11 Post-award Orientation. Pre-construction and pre-work conferences are outlined in chapter 7, section 11 of this manual.

6.12 Federal, State, and Local Regulations.

a. The Resident Engineer is aware of using service/using agency, Federal, State, and local regulations required under the terms of the contract. These regulations are enforced by the Resident Office staff and must be obeyed by all contractor personnel over which the Resident Office has jurisdiction.

b. The contractor is responsible for conforming to all state and local laws and Federal regulations under the terms of the contract. Features of work typically requiring state and/or local permits are handling and storing of explosives, operating cranes near power lines and railroad tracks, and operating steam boilers, mines, quarries, and labor camps. In addition, permits are frequently required for overweight loading of trucks and temporary access to state and local roads. Emphasize cooperation with state and local authorities. The contractor is responsible for securing the permit and for protecting all roadways, structures, utilities, and vegetation. Government or other property damaged by the contractor will be repaired by, or at the expense of, the contractor. The Resident Engineer keeps an accurate record of all damages.

CHAPTER 7. CONTRACT ADMINISTRATION

SECTION 1. GENERAL

7.1 Purpose. This section provides specific information on procedures for administering contracts during the construction phases (Phases II, III, and IV) of the systems contract for CSDP. Current policies and procedures of the Huntsville Engineering Center are also included in this section.

7.1.2 Authorities. All modifications are subject to Contracting Officer approval, either the Administrative Contracting Officer who resides in the Directorate of Contracting (CT) or the Resident Office Administrative Contracting Officer. All modifications beyond the authority of the Resident ACO will be coordinated by CD-CA with CT. Exhibit 7-1*1 is a listing of the limitations and authorities prescribed by law for Contracting Officer approvals. These charts also cite the governing FAR regulations and can be used as reference when questions arise concerning approval authorities.

7.1.3 INITIATING AND IMPLEMENTING CHANGES TO THE PROGRAM DESIGN.

7.1.3.1 Configuration Management. Configuration Management (CM) is a control device used by management during construction to achieve timely delivery, operational efficiency, and optimum performance of facilities. Two elements of CM that are important are Engineering Change Proposals (ECP's) and Requests for Information (RFI's). An ECP, which is government directed, is required if a design is modified; an RFI is used by the contractor to request clarification on a design. Both elements can lead to change orders or contract modifications. In some cases, a contractor's RFI triggers the need for an ECP. The program manager for Chemical Demilitarization (PMCD) is responsible for CSDP configuration management. ECP's are managed by the Chemical Demilitarization Technical Management and Design Integration Branch (ED-SY-C). Also, ED-SY-C is responsible for directing the Architect-Engineer's (AE) effort to implement the ECP and to prepare a change order package. Responsibilities and procedures for configuration management are defined in CEHNC 1115-3-80. See Chapter 12, Exhibit 21, Procedures for Managing RFIs, for details on processing RFIs and for general guidance on contract interpretation.

7.1.3.2 Value Engineering Change Proposals (VECP). Contractor-initiated VECP's are changes that would result in a saving to the Government by providing less costly items or methods than those specified in the contract. Processing VECP's must follow standard CM steps. Instructions on this process are included in chapter 2, paragraph 7.2.10 of this manual. After the VECP has been programmatically and technically approved, an ECP will implement the change.

7.1.3.3 Change Order Process.

Change orders make revisions to the contract specifications and drawings and are managed pursuant to the instructions of this plan. The Resident Engineer does not make design changes; Engineering Division (ED) technical support personnel will initiate an ECP that changes the design. The normal change order process is: (1) determine the need for a change; (2) verify that the change is within the scope of the contract; (3) design the change; (4) prepare a cost estimate; (5) verify the availability of time and funds; (6) request a contractor's proposal; (7) negotiate an equitable adjustment; and (8) execute a bilateral modification reflecting the agreement. The CSDP is not a typical construction program; therefore, the normal USAESCH management process for change orders has been modified to include the configuration management process discussed in 7.1.3.1. The normal change order process is applicable after the Resident Engineer receives an approved ECP (ECP's are approved by the USAESCH Configuration Control board/CCB). If a non-baselined change affects the contract (such as tax law changes or state regulation changes), normal ECP procedures will be used. The

Resident Engineer will initiate the change order process once an ECP is approved. Change orders are formalized into modifications by Standard Form 30 and only then can the contractor begin the work.

7.1.3.4 Categories of Modifications.

a. *A Supplemental Agreement* is a contract modification, which includes an adjustment in contract requirements, price, or time, and is accomplished by mutual action of the parties. Language in EFARS conforms to the FAR language wherein "supplemental agreement" is synonymous with any bilateral modification, regardless of whether it is within the contract scope or outside the contract scope. There are two types of supplemental agreements. With an in-scope agreement the contractor can be reasonably expected to do work that is within the scope of the original contract. For an out-of-scope agreement, the work to be performed was not initially in the negotiated contract, therefore, the basis for negotiation is changed. When there is doubt whether to handle the action as a supplemental agreement within the scope under a contract clause or as a supplemental agreement outside the scope under a U.S. Code, the Resident Engineer should contact CD-CA for a determination.

(1) In-Scope changes. The general scope is that work which should be regarded as fairly and reasonably within the contemplation of the parties when the contract was awarded.

(2) Out-of-Scope changes. The contractor cannot be required to accept a modification outside the general scope of work without his/her consent and the consent of the surety or sureties. An out-of-scope supplemental agreement is, therefore, a new negotiated contract. The Competition in Contracting Act of 1984 (CICA) severely restricts adding work outside the scope of the contract or authorized project without full and open competition. Sole-source contracting must be the *last* resort after attempting to maximize competition. FAR, Part 6, COMPETITION REQUIREMENTS, covers procedures and policy to maximize competition and the seven legal exceptions to full and open competition.

(a) Out-of-Scope approval authorities. In accordance with the CICA, the Resident Office must obtain authority for supplemental agreements outside the contract scope from:

- a level higher than the Contracting Officer;
- as applicable, by the Competition Advocate, Head of the Contracting Activity; or
- the Assistant Secretary of the Army (RDA) before requesting a proposal for the work involved and before discussing the work with the contractor.

There is an exception for unusual and compelling urgencies (FAR 6.302-2). Approval after contract award is obtained by the Contracting Officer since approval prior to award could unreasonably delay the acquisition.

(b) Processing an out-of-scope agreement. If the Resident Engineer determines that an out-of-scope modification is necessary, (s)he must forward a request together with a complete description of the proposed change and estimate of cost and time to CD-CA. After receiving the appropriate approval, the Resident Engineer must follow the normal procedures for bilateral agreements, except that Block 13D of the SF 30 will reflect the appropriate authority for the supplemental agreement outside the contract scope of work. The contractor must accept the supplemental agreement prior to signature by the Contracting Officer.

b. Undefinitized Contract Modification (Un-priced Contract Modification). There are situations where the normal procedure for in-scope supplemental agreement is not advisable because of potential delay of critical construction. In such cases, it may become necessary to issue a notice to proceed concurrently with the request for proposal, or in some cases after the request for proposal is issued, but prior to having reached an agreement on price and/or time. When the Contracting Officer directs a contractor to perform work prior to an agreed upon price, it is an undefinitized contract modification. When this unusual action becomes necessary, the RE must insure that sufficient funds for the proposed change, based on the best estimate, are pre-validated and are available for obligation. The contract action remains undefinitized until negotiations take place and the total absolute value of the work performed is agreed upon by both parties. The Resident Engineer must prepare a Statement in Support of an Undefinitized Contract Modification (UCM) for Contracting Officer signature. The UCM statement must be prepared prior to or concurrent with issuing the notice to proceed. The ACO can issue the notice to proceed modification, if it is within his/her authority, after obtaining the approved Statement in Support of an Undefinitized Contract Modification. If the change involves a substantial sum and considerable time will be required to determine an equitable adjustment or exact extent of the change, consider issuing an interim payment either in the NTP modification or in a subsequent modification under the unique change order request number. The change order will be finalized when put into a modification. If agreement cannot be reached in a reasonable time, a unilateral modification can be issued. Additional information on an undefinitized contract modification is covered in chapter 7, section 6. In order to manage the contract efficiently, the Contracting Officer must establish a not-to-exceed ceiling for the anticipated work and must include the not-to-exceed ceiling in the direction forwarded to the contractor.

c. Unilateral Modifications. The unilateral modification is a modification on which the Contracting Officer and the Contractor cannot agree to a price and/or time adjustment. The modification is based on a reasonable and equitable estimate by the Government of cost and time for the work. If the contractor will agree to time or price for some items, it is advisable to issue a bilateral modification for those items, which can be defined. A contract review board (CRB) review approval and pre-negotiation objective memorandum (POM, See Chapter 9) review and approval are required for any unilateral modification that exceeds \$500,000. Resident ACO's are not authorized to issue unilateral modifications due to failure to agree to time or price.

- **Exercise caution in all unilateral actions to consider time as appropriate. If the change will cause a time extension, include the time. If the program can not tolerate a time extension, recognize that the change will require the contractor to accelerate to complete the contract within the current contract completion period. Include appropriate cost consideration for Government caused acceleration.** Above all, support a unilateral modification by complete, accurate documentation since anything *less* may well result in an Appeal Board reversing the Contracting Officer's final decision. In cases where the Resident Engineer recommends issuance of a unilateral modification, all facts, correspondence, and any other pertinent information must be provided to the Huntsville Center for coordination with the Contracting Officer.

7.1.4 Review and Filing Contract Modifications. The Resident Engineer is responsible for maintaining the official contract file for all contract modifications made to Phases II, III, and IV of the contract. CD-CA will maintain, for the Directorate, a convenience file (a duplicate of the original) of all modifications. Assemble and route changes requiring review and approval by the Huntsville ACO, through CD-CA. The field office will file contract modifications using ENG Form 3752-2, (September 1989), Official Contract Record Checklist - Contract Modification/Delivery Order. In this manual refer to section 11, chapter 7, Standard Form 30, for instructions and guidance in assembling and forwarding modifications and documentation to CD.

7.1.5 Incorporating ECR's and Form 7 Comments- Field Office Responsibilities. The Resident Engineer is responsible for taking appropriate action on Engineering Change Requests (ECR's) generated by Parsons and CEHND Form 7 comments, which have been assigned action, **codes B and E**. See Exhibit 1-1*1 for a complete overview of the process and for the definition of the action codes. Paragraph 8 is the main paragraph of interest to the Resident Engineer.

a. The Technical Manager (TM) will provide a list of the ECR/Form 7 action items coded B and E directly to the Resident Engineer as they are received from the action coding panel with an info copy furnished to CD.

b. The Resident Engineer will inform the TM of the action taken on these items.

7.1.6 Exhibit.

Exhibit 7-1*1 Listing of the Limitations and Authorities for Contracting Officer Approval

CONTRACT CLAUSES

ACO OR HNC- PCO OR
COR CT/ACO ICO

Specifications and Drawings for Construction (Apr 1984) FAR 52.236-21.

Make written determinations in case of difference in figures, in the drawings, or in the specifications..... X

Changes (Aug 1987) FAR 52.243-4

- a. Issue request for proposal..... X
- b. Receive proposal and ensure a timely submittal. X
- c. Approve Statement in support of a UCM.....X.....X
- d. Issue SF 30 Notice to Proceed prior to agreement on price where urgency is required.

(1) Where change will definitely be within the Resident ACO's limit (authority limit delegated to ACO's by SF 1402) or less (including increases and decreases) X

(2) Where change will exceed the Resident ACO's limit, or amount is uncertain. X

e. Negotiation of price and time adjustments, subject to approval of Contracting Officer when amount exceeds ACO authority..... X

f. Negotiation and execution of modifications covering changes within the Res ACO's authority (including incrs and decrs).X

g. Determine extent of delays and make recommendations. X.....X

h. Grant extensions of time if approved/concurred by HNC/ACO and PCO. X.....X

i. Execute modifications above Resident ACO's authority..... X

j. Acceleration.
 (1) Determine necessity to accelerate contractor and make recommendation to Contracting Officer..... X

(2) Approve acceleration.....X.....X

(3) Issuance of acceleration order (with concurrence). X.....X.....X

(4) Negotiation of price when directed..... X

(5) Execution of modification. X.....X

Differing Site Condition (Apr 1984) FAR 52.236-2

- a. Receive notice from contractor in writing. X
- b. Investigate alleged conditions and make recommendations..... X
- c. Make decision of validity.....X.....X.....X
- d. Negotiate settlement..... X
- e. Execute modifications within Resident ACO authority..... X
- f. Execute modifications exceeding Resident ACO authority. X

Exhibit 7-1*1. Authorized Contracting Officer Approval Limits

CONTRACT CLAUSES

ACO orHNC PCO or
COR.....CT/ACO.....ICO

Default (Fixed-Price Construction) (Apr 1984) FAR 52.249-10

- a. Make recommendation for termination for default. X
- b. Issue written notice terminating contractor's right to proceed.X
- c. Conduct termination proceedings.X
- d. Receive contractor's notice of the delay. X
- e. Extend the 10-day limit or contractor's notification of delays.X
- f. Determine facts, apprise contractor of findings and reach agreement on a justifiable time extension. XX
- g. Make recommendations to Contracting Officer. X
- h. Prepare Memorandum of Facts.....XX
- i. Grant extensions of time.XX

Disputes - Alternate I (Dec 1991) FAR 52.233-1

Claims submitted by contractors for additional costs or time are not considered to be under the Disputes clause until a question of fact arising under the contract can't be disposed of by agreement between the contractor and the Contracting Officer. However, to cover the responsibilities and authorities for claims, which could reach the dispute situation, item a. through i. are included herein.....

- a. Receive and acknowledge contractor's claim for additional cost and/ or time, certified if over \$100K. Send a copy of contractor's letter to CD-CA. X
- b. Determine facts, both for & against, merits of the contractor's claim..... X
- c. Make every effort to resolve claim, either entirely or by separable parts, as soon as possible. X
- d. Forward disputed issues, fully documented, including statement of facts, with recommendation to HNC/ACO. X
- e. Meet with contractor to discuss merits of claim.XX
- f. Make written decision concerning disputes within 60 days or establish time for issuance with contractor. X
- g. Send decision to contractor, if no modification is involved. X
- h. Process appeals, if applicable.....X

If the decision is in favor of the contractor, the matter reverts back to an unsettled change under the appropriate clause of the contract. In this case, the matter may be remanded to the Resident Office involved for negotiation of a settlement. Execution of the modification will be made pursuant to the Disputes Clause. X

Exhibit 7-1*1. Authorized Contracting Officer Approval Limits

<u>CONTRACT CLAUSES</u>	<u>ACO or COR</u>	<u>HNC CT/ACO</u>	<u>PCO or ICO</u>
Payment Under Fixed-Price Construction Contracts (Apr 1989) FAR 52.232-5			
a. Determine if partial payments shall be more frequent than once a month.	X	X	
b. Recommend partial payment estimates.	X		
c. After sufficient evidence of payment has been furnished, recommend reimbursement of premiums paid for performance and payment bonds.	X		
d. Determine if value of stored materials shall be taken into consideration in partial payment.	X		
e. Determine if satisfactory progress has been made to allow progress payments to be made in full without retention of a percentage.	X		
f. When work nears substantial completion, determine amount to be withheld for the protection of the Government.	X		
g. Determine whether payment shall be made in full for items completed and accepted, and upon which price is stated separately in the contract.	X		
h. Recommend release of any retained percentage upon substantial completion of work.	X		
i. Refer controversial matters to Contracting Officer for a determination.	X		
Materials and Workmanship (Dec 1989) FAR 52.236-5			
a. Determination that materials and workmanship meet requirements.	X		
b. Request samples (if specified).	X		
c. Approval of materials and/or equipment.	X		
d. Require removal of employees.		X	X
Inspection of Construction (Jul 1986) FAR 52.246-12			
a. Require inspection, examination and testing.	X		
b. Reject defective material or workmanship or require its correction.	X		
c. Direct removal of rejected materials.	X		
d. Provide recommendation to the Contracting Officer for acceptance of defective materials or workmanship with an appropriate price adjustment.	X		
e. Determine whether defective materials or workmanship shall be corrected by Government forces, another contractor, or accepted with appropriate price adjustment.	X		
f. Terminate contractor's right to proceed for noncompliance with this clause.		X	X
g. Order facilities, labor and materials necessary for inspection and testing.	X		
h. Make recommendation to the Contracting Officer that completed work be removed or torn out for purposes of inspection (after assuring funds are available in the event that extra payment is required).	X		
i. Order removal or tearing out of completed work for purpose of inspection, if necessary to determine compliance.	X		
j. Determine if completed work removed or torn out is in conformance with the specifications.	X		

Exhibit 7-1*1. Authorized Contracting Officer Approval Limits

<u>CONTRACT CLAUSES</u>	<u>ACO or COR</u>	<u>HNC or CT/ACO</u>	<u>PCO or ICO</u>
k. Provide recommendation that extra payment and/or extension of time is required where removed or torn out work is found to conform to the specifications.....	X		
l. Execute modifications to adjust the contract price and/or time under the provision of this clause.....	X		
Superintendence by the Contractor (Apr 1984) FAR 52.236-6			
a. Require that contractor give personal superintendence to work or have a satisfactory rep. on the job with authority to act for him.....	X		
b. Recommend removal of contractor's rep., if unsatisfactory.....	X		
c. Order removal of contractor's representative.....			X
Other Contracts (Apr 1984) FAR 52.236-8			
Issues directions for coordination of work with that of other contractors.....	X	X	
Additional Bond Security (Apr 1984) FAR 52.228-2			
Require contractor to obtain additional bond security.....			X
Buy American Act - Construction Materials (May 1993) FAR 52.225-15			
a. Determine that contractor does not use foreign materials other than contained in list of exceptions.....	X		
b. Report violations to the Contracting Officer.....	X		
Equal Opportunity (Apr 1984) FAR 52.222-26			
a. Determine if contractor is in compliance with nondiscrimination regulations and report to the Contracting Officer.....	X		
b. Require that nondiscrimination posters be prominently displayed.....	X		
Suspension of Work (Apr 1984) FAR 52.212-12			
a. Approve suspension of work for convenience of Government (UCM Statement, if UCM).....	X		
b. Order suspension within authority.....	X	X	
c. Extend time for ensuing delay.....	X	X	
d. Approve equitable adjustment in contract price in case of unreasonable delay & execute modification within the Resident ACO's authority.....	X		
e. Execute modification over Resident ACO's authority.....			X
Davis-Bacon Act (40 U.S.C. 267a-267a-7)			
a. Require prompt submission of and check payrolls of contractors/subcontractors.....	X		
b. Require contractor to submit information on cash payments or other alternative being used in lieu of fringe benefits.....	X		
c. Require contractor and subcontractor to use proper classification and to pay minimum wages as prescribed.....	X		

Exhibit 7-1*1. Authorized Contracting Officer Approval Limits

<u>CONTRACT CLAUSES</u>	<u>ACO or COR</u>	<u>HNC CT/ACO</u>	<u>PCO or ICO</u>
d. Require minimum wage rates be prominently displayed at the site of the work.....	X		
e. Make prompt report to the Contracting Officer of violations of this clause.....	X		
f. Obtain from Dept of Labor final determination on questions of job classifications, fringe benefits and apprentice and trainee programs.		X	
g. Terminate contractor's right to proceed in the event of violation and prosecute work by other means.	X		
Apprentices and Trainees			
Determine that apprentices and trainees are properly indentured and registered in a program approved by the Department of Labor and, if not, require contractor and/or subcontractor to pay difference between apprentice/trainee rate and journeyman rate.	X		
Contractor Work Hours and Safety Standards Act - Overtime Compensation (40 U.S.C. 327-333)			
a. Require contractors and subcontractors to pay overtime in accordance with provisions of this clause.	X		
b. Make report to the Contracting Officer of violations that can't be promptly adjusted.	X		
c. Recommend penalties for violation.	X		
d. Assess penalties.....		X	
Payrolls and Basic Records			
a. Require contractors & subcontractors to submit payroll records.....	X		
b. Retain file of properly certified copies of all payrolls throughout the life of the contract; then forward to the District Office upon completion of the contract.....	X		
Compliance with Copeland Act Requirements			
a. Require that statement of compliance be attached to each copy of payrolls submitted by prime and subcontractors.....	X		
b. Report any violations of the terms of the Act to the District Labor Relations Officer.....	X		
Withholding of Funds			
a. Provide recommendation to the Contracting Officer that funds are withheld for violations of contract labor provisions.....	X		
b. Make determination to withhold funds.....		X	
Termination for Convenience of the Government (Fixed-Price) (Apr 1984) (Short Form) FAR 52.249-1 and (Alternate I) FAR 52.249-2.			
a. Make recommendation for termination, if appropriate.....	X		
b. Determine that termination is in the best interest of the Government.....	X		
c. Issue notice of termination, conduct negotiations, execute Supplemental Agreement of Settlement.....	X		

Exhibit 7-1*1. Authorized Contracting Officer Approval Limits

<u>CONTRACT CLAUSES</u>	<u>ACO or COR</u>	<u>HNC CT/ACO</u>	<u>PCO or ICO</u>
Protection of Existing Vegetation, Structures, Utilities and Improvements (Apr 1984) FAR 52.236-9			
a. Determine & direct extent of protection reqrd for existing vegetation.	X		
b. Direct contractor to repair existing structures, utilities, or work damaged by contractor's operations.	X		
c. If contractor refuses, have necessary work performed & charge cost to contractor.	X		
Operations and Storage Areas (Apr 1984) FAR 52.236-10			
a. Authorize or approve operations and storage areas.	X		
b. Authorize erection of contractor's temporary buildings.	X		
c. Determine if damage is caused by occupancy when Government facilities are provided.	X		
d. Authorize abandonment of contractor's temporary buildings/utilities.	X		
e. Authorize use of established roadways or construction of temporary roadways.	X		
Modification of Proposals - Price Breakdown (Apr 1968) FAR SUPP 52.236-7001			
a. Require contractor to submit breakdown of proposals and subcontractor's proposals showing costs of material, labor, equipment, subcontractors, overhead and profit, and justification for time extensions.	X		
b. Establish due date of contractor's proposals.	X		
Subcontractors (Clause Not in All Contracts)			
a. Obtain list of subcontractors from contractor.	X		
b. Obtain statement that nondiscrimination clause and other labor clauses have been included in subcontracts.	X		
c. Screen contractor's subcontractor list to determine if any are on Debarred List.	X		
d. Notify the Contracting Officer of incompetent or undesirable subcontractor, with recommendations.	X		
Use and Possession Prior to Completion (Apr 1984) FAR 52.236-11			
a. Determine whether Government shall take possession of or use any completed or partially completed part of the work.	X		
b. Recommend equitable adjustment in contractor price or time if possession or use prior to completion delays progress of work or causes additional expense to contractor.	X		
c. Execute modification.		X	
Cleaning Up (Apr 1984) FAR 52.236-12			
Inspect and direct cleaning of construction and storage areas.	X		

Exhibit 7-1*1. Authorized Contracting Officer Approval Limits

CONTRACT CLAUSES

ACO or HNC PCO or
COR CT/ACO ICO

Accident Prevention (Nov 1991) FAR 52.236-13

- a. Enforce compliance with Corps of engineers Manual, EM 385-1-1, Safety and Health Requirements. X.....X
- b. Order additional safety measures. X.....X
- c. Approve contractor's written proposals effecting safety provisions. X.....X
- d. Hold conference with contractor to discuss safety program. X.....X
- e. Prescribe procedures for safety of visitors. X.....X
- f. Require the making of safety reports. X.....X
- g. Notify contractor of noncompliance with safety provisions and action to be taken. X.....X
- h. Issue orders stopping work pending compliance. X.....X

Notice to the Government of Labor Disputes (Apr 1984) FAR 52.222-1

- a. Require contractors or subcontractors to give prompt notice of any labor disputes. X.....X
- b. Notify District Labor Relations Officer of all labor controversies. X.....X

Audit - Sealed Bidding (Apr 1985) FAR 52.214-26

- a. Review contractor's proposal to determine if amounts involved require Cost or Pricing Data. If so, obtain SF1411 from the contractor. X.....X
- b. If proposal exceeds \$500K, forward request for audit to CD-CA, providing technical evaluation & specific requirements for audit review, if any. X.....X
- c. Request audit by DCAA. X.....X
- d. Receive and review audit. Compare with Government estimate and contractor's proposal. X.....X
- e. After final negotiations of any proposal requiring Cost or Pricing Data, get contractor's Certificate of Current Cost or Pricing Data. X.....X
- f. Provide the Contracting Officer with documentation concerning extent of reliance on the contractor's proposal and/or Government estimate during negotiations. X.....X

Government Property (Fixed-Price Contracts) (Dec 1989) FAR 52.245-2

- a. Coordinate delivery of Government Furnished Property (GFP) with the needs of the contractor. X.....X
- b. Make investigation and recommendations regarding delay to work caused by late delivery or action pertaining to GFP. X
- c. Approve time extension for such delay. X
- d. Make equitable adjustment in contract price for increase or decrease in quantities of GFP and delays pursuant thereto. X
- e. Maintain records of GFP. X
- f. Order repair or replacement of defective GFP. X.....X
- g. Fix time for presenting inventories of surplus GFP. X.....X
- h. Authorize disposal of surplus GFP or scrap. X

Exhibit 7-1*1. Authorized Contracting Officer Approval Limits

<u>CONTRACT CLAUSES</u>	<u>ACO or COR</u>	<u>HNC CT/ACO</u>	<u>PCO or ICO</u>
Schedule for Construction Contracts (Apr 1984)			
a. Approve progress schedules.	X	X	
b. Approve revised progress schedules.	X	X	
c. Direct steps necessary to improve progress.	X	X	
d. Terminate contractor's right to proceed.			
Accident Prevention (Nov 1991) FAR 52.236-13			
a. Enforce compliance with Corps of engineers Manual, EM 385-1-1, Safety and Health Requirements.	X	X	
b. Order additional safety measures.	X	X	
c. Approve contractor's written proposals effecting safety provisions.	X	X	
d. Hold conference with contractor to discuss safety program.	X	X	
e. Prescribe procedures for safety of visitors.	X	X	
f. Require the making of safety reports.	X	X	
Value Engineering Construction (Mar 1989) FAR 52.248-3			
a. Review VECP to ensure complete information has been provided in accordance with the clause requirements.	X		
b. Review feasibility of the VECP and make recommendations to the Contracting Officer with a suspense date for approval.	X		
c. After recommendation of approval by or resolution of disagreement with VE Officer, approve or disapprove VECP.			
(1) Within Resident ACO's authority.	X		
(2) Exceeding Resident ACO's authority.		X	
d. If technical portion of VECP is approved with qualifications, discuss or return to contractor for revision and resubmittal.	X		
e. If monetary portion of VECP is unacceptable, negotiate agreement with contractor and execute modification.	X		
f. Recommend negotiated agreement to Contracting Officer if over Resident ACO's authority.	X		
g. Execute modification if outside ACO's authority.		X	
Commencement, Prosecution and Completion of Work (Apr 1984)			
a. Require commencement of work within period provided.	X		
b. Recommend acceptance of the contract.	X	X	
c. Accept the completed work.	X	X	
Liquidated Damages Construction (Apr 1984)			
Determination and withholding of liquidated damages.	X		
Submittal Register			
a. Monitor submission of submittals.	X		
b. Review and approve submittals retained at Resident Office.	X		
c. Approve submittals certified for approval by HNC.	X		

Exhibit 7-1*1. Authorized Contracting Officer Approval Limits

<u>CONTRACT CLAUSES</u>	<u>ACO or COR</u>	<u>HNC- CT/ACO</u>	<u>PCO or ICO</u>
Protection of Material and Work			
a. Direct measures for adequate protection of materials, supplies & work.	X		
b. Make recommendation to the Contracting Officer concerning protection of property by the Government.	X		
c. Determine that property should be protected by the Government & cost charged to the contractor.	X		
Layout of Work (Apr 1984)			
a. Determine changes, if necessary, for proper layout of work.	X		
b. Direct reestablishment of survey markers used in layout of work, or benchmarks, which are destroyed by the contractor.	X		
c. Determine cost of (b) and withhold from payment.	X		
Quantity Surveys			
a. Supervise quantity surveys being made for progress payments, & final surveys where specified to be performed by the contractor.	X		
b. Make original and final surveys where these surveys are specified to be made by the Government.	X		
Identification of Employees			
Direct and approve identification measures as may be necessary.	X		
Contract Quality Control (CQC)			
a. Approve contractor's Quality Control Program and personnel.	X		
b. Approve changes in CQC Program.	X		
c. Ensure contractor's compliance with the CQC provisions of the contract including submittals, inspection, testing, etc.	X		
d. If the CQC system, personnel, inspection tests and/or records are not adequate, direct corrective actions be taken.	X		
e. If the contractor refuses/fails to correct deficiencies, as directed, issue order to cease further work on the particular operation until in compliance.	X		
Required Insurance			
a. Secure insurance certificates when required.	X		
b. Review and approve insurance as may be required.	X		
Salvage Materials and Equipment			
Determine method of property control records for all materials or equipment specified to be salvaged.	X		
Equipment Data			
Obtain from contractor a complete list of all installed equipment including necessary data.	X		

Exhibit 7-1*1. Authorized Contracting Officer Approval Limits

<u>CONTRACT CLAUSES</u>	<u>ACO or COR</u>	<u>HNC- CT/ACO</u>	<u>PCO or ICO</u>
Contractor Prepare Network Analysis System (NAS) (Apr 1968)			
a. Obtain, review, and approve contractor's NAS.....	X		
b. Review and approve changes to NAS and periodic updates. Ensure that changes in the work are included.	X		
c. Monitor scheduled & actual progress & make reports, as required, to the District.....	X		
d. Obtain outline of contractor's proposed action to regain schedule, and obtain revised NAS reflecting these actions.....	X		
e. Recommend to contractor revisions necessary to regain schedule and obtain contractor's written counter-plan.....	X		
f. If contractor consistently fails or refuses to update NAS, as required, make recommendations to the Contracting Officer of necessary action.....	X		
As-Built Drawings (if specified by Contract)			
See instructions Subsection 7.6 (check)	X		
Inspection			
a. Ensure strict compliance with terms of contract.....	X		
b. Inspect completed work.....	X		
c. Ensure Government's quality assurance program is adequate.	X		
d. Accept facilities for the Government.....	X		
Manuals and Spare Parts Lists			
Receive and distribute in accordance with contract requirements.....	X		

Exhibit 7-1*1. Authorized Contracting Officer Approval Limits

PROCEDURES UNDER
THE PROCUREMENT INTEGRITY ACT

As a result of the Ethics Reform Act of 1989, the Procurement Integrity provisions were suspended for a year.
All of the Act's provisions,

CHAPTER 7. CONTRACT ADMINISTRATION

SECTION 2. CONTRACT CLAUSES

7.2 General. Contract clauses are placed in government contracts to reduce contingencies in bids and to provide for other conditions which may affect cost. The Government agrees within the clauses to adjust the contract when conditions occur that are not due to the fault or negligence of the contractor. Managers must give careful attention to the time limits prescribed in contract clauses for filing the notice of claim for adjustment and for submitting proposals. Refer questionable causes arising in the field to the Contract Administration Division for guidance.

7.2.1 Changes (FAR 52.243-4). This clause permits the Contracting Officer to make changes in the drawings and specifications within the contract scope. However, if such changes cause an increase or decrease of cost or time to the contract, an equitable adjustment must be made and the contract modified accordingly. Thus, the *Changes Clause* provides the Contracting Officer a mechanism for revising the plans, for correcting errors, or for modifying the work within the scope of the contract to satisfy changed requirements. This is usually accomplished by a written change; however, a change may also result from a "constructive" change. The *Changes Clause* provides in part:

"(b) Any other written or oral order (which, as used in this paragraph (b), includes direction, instruction, interpretation, or determination) from the Contracting Officer that causes a change shall be treated as a change order under this clause, provided that the Contractor gives the Contracting Officer written notice stating (1) the date, circumstances, and source of the order and (2) that the Contractor regards the order as a change order."

If the contractor is claiming a change under subparagraph (b), (s)he has to give written notice not later than 20 days after costs are incurred, except with respect to defective specifications. Therefore, it is important for the Government and the contractor to identify constructive changes. Examples of constructive changes include:

- The issuance of directives of all types which are not characterized as change by government personnel;
- An action which results in acceleration of contract performance (e.g., failure to grant time extensions for excusable delays with the implied or express demand for performance to the original schedule) without issuance of an acceleration order by the Contracting Officer;
- Defective specifications;
- Erroneous interpretation of specifications by government personnel;
- Limitation of the contractor's work method (without a change);
- Imposing higher level of test or inspection requirements than provided by the contract;
- Improper rejections of work.

7.2.2 Default (Fixed-Price Construction) (FAR 52.249-10). If the contractor refuses or fails to diligently perform the work within the specified contract time, the Government may, by written notice to the contractor, terminate his/her right to proceed with the work. Care should be taken in pursuing a termination for default because it can be easily converted to a termination for convenience. The contractor's right to proceed should not be terminated for default nor the contractor charged with damages if the contract performance time can be extended for excusable delays under this clause. What constitutes an excusable delay is defined by the clause and should be reviewed by all parties concerned. The delay must be beyond the control and without fault of the Contractor and his or her subcontractors and suppliers. Before a request for an extension of contract time is submitted to the Contracting Officer, the facts should be carefully reviewed and verified by the Resident Engineer against the qualifying language of the clause. Also, the effect of the delay on the entire schedule or individual schedules must be evaluated. In reviewing the delays and subsequent discussions with a contractor concerning the delays, care should be taken not to compromise the Contracting Officer's prerogative to make the final decision. The ACO should always attempt to establish an agreement based on facts as to the amount of time acceptable to the contractor and equitable to the Government.

7.2.3 Differing Site Conditions (FAR 52.236-2)

a. In the CSDP, ACO's have full authority to execute time and cost modifications up to \$100,000 under this clause. Before a modification can be executed, concurrence from the Center Office and the PCO must be obtained.

b. There are two types of differing site conditions under the clause: Type I or Type II. The first requirement for the Resident Office is to determine which type of condition exists, Type I or Type II. Then the RE should determine whether the prerequisites for that category have been met. The following are prerequisites for both types:

(1) The contractor *must* notify the Government before disturbing the condition so we can verify and react as necessary to mitigate costs. Claims of differing site conditions might be denied where the Government is unable to verify the condition.

(2) The condition must be something *physical*.

(3) The condition must generally *predate* the bid opening. Contact CD-CA for guidance or coordination of legal review where this is a question.

(4) The contractor must not have actual knowledge of the condition prior to bid.

(5) The standard of knowledge is that of a reasonable, intelligent contractor experienced in the particular field or area involved. Of course, if the design or specified method of performance must be changed, we need a modification regardless of whether it's a differing site condition.

c. Additional prerequisites for Type I are:

(1) It must be subsurface or "latent," i.e., hidden or concealed.

(2) The condition must differ *materially* from conditions indicated in the contract documents or language implied in the documents. Documents include the solicitation, plans, specifications, and direct references.

(3) The situation must be such that a "*reasonable*" investigation of the documents and relatively simple site viewing by a layman would have not revealed the condition. However, the standard of knowledge is what a reasonable, intelligent contractor experienced in the field concerned would know.

(4) The contractor is responsible for "*patent*" conditions, which contradict the indicated conditions. Again, for a Type I condition, the standard of site inspection is where a relatively simple inspection would have revealed the discrepancy. If the contract documents obviously contradict each other, the bidder has the duty to seek clarification.

(5) The contractor must have relied upon government representation in bid preparation. The burden of disproof of such a statement is on the Government. If an audit is involved, get the auditor to verify the basis of the original bid.

d. Additional prerequisites for Type II conditions are:

(1) The contractor must demonstrate that the condition was unknown and that it was "unusual," differing materially from those conditions ordinarily encountered and generally recognized as inherent in such work. An unknown condition is one that couldn't have been anticipated or readily discovered through a reasonable investigation or inquiry.

(2) The condition must be unusual to the area or type of work involved.

(3) To establish a Type II condition, the contractor has more burden of proof than Type I, since Type II wasn't the result of Government misrepresentation. Generally, a more thorough site investigation is deemed necessary when the Government makes no representation as to existing conditions. This requirement may be lessened considerably if the Government had knowledge of the condition but didn't reveal it to the bidders.

(4) Again, the contractor must have based his or her bid on the reasonably expected conditions.

e. Procedures for adjustment to the contract based on differing site conditions.

(1) The contractor must notify the Government before disturbing the condition. The contractor must promptly investigate and determine which type of condition exists, then determine whether the necessary prerequisites have been met. The contractor must follow-up in writing as soon as possible.

(2) The Government may also initiate a differing site condition change upon discovery of a changed condition.

(3) The Resident Engineer must decide what is the most economical course of action to take. If the design must be changed, or if it is suspected that the design could be affected, the Resident Engineer should

contact the Project Manager (CH) for coordination with ED as soon as possible. If no change to the design is necessary and sufficient funds are available, the Resident Engineer should issue an applicable directive to the contractor. The contractor should only proceed at the direction of the Government.

(4) The Resident Engineer then prepares a rough-order-of-magnitude (ROM) estimate of cost increases/decreases including potential impact (both time and money to this and other contracts) and pre-validate sufficient funds to execute a contract modification subsequent to negotiations.

(5) If a change is necessary, either to the design or the specified method of performance, consider whether a notice to proceed (NTP) modification must be issued under the undefinitized contract modification (UCM) procedure, pursuant to the Changes and Differing Site Conditions clauses. The Statement in Support of a UCM must be approved by the Contracting Officer.

(6) Before the ACO can initiate a modification, a Memorandum for Record must be prepared to support the differing site condition. The Memorandum for Record must contain the following information:

(a) Notice Requirement. When did the contractor (or Government) discover the condition? Whom did he tell and when? Before disturbance?

(b) Government Investigation: When and who investigated and verified the physical condition?

(c) Analysis: Type I or II and why determined to be a differing site condition. Document that all of the previously discussed prerequisites have been considered and are met.

(d) Changes Required: Document discussion, concurrence and resolution provided by CH or ED, if applicable. Generally describe changes necessary as a result of the condition.

(e) Potential Cost Impact: Both time and money on the progress of the work on this and/or other contracts. (Note: Maintain accurate and detailed records including exact use of all equipment, materials, and labor during the entire period the contractor is working under the alleged conditions.)

7.2.4 Disputes (FAR 52.233-1). The *Disputes Clause* included in the contract is subject to the Contract Disputes Act of 1978. The *Disputes Clause* is the contract provision, which establishes the right of a contractor to an administrative remedy for settling disputed matters. This provision binds the parties to an administrative process for disposing of disagreements arising within the contract. Strict adherence to procedure, as required by the clause, is required in order to perfect a claim and thus the entitlement of interest. The Contracting Officer's written decision will be final, unless the contractor appeals or files a suit as provided in the Act. The *Disputes Clause* requires a contractor to proceed diligently with the performance of the contract and in accordance with the Contracting Officer's decision pending final resolution of the dispute.

7.2.5 Inspection of Construction (FAR 52.246-12). Under this clause, any defective material or workmanship will be replaced and/or corrected unless, in the public interest, a recommendation is provided to the Contracting Officer for acceptance of such with an appropriate adjustment in price. Prior to final acceptance the contractor can be directed to remove or tear out work to permit an examination and a

determination that work complies with the contract requirement. If work is found to be in compliance, the contractor may be entitled to reimbursement for removing and replacing the completed work. However, any commitment to reimburse the contractor should be considered in view of the contractor's responsibilities under his or her quality control program. The reimbursement and any adjustment in contract price and/or time will be made under this clause.

7.2.6 Use and Possession Prior to Completion (FAR 52.236-11). This clause gives the Government the right to take possession of, and use, any completed or partially completed part of the work. Under provisions of this contract clause, if prior possession or use by the Government delays the progress of the work or causes additional expense to the contractor, an equitable adjustment will be made in contract price and/or time. Note that while the Government has possession of or is using a portion of a facility, the Government assumes responsibility for protection of that work until it is returned to the contractor prior to acceptance. Use and possession by the Government starts the warranty period for that portion of a facility.

7.2.7 Suspension of Work (FAR 52.242-14). If work is suspended by written order or otherwise for an unreasonable length of time for the convenience of the Government, the contractor may be entitled to an adjustment in contract price. **Any price adjustment allowed under the Suspension of Work clause, including standby time and extra mobilization-demobilization, must exclude profit.** Do not use this clause in any instance where an equitable cost adjustment is provided for or excluded under any other contract provision. Note that any time extension associated with an unreasonable delay caused by the suspension is issued under the default clause. Adjustments for unreasonable delays prior to issuance of a NTP for a change or differing site condition must be treated as "suspension of work" rather than under the other clauses. Separate costs attributable to the change orders and costs attributable to the "suspension" for application of profit. The next step is to estimate potential impact and commit sufficient funds. If time permits, the ACO should try to negotiate an equitable adjustment and issue the suspension of work as a bilateral supplemental agreement. If time does not permit, the suspension of work will be issued as an Undefinitized Contract Modification (UCM) in accordance with Chapter 7, Section 6 in this plan. *The Contracting Officer must approve all unilaterally directed suspensions prior to the suspension of work directive.* The Statement in Support of an Undefinitized Contract Modification along with evidence of sufficient funding will accomplish this approval action. After approval, the Contracting Officer or the ACO within his or her designated authority will issue the suspension of work directive by the fastest written means available. Be sure to document when the contractor was informed that the A suspension of work is lifted. Accomplish this by one of the following ways: (1) Orally, then confirmed in writing; (2) electronic means signed by the Contracting Officer; or, (3) modification issuing a NTP, including a statement that, "This change order ends the suspension of work dated on . . ." Because not all causes of delays are compensable under this clause, field offices should consult with CD-CA for a determination prior to settlement with the contractor.

7.2.8 Termination for Convenience of the Government (Fixed-Price)(Short Form) (FAR 52.249-1) and Termination for Convenience of the Government (Fixed-Price) (FAR 52.249-2). In the normal administration and management of construction contracts the need to delete work frequently arises. When this happens there are two possibilities open to the Contracting Officer. (S)He might issue a partial termination for the convenience of the Government or (s)he might issue a change request deleting portions of the work under contract. In some cases, the amount of compensation received by the contractor will be materially different depending on which course of action is followed. Therefore, it is important to

understand the extent of the Government's rights in this area. One of the primary reasons for distinguishing between a change and a termination for convenience is the likelihood of different pricing results. For a contract where the contractor would have made a profit had the contract gone to completion, the pricing of a termination is based on costs incurred on work done plus a reasonable profit on those costs. On the other hand, a deletion under the *Changes Clause* will be priced by taking out the estimated cost of the work deleted plus an estimated profit. For a contract where the contractor would have sustained a loss had the contract gone to completion, the pricing of a termination is based on costs incurred on work done less a pro rata share of the loss on those costs. However, the *Changes Clause* calls for an "equitable adjustment" for deletion of work, which results in reduction of the total contract price. In arriving at this price reduction the pro rata adjustment for loss rule does not apply. There is no intent on the part of the Government to actually have optional ways of pricing a deletion of work in order to achieve an advantage over the contractor. Further, the use of the *Termination for Convenience Clause* indicates that the parties have agreed to a specific set of rules and procedures to govern situations where the Government decides to order the contractor to stop prior to completion of the work. It follows that the *Termination for Convenience Clause* should override the *Changes Clause* when the only effect of the order is to delete a significant amount of the work. The *Changes Clause* should be restricted to the normal type of change - where the deletion is connected with additions or other alterations to the work, or where the deletions are minor in their effect on the overall work.

7.2.9 Federal, State, and Local Taxes (FAR 52.229-3). Inclusion of this tax clause provides that the basic contract price includes the costs of federal, state and local taxes applicable at the date of the contract. However, it further provides that if, during performance, new federal excise taxes or duties become effective, or prior applicable federal excise taxes or duties ineffective, and the amount of such taxes or duties as they affect the basic contract exceed \$100, an adjustment will be made to reflect the actual variation, upward or downward. It is noted that this clause specifically excludes adjustments to social security taxes or other employment taxes. **Note that this clause does not authorize an adjustment for new or changed state and local taxes or duties.**

7.2.10 Value Engineering - Construction (FAR 52.248-3). This clause applies to Value Engineering Change Proposals (VECP) voluntarily initiated and developed by the contractor for changing the drawings, specifications, or other contract requirements that would result in a savings to the Government by providing less costly items or methods than those specified without impairing any of their essential functions and characteristics. The VECP clause is a special purpose change clause applicable only to contractor-initiated cost reduction proposals. If approved, the contractor shares in the resultant savings. Until a notice to proceed or a contract modification is issued by the Contracting Officer or the ACO acting within his or her authority, the contractor is obligated to perform in accordance with the original contract requirements. Acceptance or rejection of all or part of the VECP by the Government is final and not subject to the *Disputes Clause* of the contract. However, the terms of the modifications implementing the acceptance are subject to the *Disputes Clause*. (Notice: In an ASBCA Decision, it has been held that profit is to be excluded from the Instant Contract Savings computation.) The Government will take appropriate credits for General and Administrative overhead, field overhead, bond, and applicable gross receipt tax.

Exhibit 7-2*1 is a value engineering change proposal (VECP) flow chart that shows the approval process for VECPs. The PCO has delegated to USAESCH/ACO the authority to monitor the contractor's Value Engineering Program. Neither the USAESCH/ACO nor the Field ACO has the authority to approve a

VECP. The VECP's must follow configuration management procedures and after the VECP has been programmatically and technically approved, an ECP will be processed to implement the change. The USAESCH VE Officer will be kept informed by CD-CA. The Resident Engineer will send all VECP's through CD-CA.

7.2.11 Price Reduction for Defective Cost or Pricing Data - Modification- Sealed Bidding (FAR 52.214-27). This clause provides that if the Contracting Officer determines that any price, including profit, negotiated for any modification in excess of \$500,000 was increased by any significant sums because the contractor or any subcontractor furnished incomplete or inaccurate cost or pricing data or data not current as of the date of execution of the contractor's Certificate of Current Cost or Pricing Data, then such price will be reduced accordingly and the contract modified in writing to reflect such adjustment.

7.2.12 Government - Property (Fixed-Price Contracts) (FAR 52.245-2) and Government-Furnished Property (Short Form) (FAR 52.245-4). The Government may find it convenient and desirable to furnish Government-owned property to construction contractors for their use in performance of the contract. Such property is identified in detail in the plans and specifications of the basic contract. In some cases the Government will not be able to furnish the property in accordance with its commitment, thus, the duties and obligations of the parties will vary from those established by the basic contract. Accordingly, a contract modification will be necessary to adjust the rights of the parties in the new situation. Special Clauses entitled Government-Furnished Property, Property Records (April 1984), and Identification of Government-Furnished Property (April 1984) should be included in the contract if Government-furnished property is added to the work after a contract award. These three separate clauses can be used to amend the contract to account for the revised condition. However, any equitable adjustment will be made in accordance with the procedure of the *Changes Clause*.

7.2.13 Variation in Estimated Quantity (FAR 52.211-18). This clause is a self-operating clause if the contract contains estimated quantity items. The clause provides that when the actual quantity of a pay item (CLIN) varies more than 15 percent above or below the estimated quantity stated in the contract, an equitable adjustment in the contract price will be made *upon demand of either party*. See section 15, Special Considerations, of this chapter for a more detailed explanation of the *Variation in Estimated Quantity Clause*.

7.2.14 Exhibits.

Exhibit 7-2*1 Value Engineering Flow Chart

VALUE ENGINEERING CHANGE PROPOSAL FLOW CHART

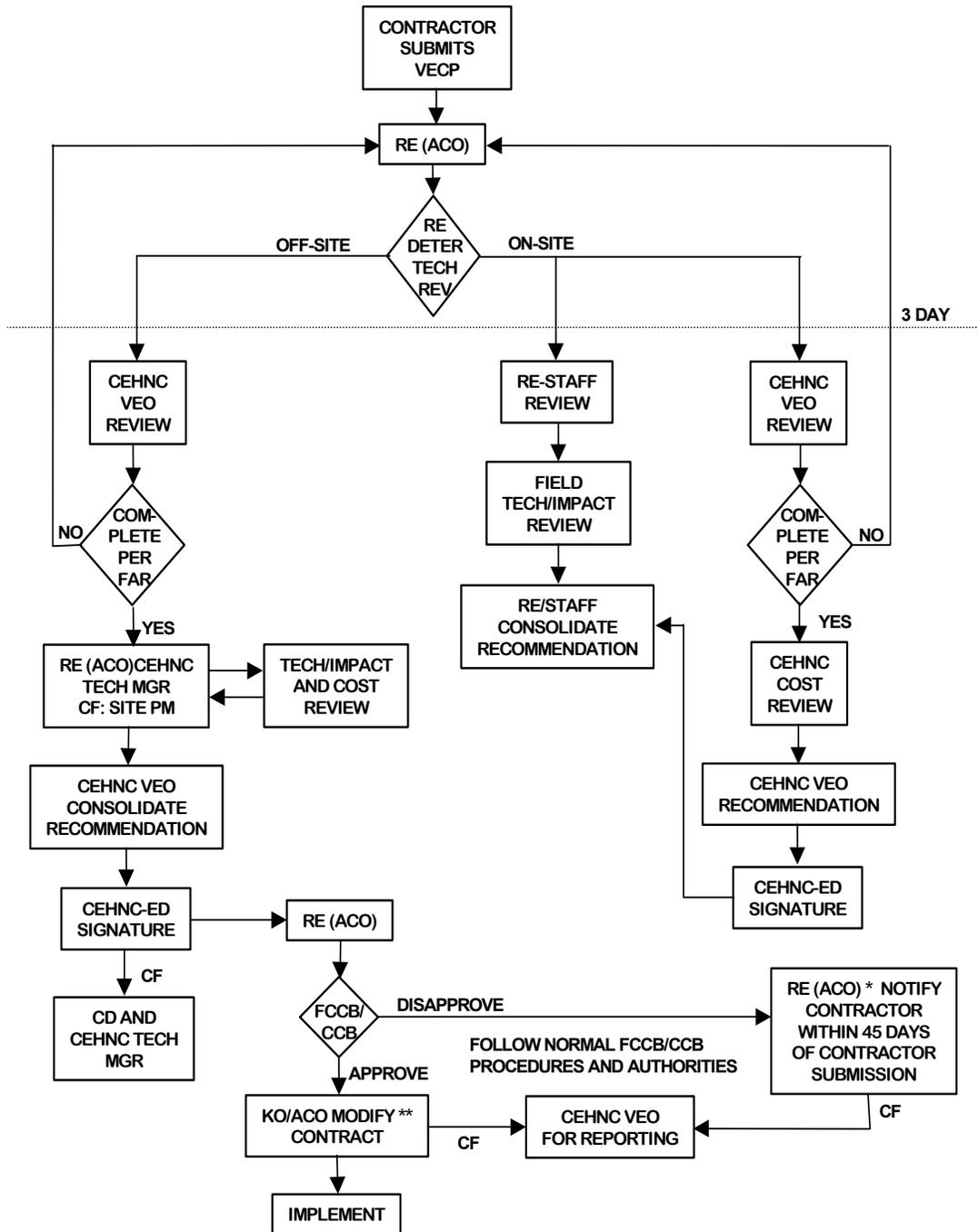


Exhibit 7-2*1. Value Engineering Flow Chart

CHAPTER 7. CONTRACT ADMINISTRATION

SECTION 3. THE MODIFICATION PROCESS

7.3 General. This part provides general guidance on the elements or components of the modification process. Detailed guidance is provided in follow-on parts to completely describe the process.

7.3.1 Description of Change.

a. The description of the changed work must not only provide the contractor with a full understanding of the required changes, in order that he may prepare a complete and responsive proposal, it also serves as a permanent record of the completed modification requirements. The description must be brief. It must provide sufficient detail for reviewers not familiar with the work to fully understand the scope of the change. If necessary, a detailed scope of work may be provided.

b. Changes may originate in various ways. In the CSDP, an approved Engineering Change Proposal (ECP) must first be provided to the Resident Engineer. The ECPs must follow procedures for configuration management as specified in the CSDP Configuration Management (CM) Plan. This guidance does not cover the CM procedures. The Resident Engineer is a member of CM Control Boards. The Resident Engineer, for administrative purposes, shall identify all changes in order that CM procedures can be followed and sources of all changes can be audited. Approved ECPs originating from other than the Resident Office, will be transmitted by CD-CA.

c. The CEHNC ACO has unlimited authority and the Resident Engineer has limited ACO authority on the Firm Fixed Price (FFP) phases of the contract only. The PCO (IOC) has unlimited authority on all phases of the contract, and is responsible for all other (CPAF) contract changes/ modifications.

7.3.2 Request for Proposal (RFP). The RFP provides the contractor with a description of the change and establishes a suspense date for receipt of the Contractor's proposal. The description must be the same scope or statement of work in the approved ECP. A separate description may not be necessary. However, preparers of the RFP must ensure that the description is clear to provide the basis of subsequent negotiations. The RFP is initiated by letter from the Resident Engineer, ACO, or PCO.

7.3.3 Government Estimate.

a. FAR/EFARS 36.203 and FAR 36.214 require that Government Estimates be used to help establish reasonableness of price. To comply with the requirements of EFARS 36.203-102, it is no longer mandatory that all negotiated increases in price be equal to or less than the amount of the Government Estimate. However, when the Government estimate is changed during or subsequent to conferences or negotiations, the basis for the revision or changes in price or prices shall be fully explained and documented in the price negotiation memorandum.

b. A formal Government Estimate is required for all proposed modifications involving \$100,000 or more, including increases, decreases or a combination/aggregate of both (FAR 36.203). The Government Estimate must be prepared independently of the contractor's proposal **and a statement to this effect included on the estimate cover sheet**. This statement is not required on a revised Government Estimate when it is changed to include data supported by the contractor during negotiations.

- c. See Section 7.5, "Government Estimates" for procedures in preparing Government Estimates.

7.3.4 Notice to Proceed. The preferred policy (forward pricing) is to issue the notice to proceed (NTP) for a change only after the full scope of work is determined, the Government Estimate is prepared, an audit is obtained, if applicable, an equitable adjustment is negotiated with the contractor, and the funds are committed, or otherwise certified as available by the Finance and Accounting Officer. If it is determined that the work under the contract would be unacceptably delayed by the process of concluding negotiations, and the contractor must proceed with the changed work before a formal modification can be negotiated, the availability of funds will be ascertained, a NTP modification (undefinitized change order) will be issued to the contractor before agreement is reached on price and time. See Section 7.6, Undefinitized Contract Modifications.

7.3.5 Truth in Negotiations - Contractor Cost or Pricing Data. As required by FAR 15.403, when any single source action is received which requires certified cost or pricing data, the contractor must furnish a detailed proposal with labor, material, equipment, general plant, overhead, profit and bond markups itemized. The contractor must certify the completeness and accuracy of the factual aspects of the cost or pricing data, upon conclusion of the negotiations. The fact that an independent Government estimate of cost is developed does not, of itself, provide a basis for exception from the requirement to obtain cost or pricing data from the contractor. Likewise, a certificate of current cost or pricing data shall not be considered a substitute for examination and analysis of the contractor's proposal. If the contractor should refuse to provide such data or certification, follow the procedure outlined in FAR 15.404-2 for withholding award or price adjustment and refer the matter to higher authority. Upon receipt of the cost or pricing data, make an analysis to assure reasonableness of the pricing. For complete information and instructions concerning the Truth in Negotiation requirements, see Section 7.7.

7.3.6 Technical Analysis.

a. A technical analysis is a review by technical personnel in the Resident office generally familiar with the contractor's operation and technical nature of the work affected by the contract action. As a minimum, it covers a review and assessment of the quantities and types of materials, labor, equipment, any special facilities or tooling needed, reasonableness of waste factors, tear-out, impacts, time analysis, field overhead, productivity rates, etc. FAR 15.404-1 requires the Government to make a technical analysis of all proposals where cost or pricing data are required. In addition, Huntsville Division requires a technical analysis for all proposals exceeding \$100,000.

b. The ACOs should perform technical analysis of ALL proposals as good business practice. For changes NOT exceeding \$100,000, the technical analysis need not be formally documented. However, the pre-negotiation objectives should incorporate significant results.

c. For proposals over \$100,000 or otherwise requiring cost or pricing data submission, but not needing an audit requirement, the technical analysis may be documented within the pre-negotiation objectives or as an attachment. Also recommended is a marked-up proposal included in the file. See Section 7.7 for further guidance and samples.

7.3.7 Cost/Profit Analysis of Contractor's Proposal.

a. Cost analysis is an evaluation of the reasonableness of individual cost elements comprising the proposed price. The primary reason for requiring and analyzing cost data for modifications is the fundamental principle that the price adjustment is to be based on the effect of the action on the contractor's cost had the action not occurred. It is not based on the fair market value from the contractor to the Government. The other main reason is to facilitate a review of the contractor's understanding of the scope of work, to ensure that both parties comprehend the scope.

b. Cost analysis is required whenever cost or pricing data submission is mandatory (FAR 15.404-1). In addition, Huntsville Division requires a documented cost analysis for all modifications exceeding \$100,000. As a matter of sound business practice, for the reasons stated above, some degree of cost analysis should be performed on all pricing actions, where resources permit.

c. Cost analysis takes into account requests of the audit, market survey information, technical analysis, previous experience and cost histories, and application of the cost principles in FAR, Part 31.

d. The negotiator can perform cost analysis on changes not requiring "cost or pricing data" by analyzing the proposed breakdown required by Contract Clause, Modification Proposals - Price Breakdown (DFARS 52.236-7001). Offices should discuss this requirement with contractors and require a cost breakdown regardless of the proposed amount (except perhaps for small, relatively simple changes).

e. When any element of a proposal differs significantly from the Government's estimate, when cost or pricing data is not required, FAR 36.214 requires the Contracting Officer/Administrative Contracting Officer to request a breakdown of work and cost data to compare with the estimate.

f. Profit analysis is required under the same circumstances as cost analysis (FAR 15.404-4). It is really an element of cost analysis. Profit analysis is a comparison of proposed profit rate with the Government's profit rate developed using the Corps of Engineers' Weighted Guideline Method prescribed by EFARS 15.973 (See Exhibit 7.5.15). The EFARS method must be used to establish the profit portion of the Government's pre-negotiation objective.

g. Specific procedures for cost/profit analysis are covered in Section 7.7.

7.3.8 Price Analysis of the Contractor's Proposal.

a. Price analysis is an evaluation of the reasonableness of overall price or prices without scrutinizing details of the cost elements comprising the price. Examples include comparison of bottom-line price, bid item price, cost per linear meter, cost per cubic meter, overall labor, overall materials, overall equipment, etc., against other yardsticks. Price analysis is required for all pricing actions (FAR 15.404-1, and 36.214). Section 7.7 covers specific procedures for price analysis.

b. **P**rice analysis is not a substitute for cost analysis; rather they complement each other. Price analysis is a **macro**-perspective, while cost analysis is a **micro**-perspective.

c. When a Government Estimate is necessary, the negotiator must review the proposal for accuracy and compare it to the Government's estimate. When any element of the proposal varies significantly from the Government's estimate, or if the proposed price is significantly lower, the negotiator must take steps to analyze and resolve the differences to ensure that both parties understand the scope of work (FAR 36.214).

d. If there is no Government Estimate for a change less than \$100,000, other price analysis comparisons are necessary to ensure a fair and reasonable price. When the nature of the change makes this difficult, the negotiator should require a cost breakdown and perform cost analysis.

7.3.9 Audit. When the proposal involves in excess of \$500,000, including increases, decreases, or a combination of both, the ACO should consider whether an audit by DCAA is necessary to support proposal analysis (FAR 42 & DFARS 215.404-2). The Resident Engineer shall forward the proposal and any other pertinent documents such as the Request for Proposal, a Government cost estimate and technical analysis **through the Directorate of Contracting to the Project Specialists** to the DCAA. The Resident Engineer may also request specific audit attention on items that appear controversial. The CD-CA or the Resident Engineer Office, through mutual agreement, will formally request the audit. Where the need exists, audits may be requested for proposals less than \$500,000. Audit reports are "FOR OFFICIAL USE ONLY." The Contracting Officer (HNC-ACO) may authorize release of an audit report to the contractor, upon written request. Section 7.7 also furnishes additional details on obtaining audits.

7.3.10 Pre-negotiation Objectives.

a. FAR 15.406-1 (DFARS 15.406-1) requires the Contracting Officer to develop pre-negotiation objectives (PNO) prior to any pricing action. The pre-negotiation objectives describe the negotiator's price and time objectives in dollars and number of days, respectively. The objectives may be stated as a specific number or as a range or desired results. The PNO contains a comparison summary of the contractor's cost and time proposal; results of audit, if applicable; technical analysis, if applicable; cost analysis, if applicable; price analysis; the Government Estimate, if applicable; and individual cost element objectives, when cost analysis is required.

b. The PNO includes a narrative summary of significant differences between the elements of the proposal and the cost/time objective and explains what forms the basis for the objectives. When time extensions are expected, the PNO will explain how time related costs are or are not included after having considered all concurrent delays from all causes. The PNO must document any exceptions taken to the audit. The original PNO are part of the official contract file, signed and dated by the negotiator and stamped "For Official Use Only."

c. When an audit report is involved, after finalization of the modification, the Resident Office will provide a copy of the POM, and PNM, to the DCAA. See Section 7.8 for detailed instructions on Prenegotiation Objectives.

NOTE: Need HNC-ACO concurrence to change this - discuss.

7.3.11 Negotiation.

a. In the sequence of events involved in the Elements of Modification Process, negotiations should follow the receipt and cost and/or price analysis of the contractor's proposal, the establishment of pre-

negotiation objectives, and, when applicable, revision of the Government Estimate.

b. Negotiations must be conducted in all cases, regardless of whether the contractor's proposal is reasonable in comparison with the Government Estimate, to insure that the parties understand the scope of the change. When there are major variances, the negotiator cannot rely on the fact that the total proposal is lower than the total Government Estimate without comparing the scope of work, and exploring the propriety of the differential costs/prices. (FAR 36.214). If cost or pricing data is required, the negotiator has performed cost and technical analysis, as discussed earlier. In these cases, the negotiator must address and eliminate proposed costs, which are unallowable, or unallocable, FAR Part 31, regardless of whether the proposal is less than the Government Estimate. Proposed "factual" data must also be resolved during negotiations of modifications requiring cost or pricing data.

c. Negotiations must address time extensions in all cases, even if to confirm that no time extension is necessary.

d. Negotiations must address and resolve impacts. While it is not advisable to solicit impact costs, it is unwise to ignore the issue, hoping the contractor won't think of it. In order to reach a mutual understanding and full agreement to an equitable adjustment, the negotiator must ensure the contractor understands all cost directly or indirectly attributable to the change. Do not rely on the contractor's signature on the modification containing the accord and satisfaction language as evidence that he agreed impacts were considered in the settlement. Boards and courts have ruled time and time again that unless the subject was clearly discussed and documented there is no "meeting of the minds." Exculpatory statements on modifications are not documentation that there is agreement. As a minimum, get the contractor to confirm that he has considered all costs in the settlement, including impacts on the unchanged work.

e. Impact costs included in the Government Estimate, but not resolved during negotiations (i.e., not discussed or the contractor reserves his rights to impacts in a future modification or claim), must be removed from the Government Estimate for purposes of comparison with the negotiated amount. Otherwise, the scope of the agreement won't match the scope included in the Government Estimate.

7.3.12 Price Negotiation Memorandum (PNM).

a. FAR 15.406-3 specifies that the price negotiation memorandum contain the "...most significant facts or considerations controlling the establishment of the pre-negotiation price objective and the negotiated price including an explanation of any significant differences between the two positions." EFARS 15.808 requires complete documentation and justification for issuance and negotiation of all construction contract modifications. The PNM must address the points raised in the pre-negotiation objectives to show a logical progression of resolution of all issues. Document agreed changes to the scope of work, forming a basis for settlement, in the price negotiation memorandum.

b. The negotiator may make changes in the Government Estimate necessary to add any pertinent factors, which have not been considered in the preparation of the estimate (FAR 36.214 and EFARS 36.203- (102). Show explanations for each revision in the applicable block on the price negotiation memorandum.

c. The PNM must document discussion and agreement on time extension or that no time extension was necessary. If the agreed time extension varies from the pre-negotiation objectives, document the basis for the time extension.

d. The PNM must document discussions and agreement that impacts were considered in the final settlement.

e. See Section 7.10 for PNM procedures.

7.3.13 Memorandum of Facts (MOF). Prepare a Memorandum of Facts to justify the issuance, negotiations and execution of each supplemental agreement under the Default clause and for multi-part changes, excluding the definitization modification. The appropriate Contracting Officer or the ACO, for actions within their authority shall sign MOFs. Such memoranda are not contractual instruments and will not be revealed to the contractor. However, they are a required part of the official record file and contain essential information for those reviewing such documents for legal and technical sufficiency. See Section 7.12, General Guidelines for a Memorandum of Facts.

7.3.14 Legal Sufficiency Review. EFARS 1.602-2 requires Office of Counsel to verify to the Contracting Officer, in writing, that any proposed contract action (suspension, modification, change order, termination, etc.) of \$500,000 or more is legally sufficient, prior to issuance. Legal review is required for any action regardless of dollar value, which may lead to a claim. The Contracting Officer may request legal review of actions less than \$500,000.

7.3.15 Standard Form 30 (SF 30). Standard Form 30 when properly executed by the contractor and the Contracting Officer or Administrative Contracting Officer, after legal review, if applicable, constitutes a modification to the contract. The Administrative Contracting Officer's authority for use of the Form 30 is limited to modifications pursuant to the Changes, Differing Site Conditions, and Suspension of Work clauses within his designated amount (as of 26 Feb 98, HNC is seeking authority under the Value Engineering Clause). It is used also, for extensions of time under the Default clause. Follow instructions in Section 7.11 for preparation of SF 30.

7.3.16 Performance/Payment Bonds and Consent of Surety. The Request for Proposals (RFP) or the solicitation required the offeror to furnish a performance and payment bond on the construction phases of the contract, Phases II, III, and IV, in the amount indicated in the RFP and within the time stated. The performance bond ensures that the contractor fulfills all contract requirements for these phases of the project. The payment bond ensures that the contractor makes payments to all persons supplying labor and material for the prosecution of the work provided for in these phases. The consent of surety advises the surety of a change in the contract or the construction phases and obtains his consent to extent the bond coverage accordingly. For changes \$50,000 or greater, but less than \$100,000, execute SF1414, Consent of Surety. For changes \$100,000 or greater, execute SF1415, consent of Surety and Increase in Penalty. See Section 7.13 of this relative to performance/payment bonds and consent of Surety Procedures.

7.3.17 Exhibit.

Exhibit 7-3*1 Steps in the Modification Process

STEPS IN THE MODIFICATION PROCESS

Required contracting actions for modifications - FAR, DFAR, AFAR, EFAR	< \$100 K	= > \$100 K < \$500 K	> \$500 K
Justification for change	X	X	X
Independent Government Estimate	A	X	X
Funding Document (MCD)	X	X	X
Request for Proposal (RFP)	X	X	X
Contractor's Proposal	X	X	X
Certificate of Relief over \$100K		X	X
Contractor's Cost Analysis		A, B	B
Cost or Pricing Data	C	A	X
Technical Analysis	A	X	D, X
Audit Report	C	A	X
Government Cost Analysis	A	X	X
Government Price Analysis	X	X	X
Pre-Negotiation Objective	X	X	X
Price Negotiation Memorandum	X	X	X
Certificate of Current Cost or Pricing Data	C	A	X
DD Form DD 1547 - Profit survey			X
Form SF 30 - Modification of Contract	X	X	X
ACO Signature	X		
Contracting Officer Signature	A	X	X
Legal Sufficiency Review	A	A	X
Contract Modification Package Review	A	X	X
SF1414 - Consent of Surety	X		
SF1415 - Consent of Surety/Increase in Penalty		X	X

X – Required; A-May be necessary or may be required by Contracting Officer; B-Contractor required to conduct analysis of the Sub’s proposal (FAR 15.404-3); C-The Government is not allowed to request (FAR 15.403-1); D-Provide report to DCAA auditor for items requiring an audit.

Exhibit 7-3*1. Steps in the Modification Process

CHAPTER 7. CONTRACT ADMINISTRATION

SECTION 4. REQUEST FOR PROPOSAL

7.4.1 Introduction. In the CSDP, requesting a proposal must be preceded by a number of actions which are dependent on configuration management procedures. Accordingly, when the Resident Engineer receives an approved Engineering Change Proposal (ECP) via the Configuration Management (CM) process, (s)he will issue a request for proposal (RFP) to the Systems Contractor. Normally, the RFP provides the contractor with a description of the changed work and establishes a date for the contractor to submit his proposal (within 30 days, 60 days, etc.). When the modification is issued as a result of an approved ECP the scope of work description on the RFP letter must be exactly the same as shown on the ECP. This scope of work description must be clear and concise in order to provide a basis for subsequent negotiations. The RFP letter, when signed by the ACO, becomes an official support document for the subsequent modification, i.e., Standard Form 30, and as such, shall be included in each modification package.

7.4.2 RFP Letter Instructions. The following instructions and procedures are applicable for the RFP Letter.

a. Change Case Number. Each resident office shall maintain a change case log in which numbers are assigned and tracked for each new change. This Change Case Number shall be used on all supporting documentation; Military Construction Army (MCA) funds request, the RFP, and all correspondence pertaining to the change. At the time the Change Case Number is assigned, provide the Cause Code letter designation for the change. The Cause Code often corresponds to the A Reason for Omission from the Plans and Specifications. Show the specific Cause Code on all change documentation. These codes are indicated in Exhibit 7-4*1 to this Section.

b. Project Description and Location. Enter the project title and location exactly as shown on the contract (SF 1442).

c. Contract Name and Address.

(1) Include the appropriate Contract clause in the body of the RFP letter.

(2) When major revisions to the scope of work are necessary, a clarification is required, or work is added to the change by supplement, issue a separate letter which specifically references the change item number; outlines the revisions to be made and identifies the revision as Supplement No. 1, 2, or 3, etc. as appropriate. Following negotiations of the change and supplement(s), the Standard Form 30 will reflect the revised Scope of Work.

(3) If drawings and/or specifications are to be revised, coordinate necessary revisions with prior modifications, and in some cases, other outstanding change items. Further, coordinate drawing and specification changes with the Construction Directorate Point of Contact and the ChemDemil Life Cycle Project Manager (CH). Show changes in the drawings and/or specifications as Attachment 1 and 2, if applicable. Where changes are not involved, indicate A None. Do **not** use the statement, A Drawing changes will be revised, but not reissued, list the affected drawings on the enclosure applicable to the change in drawings and a general description of the drawing change provided. When sketches are referenced, furnish them as part of the attachment and clearly identify them by the change item number and the contract drawing or specification to which they relate.

(4) Once the RFP has been signed by the ACO, a copy is to be faxed to CD-CA.

7.4.3 Exhibits.

Exhibit 7-4*1	Alpha/Numeric Cause Codes for Modifications
Exhibit 7-4*2	Sample of RFP Letter (UMCDF).
Exhibit 7-4*3	Sample of RFP Letter (ANCDF).
Exhibit 7-4*4	Sample of RFP Letter (ANCDF).

ALPHA/NUMERIC CAUSE CODES OF MODIFICATIONS

Code	Description
1	Engineering Changes - Changes accountable to the U.S. Army Corps of Engineers, which are necessary to remedy deficiencies in the contract plans and specifications. The Resident Engineer submits a Design Deficiency Data Sheet, if investigation of A-E Liability for impact costs is warranted.
4	User Changes - New Federal regulations codes, criteria, mission changes, enhancements directed or requested by Government agency, using/programming command/service or customer (other than Corps).
5	Contract Option Exercised - After Award
6A	Miscellaneous Changes - Inaccurate Pricing
6B	Miscellaneous Changes - Taxes and Duties
6C	Miscellaneous Changes - Inspection
7	Differing Site Conditions
8	Value Engineering Change
9	Administrative - Contract changes such as contractor address change, funding change, etc. (No time or cost is added to the contract).
E	Excusable Delay for No Fault -
G	Deficient Government-Furnished Property
K	Contractor Requested Changes
Q	Variations in Estimated Quantities
R	Request for Information
S	Suspension or termination of work
V	Construction Change

Exhibit 7-4*1. Cause Codes for Modifications

DEPARTMENT OF THE ARMY
HUNTSVILLE CENTER, CORPS OF ENGINEERS
UMATILLA RESIDENT OFFICE
ROUTE 1, BOX 1777
HERMISTON, OREGON 97838
May 23, 1997

Contract Administration

HR97-0030

SUBJECT: Contract No. DAAA09-97-C-0025, Umatilla Chemical Demilitarization Facility,
Umatilla Depot, OR 97838 - **Request for Proposal, Change Case No. UM00011**

Raytheon Demilitarization Company
Mr. Samuel J. Kasley
P.O. Box 1188
Hermiston, Oregon 97838

Dear Mr. Kasley:

Reference our letter HR970025 dated May 16, 1997.

Pursuant to the "Changes" clause of the subject contract, the Government is proposing to modify the contract as follows:

- a. Statement of the Change: Delete requirements for use of protective masks during project phases II, III, and IV.
- b. Change in Specifications: See revised Specification Section C, paragraph 9.3(encl).
- c. Change in Drawings: No changes.

Please sign and date the original and four copies of your cost proposal and submit to the Umatilla Resident Office, Attn: CEHNC-UM-CA. Attention is directed to instructions entitled, "Modification Proposals-Price Breakdown, enclosed herewith; a detailed cost proposal itemizing labor, materials, and equipment costs are required to accomplish the above described work. For identification purposes this change is hereafter referred to as Change Case No. UM00011.

Exhibit 7-4*2. Sample RFP Letter

If your proposal includes a request for a time extension, a justification must be provided for the proposed time. A sub-net showing all proposed changes in logic activity duration and costs to the current base line schedule is required, in accordance with Section C, Paragraph 3.3, Subparagraph E. of the contract.

You are requested to submit your cost proposal within 15 days of receipt of this letter. If a scope of work meeting is needed to resolve questionable areas, please contact Mr. David Albright of our Contract Administration Staff at (541) 567-1558.

Sincerely,

Charles D. Galloway, P.E.
Administrative Contracting Officer

Enclosures

Copies Furnished:
IOC (Ms. Leslee LaMere)
PMCD (Mr. Raj Malhotra)
CEHNC-CD (Mr. Jim Cox)
CEHNC-CT (Mr. Houston Townsend)
SCBUL-CD (Mr. Martin Yakawich)

Exhibit 7-4*2. Sample RFP Letter (Continued)

April 8, 1997

Directorate of Chemical Demilitarization Construction
ANCDF Resident Office

Serial Letter No. HW-960255/AN-6-018-0019

SUBJECT: Contract No. DAAA-09-96-C-0018, Anniston Chemical Agent Disposal Facility (ANCDF), Anniston Army Depot, Alabama; Revised Scope of Work For Change Case AN-6-018-0019 –A Transmittal Submission Requirements

Mr. Preston Gray
Westinghouse Electric Corporation
1425 Wilmer Avenue
Anniston, Alabama 36201

Dear Mr.Gray:

Reference is made to the Government's Serial Letter No. HW-960186, dated December 19, 1996, requesting a proposal for the subject change case and the informal discussions held between this office and your organization on the subject of Value Engineering Change Proposal (VECP) as applicable to this change.

The scope of work for the subject change case is revised as follows:

CONTRACT SPECIFICATIONS

The following revisions are made to Section "H" of subject contract:

Reference Paragraph H-30 -SUBMITTAL REGISTER, subparagraph (c)2.1.1 -"Approval" Submittals. GOVERNMENT FURNISHED EQUIPMENT. The second sentence is revised to read "The submittals shall include the following: **one** vellum reproducible and **five** prints of all drawings; or, if catalog cuts, printed specifications or similar publications are used as submittals, three copies shall be submitted, plus one additional copy which will be returned to the Contractor".

All other terms and conditions of the referenced Request for Proposal remain unchanged.

Exhibit 7-4*3. RFP Sample Letter

After further review by the Government on the subject of Value Engineering Change Proposal, this office has determined that the subject change case does not meet the requirements of VECP in accordance with FAR Clause 52.248-3 -VALUE ENGINEERING -CONSTRUCTION. Therefore, in accordance with FAR Clause 52.243-4 you are requested to submit to this office, NLT April 22, 1997, your cost proposal for accomplishing the scope of work identified as Change Case AN-6-018-0019.

Please sign and date the original and two copies of your proposal and submit to the Resident Engineer, US Army Corps of Engineers, ANCDF Resident Office, CEHND-CD-AN, 3580 Morrisville Road, Anniston, AL 36201.

This is a Request for Proposal only. DO NOT proceed with this additional work until you have received a contract modification signed by the Contracting Officer.

Sincerely,

George S. Sledge
Administrative Contracting Officer

Copies Furnished:
Mr. Jim Loehrl, Chief Services Branch, IOC
Stephen C. DePew, ANCDF Site Project Manager

Exhibit 7-4*3. RFP Sample Letter (Continued)

July 14, 1997

Directorate of Chemical Demilitarization Construction
ANCDF Resident Office

Serial Letter No. HW-9600??/AN-6-018-0003

SUBJECT: Contract No. DAAA-09-96-C-0018, Anniston Chemical Agent Disposal Facility (ANCDF), Anniston Army Depot, Alabama; Request for Proposal, Change Case AN-6-018-0003 –A Miscellaneous Revisions III

Mr. Preston Gray
Westinghouse Electric Corporation
1425 Wilmer Avenue
Anniston, Alabama 36201

Dear Mr.Gray:

In accordance with FAR Clause 52.243-4 you are requested to submit a cost proposal for accomplishing the following scope-of-work identified as Change Case AN-6-018-0003. Please submit your proposal within ninety (90) calendar days within receipt of this request, and include a detailed cost breakdown and time analysis (NAS) fragnet. The cost breakdown should detail all equipment, labor, and material costs identifying proposed labor and equipment hours, hourly rates, quantities, unit prices, overhead (field and home office), profit, and bond for the prime contractor and all subcontractors. Your proposed costs should also be separated and defined in accordance with the affected contract line item numbers (CLINS). Without the requested fragnet and cost breakdown your proposal cannot be fully evaluated and will be considered incomplete.

STATEMENT OF CHANGE

Subject change consists of Electrical Instrumentation Loop Diagram, Schematic and Interconnection design revisions associated with Construction Rev 1.

CONTRACT DRAWINGS

Enclosed are the following reproducible contract drawings, which have been revised as a result of subject change. Due to the large number of revised drawings, only the index sheets for each drawing package are identified. Each drawing revised by subject change is indicated on the index sheet and on the individual drawing sheet.

Exhibit 7-4*4. RFP Sample Letter

Contract No. DAAA-09-96-C-0018
Request for Proposal, Case AN-6-018-0003
Page 2 of 3

- 1) Package No. 21a -Electrical -Instrumentation Installation Loop Diagrams
Drawing Indexes AN-00-Z-940 through AN-00-Z-944 2 size
- 2) Package No. 21b -Electrical -Instrumentation Installation Loop Diagrams
Drawing Indexes AN-00-Z-940 through AN-00-Z-944 2 size
- 3) Package No. 21c -Electrical -Instrumentation Installation Loop Diagrams
Drawing Indexes AN-00-Z-940 through AN-00-Z-944 2 Size
- 4) Package No. 21d -Electrical -Instrumentation Installation Loop Diagrams
Drawing Indexes AN-00-Z-940 through AN-00-Z-944 2 size
- 5) Package No. 21e -Electrical -Instrumentation Installation Loop Diagrams
Drawing Indexes AN-00-Z-940 through AN-00-Z-944 2 size
- 6) Package No. 22a -Electrical -Schematics & Interconnection
Drawing Indexes AN-00-Z-922 through AN-00-Z-928 Full Size
- 7) Package No. 22b -Electrical -Schematics & Interconnection
Drawing Indexes AN-00-Z-922 through AN-00-Z-928 Full Size
- 8) Package No. 22c -Electrical -Schematics & Interconnection
Drawing Indexes AN-00-Z-922 through AN-00-Z-928 Full Size
- 9) Package No. 22d -Electrical -Schematics & Interconnection
Drawing Indexes AN-00-Z-922 through AN-00-Z-928 Full Size
- 10) Package No. 22e -Electrical -Schematics & Interconnection
Drawing Indexes AN-00-Z-922 through AN-00-Z-928 Full Size
- 11) Package No. 22f -Electrical -Schematics & Interconnection
Drawing Indexes AN-00-Z-922 through AN-00-Z-928 Full Size

Exhibit 7-4*4. RFP Sample Letter (Continued)

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- | | |
|--|-----------|
| 12) Package No. 22g -Electrical -Schematics & Interconnection
Drawing Indexes AN-00-Z-922 through AN-00-Z-928 | Full Size |
| 13) Package No. 22h -Electrical -Schematics & Interconnection
Drawing Indexes AN-00-Z-922 through AN-00-Z-928 | Full Size |

CONTRACT TIME

Include a Time Analysis Fragnet with your cost proposal that shows how this additional work will be reflected in your Network Analysis System. Your fragnet should also reflect any schedule impacts that will result from subject change. Your fragnet will be evaluated to determine whether or not a time extension will be required.

Please sign and date the original and two copies of your proposal and submit to the Resident Engineer, ANCDF Resident Office.

This is a Request for Proposal only. DO NOT proceed with this additional work until you have received a contract modification signed by the Contracting Officer

Sincerely,

Karen Durham-Aguilera, P.E.
Administrative Contracting Officer

Exhibit 7-4*4. RFP Sample Letter (Continued)

CHAPTER 7. CONTRACT ADMINISTRATION

SECTION 5. Government Estimates

7.5 Introduction. FAR 36.203 require that an Independent Government Estimate (IGE) be used to help establish reasonableness of price. Regulations require a formal IGE for all proposed modifications involving \$100,000 or more, including increases, decreases, or a combination of both (FAR 36.203). The IGE and the contractor's proposal shall be prepared independently of each other; **a statement to this effect will appear on the estimate cover sheet.** This statement is not necessary on a revised IGE when the estimate changes to include data supported by the contractor during negotiations. TM 5-800-2 for military construction contains detailed instructions for preparing IGEs. Cost Engineering Policy and General Requirements (ER 1110-1-1300), provide policy and guidance for cost estimating for all projects. The approved computer software for cost estimates is the Micro Computer-Aided Cost Engineering System (M-CACES) (ER 1110-1-1300).

7.5.1 Responsibility. IGEs for all changes initiated via the configuration management process are the primary responsibility of Engineering Directorate and Chemical Demilitarization **Directorate.** These estimates are sent to the Resident Engineer by CEHNC. Resident office personnel will prepare an IGE for field changes within the field ACO's delegated authority. If it appears that Engineering Directorate could best prepare the estimate, the Resident Office will send a request, including complete data concerning the change, through the **Director, Chemical Demilitarization Directorate** and Director, Engineering Directorate, to Cost Engineering Branch, ED-ES-C. For all field changes in excess of the ACO's authority, the Resident Engineer will provide Engineering Directorate with all pertinent information to prepare an IGE. Unless the Resident Office provides input to Cost Engineering Branch for estimating impact costs and other indirect costs, such as extended field overhead, Engineering Directorate will not normally include those factors in the IGE. **Chemical Demilitarization Directorate** will provide information on items such as field conditions, which may affect the estimate. Site visits by Cost Engineering Branch personnel will be necessary to accurately prepare estimates for changes. Special circumstances may arise where the Resident Office should prepare the estimates. In such circumstances, the Director of Engineering shall coordinate and establish procedures with the Director of **Chemical Demilitarization Directorate** for preparing the IGE.

7.5.2 Government Estimate Revision. The Resident Engineer may revise the original cost estimate prepared by Engineering Directorate if facts, revealed during negotiations, justify the revisions. **If requested by CD negotiator's, Cost Engineering Branch personnel will assist in part of the negotiations and in revising the estimate for all changes exceeding \$100,000.** They will assist in other negotiations **as requested by the ACO.** Explain estimate revisions in detail by revising sheets, adding sheets to the estimate, and by attaching explanatory notes. **Do not completely redo the estimate.** Revisions must be logical and well defined, so personnel reviewing the IGE can follow the revisions. It will suffice to line out the incorrect figures, insert the correct figures, and footnote the correction with explanatory remarks. The estimator will initial and date the corrections. The IGE is no longer required to equal or exceed the negotiated amount (for additive amounts, opposite for deletion). It is imperative that the contract file demonstrates that the Government has used good business judgment in reaching any negotiated amount. The scope of the IGE, the price negotiation memorandum, and the contractor's proposal concerning the items of work involved must be in agreement.

7.5.3 Modifications Less Than \$100,000. Normally, Huntsville Center's policy does not require an IGE for modifications less than \$100,000. There are some exceptions. However, the Contracting Officer can request an estimate. If the IGE is not necessary, the ACO must perform a cost analysis of the contractor's proposal to verify that it is equitable. The detailed review will be signified by signing and dating the contractor's proposal as such. If the contractor's breakdown is not complete enough to perform a cost analysis, a detailed IGE is necessary to determine acceptability of the proposal. An IGE is necessary to support issuance of a notice to proceed prior to agreement on price and time. **An IGE is also necessary to support a unilateral modification regardless of the amount of the modification.**

7.5.4 Modifications \$100,000 or Greater. Modifications expected to cost \$100,000 or more after negotiation, require preparation of an IGE prior to start of negotiations. Comparing the contractor's proposal with the IGE will help establish the reasonableness of price. **As a minimum, a preliminary IGE must be prepared prior to NTP.** If this is impossible, document the contract file to indicate the circumstances preventing preparation prior to the IGE. The IGE must be completely detailed in accordance with the following procedure:

- a. Use the description of change, the scope of work from the approved ECP, and the revised or new specification and/or drawings outlining the change.
- b. As necessary, the estimator should visit the job site to gain a thorough understanding of the work involved, including difficulties related to in-place work.
- c. The estimator must determine the full extent of work involved in the change through coordination with Engineering Directorate and in-place construction. The estimate will address facilities to be removed, replaced, abandoned in place, and altered or deleted. Include an evaluation on the effect that these changes make on the estimate. Also, determine the status of related procurement and shop fabrication of material and equipment affected by the change, including proposed disposition of material and equipment made excess by the change, whether scrapped, salvaged and revised, retained by the contractor, or turned over to the Government. Reflect the best interests of the Government concerning price, disposition, and possibility of future use of excess materials and equipment in the estimate. In accordance with ER 700-1-1, promptly report excess or surplus materials resulting from contract changes. These items must be screened, inventoried, and disposed of as applicable in accordance with existing regulations. Do not make agreements to provide such materials to construction contractors prior to coordinating with CD-CA.
- d. Discussions may be held with the contractor's estimators to develop the scope of work involved in the change and the preparation basis for the IGE and the contractor's proposal prior to the start of estimate preparation.
- e. Obtain an accurate quantity take-off of material and equipment required for the change.
- f. Consider the following other contributing factors in preparing the estimate: Time of year; weather conditions anticipated; inside or outside work, including heating and lighting requirements; working hours per day or week, including premium pay; equipment required; obstructions; delays; occupied premises; availability of materials, special manufacture, shipping time; lost effort; acceleration; and deleted work and added work.

g. Once the above considerations are established, listing and pricing of all the cost elements should follow. Include as cost elements such items as:

- X Taxes
- X Expendable materials such as form lumber, oxygen, acetylene;
- X Supplies, such as pipe dope, welding rod, nails, paint thinner, special clothes, goggles, and tools allowance;
- X Freight, storage and handling;
- X Job site handling of material and equipment after delivery, such as unloading, warehousing, stockpiling, and issuing;
- X Contractor's plant and equipment usage exclusive of original construction and cleanup

h. Compute labor rates including a basic rate as established by local organizations, overtime, supervision, travel and insurance, welfare, and other fringe benefits where applicable. Identify labor by man-hours, if practical. Exercise care in applying a markup to direct labor. Such labor additives as social security, unemployment benefits, and workmen's compensation are limited in their application. Factual information on these items, including applicability of state laws, should be developed, used, and applied only to basic labor rates excluding travel, subsistence, welfare, health, union, and other benefits.

i. Base the allowance for performance and payment bonds upon the actual cost of the bonds and the total contract to date including the proposed change.

j. Show construction subcontractor and second tier subcontractors' costs individually and summarize on the recap sheet.

k. Periodically review estimates and percentages for contractor overhead and other markup features to assure that they reflect existing conditions.

l. Consider state and local tax regulations where applicable.

m. The totals appearing in "Labor" and "Material" columns may be rounded to the nearest dollar with sums over \$.50 being raised to the next dollar.

n. (1) Periodically review equipment rental rates and ownership rates to insure that estimated hourly rates reflect the average number of hours the equipment is actually being worked regularly each week. When the contractor's owned plant and equipment become a factor in any determination of a contract price adjustment, compute the ownership and operating expense in accordance with either (a) EP-1110-1-8, the "Construction Equipment Cost Guide;" or (b) the audited hourly ownership and operating rates.

(2) The special clause, AN EQUIPMENT OWNERSHIP AND OPERATING EXPENSE SCHEDULE, is now required in all stateside construction contracts. Exhibit 7-5*1, Construction Equipment Costs in Modifications, provides guidance to contract administration personnel in indirect and direct costing of marine and construction equipment in modifications. Exhibit 7-5*1 is not all-inclusive, but is intended to cover the most common situations encountered.

o. Allowance for contingencies must be carefully evaluated, and if included in the estimate, it must be explained in detail.

p. All modification estimates will contain a determination as to whether a time extension is justified and the extent of time extension will be determined by analyzing the current approved construction schedule. If the time extension is the basis for additional costs, show the relationship and amount of cost. Do not include time costs for changes concurrent with the contractor's own delays or for delays under the *Default Clause*.

7.5.5 Cost Records. Field offices should establish and maintain a record of material costs, construction equipment rates, labor rates, and work units on a current basis as a ready reference for estimating. Explore all possible sources for beneficial data. Stored material invoices are an excellent source.

7.5.6 Acceleration. Acceleration is extra effort needed to meet the original contract completion date, i.e.; to eliminate a time extension otherwise due for changes or excusable delays encountered. In changes where acceleration is attributable to extra effort expended by the contractor to comply with an acceleration order, it shall be clearly identified in the Government Estimate. Exhibit 7-5*2, Acceleration, lists the requirements or conditions encountered with Acceleration. Do not confuse "Acceleration" with "Expediting." Expediting is requiring the completion prior to the contract completion date and is not permitted without approval of the Head of the Agency, except that the Contracting Officer may expedite a completion date if no additional costs are incurred (DFARS 236.270).

7.5.7 Impact Costs. An analysis of the impact of change on the contractor's operation must be performed. The basic rule is to compare cost and time requirements *before* the change to those *after* the change. Paragraph 13-4 of TM 5-800-2 has an excellent discussion of impact consideration. Avoid including questionable impact costs in the initial Government estimate unless each is justified. If the analysis reveals that the change results in *negative* impact costs, i.e., an increase in productivity; discounts for originally required materials, etc., the negotiator should take this into consideration during proposal review and negotiations. Exhibit 7-5*3, "Impact Costs," lists some considerations when dealing with impact. Note that any impact costs NOT discussed during negotiations, resolved and included in the resulting modification, MUST be removed from the Government Estimate used in support of the modification.

7.5.8 Determination of Allowable Profit. A reasonable profit for a given contract and contractor depends on a number of items. Evaluate all factors against job conditions and weigh accordingly. In preparing Government Estimates where profit is negotiated as an element of price, with either a prime or subcontractor, negotiate or determine reasonable profit for each procurement action by using the weighted guidelines method of profit determination (EFARS 15.971) as noted in Exhibit 7-5*4, HQUSACE Weighted Guidelines Method for Determining Profit. **No profit is allowed on suspended work or delays prior to issuance of NTP (treated as a suspension of work).**

7.5.9 Facilities Capital Cost of Money (FCCM). See Exhibit 7-5*5 for application of FCCM on contract modifications. Note that the Government's profit objective must be reduced by the lesser of 1% of the total job cost or the cost of facilities capital dollar amount, which ever is less. Note also that FCCM is already included in the OCE equipment ownership costs.

7.5.10 Proposal Preparation Costs. Construction contractors normally recover off-site proposal preparation costs in their overhead rates. The Government has usually paid for on-site estimators in the basic contract price, unless the contractor can show an increased cost due to the change (e.g., overtime or additional estimators needed). If the contractor includes a direct cost for off-site proposal preparation efforts, see Exhibit 7-5*6, A Policy Guidance for Treatment of Proposal Preparation Costs on Modifications.

7.5.11 Allowable Overhead. The Government Estimate must consider equitable overhead costs or credits if affected by the change. Two types of overheads are normally considered in pricing modifications. These are increases or decreases in General and Administrative (G&A) overhead and increased or decreased job overhead expenses.

a. Field or job overhead expenses are those cost incurred on the job site or charged directly to the contract, but not readily chargeable to individual work items. Some home office expenses might be charged directly to a contract. When a contractor charges out certain home office expenses to an individual contract, it is important to insure that those costs categories are eliminated from the G&A expense pool to avoid duplication. For example, if the Network Analysis System costs are charged directly to the contract, all NAS home office costs will then be eliminated from the G&A cost pool. The estimator should be careful to consider only those job overhead expenses affected by the change. Certain supervisory personnel expenses are already included in the contract price. Unless the contractor's actual expenses are *increased*, the Government has already paid for those expenses. **The Chief of Engineers has explicitly instructed that the use of unchanging, flat field overhead percentages is prohibited.** Before allowing extended job overhead costs, the estimator must consider and eliminate those extra expenses the contractor would have incurred due to his own concurrent delays or other non-Government caused, concurrent delays (excusable delays under the *Default Clause*, etc.). See Exhibit 7-5*7 for an example of analyzing and calculating field overhead.

b. G&A expenses generally cover the indirect costs of maintaining home and branch offices. FAR 31.203 require that overhead costs be consistently applied throughout the contractor's accounting system. This also means G&A must be consistently applied throughout the contract. The G&A overhead is normally charged to each contract as a percentage of job costs in the contractor's accounting system. Therefore, deductive changes must be treated like increase changes. If G&A percentage is consistently charged for each increase, a like credit must be provided for deductive changes which reduce the job cost base. The G&A overhead rate is normally expressed as a percentage of job costs (direct and indirect). It is normally based on a ratio of allowable (see FAR 31.2 for allowable costs) home and branch office costs divided by total costs for all contracts (often referred to as "cost of sales"). The theoretical G&A rate are based on the contractor's current fiscal year. However, in practice, the latest whole fiscal year cost data is often used to develop the G&A rate, unless that data is not a reasonable representation of the current fiscal year situation. Alternatively, the contractor may propose to charge direct home office costs to a change order. This may be appropriate if this is how the entire job, including each change, is charged in the contractor's accounting system. If the contractor's accounting system normally charges a G&A percentage to each contract, the contractor may be duplicating costs by charging directly to changes, or certain changes. Again, the key to application of G&A is *consistent application* per FAR 31.203.

c. Daily G&A costs. Another type of overhead increasingly proposed by contractors is "unabsorbed home office overhead," sometimes incorrectly titled "**extended home office overhead**" costs. This will usually appear as a daily home/branch office overhead rate, computed by the "Eichleay Method" or other similar formulae. As a general rule, unabsorbed overhead does not apply to construction contract changes. It may apply to extended periods of suspension, in unusual circumstances. **Do not allow this type of overhead without first consulting Construction Directorate.** The estimator should normally apply G&A percentage rates in the Government Estimate. Exhibit 7-5*8 provides a detailed discussion on unabsorbed overhead.

7.5.12 Preparation. The detailed estimate is prepared on ENG Form 150 or by the M-CACES Gold Procedure as outlined in the M-CACES Gold Estimating Program User's Manual. Show cost of all labor, material, equipment, subcontract work, impact on changed and unchanged work, if any, overhead, profit, bond, and, where applicable, gross receipt tax. Summarize the estimate by line item on CEHND Form 970. This form is commonly referred to as the "Cover Sheet" for the Government Estimate. The form will be prepared and properly signed regardless of whether the estimate is constructed by M-CACES or prepared manually; but it is the full extent of the Government Estimate furnished in support of most modifications. The estimator will sign the estimate above his name at the top of CEHND Form 970. The checker will initial above his name. Attach the detailed estimate behind CEHND Form 970. The estimate must be signed by the appropriate authorized approving official prior to use in negotiations.

7.5.13 Approval. In connection with the ACO authorities, Resident Engineers are delegated authority to approve Government Estimates within and up to their designated monetary limit (see exhibit 7-1*2). The Resident Engineer is also delegated authority to approve a Government Estimate exceeding his/her authority when the change is settled within his/her authority limit. If the change involves more than the ACO designated amount, or involves clauses other than those delegated to the ACO, the Resident Engineer will sign the "Submitted By" signature block on CEHND Form 970. Leave the "Recommended By" and "Approved By" blocks blank. CD-CA will insert the signature lines based on availability of appropriate personnel. Exhibit 7-5*9 is a sample Government Estimate showing signature blocks.

7.5.14 Interest in Government Estimates. When Contract Disputes Act interest is applicable, add a separate computation to the Government's Estimate after the total price settlement. Include separate bid items on CEHND Form 970 and Standard Form 30 for interest. Exhibit 7-5*9 also provides a Government Estimate showing interest computation.

7.5.15 Safeguarding Government Estimates. Government Estimate costs is confidential. Prior to accepting the contractor's proposal, safeguard and appropriately protect estimates by "FOR OFFICIAL USE ONLY" (FOUO) cover sheets, DA Label 87. Stamp or mark all sheets comprising the estimate "FOR OFFICIAL USE ONLY" in bold letters at least 3/16 inches in height near the bottom of the page. Store and handle the estimate in accordance with AR 340-17. **Only the Administrative Contracting Officer, under his designated monetary authority, and the Contracting Officer have the authority to accept proposals.** Normally when the modification is given to the ACO or Contracting Officer for signature, cancel the FOUO designation. Cancellation is effected by a qualified person placing his or her signature, date and office symbol appropriately placed on the cover sheet of the Government Estimate under the following statement: **"Protective marking canceled upon agreement between Government and Contractor as to price."** Line out all FOUO markings. Destroy non-record copies of FOUO.

7.5.16 Exhibits.

Exhibit 7-5*1	Construction Equipment Costs in Modifications
Exhibit 7-5*2	Accelerated Contract Work
Exhibit 7-5*3	Impact Costs
Exhibit 7-5*4	HQ USACE Weighted Guidelines Method for Determining Profit
Exhibit 7-5*5	Application of Facilities Capital Cost of Money (FCCM) on Modifications
Exhibit 7-5*6	Policy Guidance for treatment of Proposal Preparation Costs on Modifications
Exhibit 7-5*7	Analyzing and Calculating Field Overhead
Exhibit 7-5*8	Contractor Overhead Calculations
Exhibit 7-5*9	Government Estimate Approval Authority

**GUIDANCE CONSTRUCTION EQUIPMENT COSTS
IN MODIFICATIONS**

1.0 References:

- a. FAR, Part 31.105, Contract Cost Principles and Procedures for Construction and Architect-Engineer Contracts.
- b. FAR, Part 3.205-36, Rental Costs.
- c. EFARS, Part 31.105.
- d. EP 1110-1-8, Volume 3, Construction Equipment Ownership and Operating Expense Schedules, Region III (August 1991).

2.0 This guidance is a summary of the major policies prescribed in the above references to aid field office personnel in properly costing owned or rented marine and construction equipment in modifications. Stateside contracts must contain a special clause, entitled: EQUIPMENT OWNERSHIP AND OPERATING EXPENSE SCHEDULE, for use when actual ownership or operating expenses cannot be determined.

3.0 Contractors commonly account for such items as equipment depreciation, interest payments on loans, home office repair shops, major overhauls and repairs, small tools for mechanics, etc., in their overhead cost pools. This is perfectly legal and proper for normal business purposes. FAR Part 31 also recognizes this practice (although not all costs are allowable, e.g. interest) unless a predetermined schedule of construction equipment use rates is used. Contractors usually include such costs in their proposed overhead for Corps contracts.

4.0 FAR 31.105 states, "Actual cost data shall be used when such data can be determined for both ownership and operating cost for each piece of equipment, or groups of similar serial or series equipment from the contractor's accounting records." When actual costs are proposed in excess of \$25,000.00, EFARS requires "cost and pricing data" submission with SF 1411, "Contract Pricing Proposal Cover Sheet", subject to audit.

5.0 FAR states that when actual costs cannot be determined, predetermined rates may be specified. EFARS Part 31.105 prescribes the use of the Corps Schedule when the contracting officer can't determine actual cost data for both ownership and operating costs from the contractor's accounting records. The Corps Schedule is applicable for all stateside construction contracts. Contractors can seldom account accurately for actual equipment costs. Consequently, the schedule is most often required for costing owned construction equipment in modifications.

6.0 When the schedule is used, FAR requires that all costs included in the cost rate schedule must be identified and eliminated from the contractor's other direct and indirect proposed costs. All costs removed from the indirect (G&A) pool should be added to the "total cost of sales base"; (see below), when computing the adjusted overhead rate for Corps construction contracts. Field office personnel should always require the contractor to submit a cost breakdown and basis for computing overhead, since many equipment costs are usually included in the numerator and not in the denominator, as proposed by the contractor. Below is the formula most often used to calculate G&A.

$$\text{G\&A rate} = \frac{\text{X\% of home office cost pool} + \text{Branch or Div office pool}}{\text{total cost of sales of Branch or Division}} \times 100\%$$

Where X = share of home office costs allocated to the branch or division

If the G&A rate aren't adjusted, costs will be duplicated between direct hourly rates and overhead. Below is the adjusted formula:

$$\text{Adjusted G\&A rate} = \frac{\text{same as above less equipment costs}}{\text{same as above plus equipment costs}} \times 100\%$$

7.0 This is the most common cost duplication proposed by contractors. In fact, even if they cite a recent DCAA audit as the justification for their proposed G&A rate, it may have likely not been adjusted to remove equipment costs from the overhead pool. This is due to several reasons. DCAA auditors primarily audit defense contractors on non-Corps contracts. For contracts other than COE, stateside construction, there most likely will not be equipment cost guide used as the basis for equipment pricing. Unless specifically alerted in the request for audit or technical analysis that the cost guide may be applicable, DCAA auditors often fail to eliminate equipment costs from the home office overhead pool. We recommend field offices inform the auditor that the COE cost schedule is in the contract. When asking DCAA auditors for recent or current audited G&A rates, confirm whether the auditor removed all equipment costs from the overhead pool. Also, ask for copy of the G&A work papers whenever you use another audit as a source.

8.0 The ownership costs developed in the schedule consist of allowances for depreciation and cost of facilities capital (CFC). The rates consider purchase price (less tires), freight, sales or import tax, and salvage values. See page 2-2 of the schedule for a full explanation.

- o License fees,
- o Property taxes,
- o Insurance costs.

9.0 The following allowable costs have not been included in the rates. An allowance may be considered in overhead or directly to a piece of equipment (but not in both):

- o Job site security,
- o Inspection fees,
- o Record-keeping,
- o Mechanics training,
- o Highway permits.

10.0 Unless a new piece of equipment must be mobilized or a compensable time extension results from the change, most of the costs in paragraphs 9 and 10 will not be increased or decreased by the change, thus should not be considered, except perhaps in the G&A pool.

11.0 Contract administrative (CA) personnel are reminded to subtract original equipment tire costs from the equipment acquisition cost, when calculating an ownership rate.

12.0 The schedule operating cost rates include allowance for the following (see EP 1110-1-8, pages 2-4 to 2-7):

- o Fuel (including fuel storage tanks and pumps)
- o Filters, oil, grease (FOG)*
- o Repairs and maintenance (including major overhauls)**
- o Tire wear and repairs (including original equipment tires)

* FOG includes cost of wages, fringes, service trucks and other equipment cost, for fueling, greasing, and servicing, taxes for materials, except that an oilier may be separately proposed for certain cranes, drag lines, hydraulic excavators and shovels.

** These cost include:

- o Mechanics labor and supervision
- o Repair parts and supplies
- o Service trucks and other equipment used during M&R operations, plus tools
- o Supporting facilities, such as field and main office repair shops, shop overhead, parts, supplies inventory, and outside specialties services, such as machine shops

13.0 CA personnel should eliminate any of the above costs, if duplicated in the proposals. Adjustments to the schedule rates may be necessary due to equipment age, number of hours per week used, or actual purchase price in accordance with instructions in the schedule. The schedule also includes standby costs.

14.0 Equipment ownership or standby costs are only allowable for equipment in sound, working condition (FAR 31.105). This also applies to rental equipment. For instance, if rental equipment is charged by the month, adjustments must be made for pieces of equipment out of service for longer than routine service.

15.0 Reasonable costs of renting construction equipment are allowable, with certain restrictions (FAR 31.105). Servicing costs, FOG, fuel, etc., if not included in the rental agreement, are allowable. Costs for major repairs and overhaul of rental equipment are unallowable. They should be included in the rental cost. Equipment sold and leased back cannot exceed the ownership rates from the schedule (FAR 31.205-36). Charges in the nature of rent for equipment between any divisions, subsidiaries, or organization under common control are allowable, to the extent that they don't exceed the normal costs of ownership, provided that no part of the costs shall be duplicated. For instance, overhead and profit for the subcontractor or contractor renting from their affiliate are already included in the "rental" rate and should not be duplicated at the same level (FAR 31.205-36).

16.0 Cost for equipment rented from an affiliate at rates normally charged to non-affiliates are allowable provided that the affiliate normally leases to the public and also provided that the rates are reasonable, e.g., when compared to other rental sources, compared to owned equipment rates with markup applied, etc. Again, do not duplicate costs such as markup already included in the rental rate (FAR 31.205-36).

ACCELERATION

1. *ACCELERATION IS SPEEDING UP THE CONTRACT WORK TO TRY TO COMPLETE PERFORMANCE EARLIER THAN OTHERWISE EXPECTED.*
2. *CONTRACTOR SELF-INITIATED -- NONCOMPENSABLE*
3. *GOVERNMENT-INITIATED -- DELIBERATE OR CONSTRUCTIVE*
4. *COMPENSABLE UNDER CHANGES CLAUSE ONLY IF GOVERNMENT REQUIRES ACCELERATED EFFORT TO MEET A CURRENT DELIVERY SCHEDULE IN THE FACE OF DELAYS FOUND TO BE EXCUSABLE.*
5. *MOST COMMON OCCURRENCES:*
 - * *CO DIRECTS ADHERENCE TO ORIGINAL OR ADJUSTED CONTRACT COMPLETION DATE BUT THERE ARE EXCUSABLE DELAYS.*
 - * *CO ADDS REQUIREMENTS TO CONTRACT BUT FAILS TO EXTEND CONTRACT TIME.*

GENERAL REQUIREMENTS FOR GOVERNMENT-DIRECTED CONSTRUCTIVE ACCELERATION:

1. *A PERIOD OF EXCUSABLE DELAY MUST EXIST.*
2. *GOVERNMENT MUST HAVE ACTUAL KNOWLEDGE OF THE DELAY WITH ENOUGH DATA TO BE ABLE TO MAKE REASONABLE DETERMINATION.*
 - * *CONTRACTOR MUST NOTIFY GOVERNMENT WITH DATA; OR*
 - * *GOVERNMENT MUST HAVE ACTUAL KNOWLEDGE.*
3. *GOVERNMENT MUST FAIL OR REFUSE TO GRANT THE REQUESTED EXTENSION WITHIN REASONABLE TIME.*
4. *THERE MUST BE AN EXPRESS OR IMPLIED GOVERNMENT ORDER TO ACCELERATE PROGRESS.*
5. *CONTRACTOR MUST NOTIFY GOVERNMENT THAT ORDER IS CONSIDERED TO BE A CONSTRUCTIVE CHANGE.*
6. *CONTRACTOR MUST MAKE ACTUAL, REASONABLE EFFORT TO ACCELERATE, RESULTING IN ADDITIONAL COSTS.*

| Exhibit 7-5*2. Accelerated Contract Work

DEALING WITH ACCELERATION WHEN THERE ARE EXCUSABLE DELAYS

- * AVOID CONSTRUCTIVE GOVERNMENT ACCELERATION, IF THE NEED DATE ALLOWS EXTENSION TO THE SCHEDULE. MAKE TIMELY ANALYSIS, COMMUNICATE TO CONTRACTOR INTENT TO GRANT SPECIFIC NUMBER OF DAYS TIME EXTENSION.
- * IF INTENTIONAL ACCELERATION IS NECESSARY DUE TO NEED DATES, AND THE GENERAL REQUIREMENTS ARE PRESENT (GOVERNMENT IS LIABLE):
 1. DETERMINE THE FACTS:
 - * WHEN DID ACCELERATION BEGIN?
 - * WHEN DID IT END?
 - * WHAT ADDITIONAL COSTS WERE INCURRED?
 2. SOURCES OF INFORMATION:
 - * PAYROLLS, Q.C. REPORTS, Q.A. REPORTS, CORRESPONDENCE, EXAMINATION/AUDIT OF PROPOSAL, ETC.,
 3. COST INDICATORS:
 - * DO PAYROLLS SHOW ABNORMAL OVERTIME DURING SPECIFIC PERIOD?
 - * WERE NUMBERS OF CRAFTSMEN OR SUPERVISORS SIGNIFICANTLY INCREASED?
 - * WAS ADDITIONAL EQUIPMENT MOBILIZED?
 - * WAS THERE ADDITIONAL JOBSITE MANAGEMENT?
 4. EXAMPLES OF COSTS TO CONSIDER:
 - * PREMIUM PORTION OF THE OVERTIME
 - * ADDITIONAL NUMBERS OF OVERHEAD PERSONNEL
 - * EXTRA COSTS FOR SALARIED EMPLOYEES
 - * ADDITIONAL EQUIPMENT MOBILIZATION COSTS
 - * LOSS OF EFFICIENCY -- IMPACT
 - * AIR FREIGHT VERSUS NORMAL DELIVERY COSTS

| Exhibit 7-5*2. Accelerated Contract Work - Continued

IMPACT ON THE UNCHANGED WORK

- * IMPACT IS THE COST OR TIME EFFECT OF A CHANGE ON THE UNCHANGED WORK
- * IMPACT WAS HISTORICALLY NOT RECOGNIZED
- * WWII - BECAME BIG PROBLEM ON MILITARY FAST PROJECTS
- * RICE DOCTRINE - 1942 SUPREME COURT CASE
- * 1968 - CHANGES CLAUSE REVISED TO INCLUDE IMPACTS IN THE EQUITABLE ADJUSTMENT. ALSO IN DIFFERING SITE CONDITIONS CLAUSE
- * EXAMPLES
 - * RIPPLE EFFECT ON SCHEDULE
 - * MULTIPLICITY OF CHANGES
 - * STACKING OF TRADES (CONGESTION)
 - * FATIGUE (OVERTIME)
 - * REASSIGNMENT OF MANPOWER
 - * LOSS OF MORALE AND ATTITUDE
 - * CREW SIZE INEFFICIENCY
 - * ERRORS AND OMISSIONS -- POOR WORKMANSHIP
 - * SITE ACCESS
 - * LOGISTICS DELAYS OR PRICE INCREASES
 - * LOSS OF MATERIAL DISCOUNTS TIMING/QUANTITIES
 - * DILUTION OF SUPERVISION
 - * JOINT OCCUPANCY INTERFERENCE (BOD)

DEALING WITH IMPACT

- * NEGOTIATOR MUST ANALYZE AND INCLUDE VALID CONSIDERATION IN PRE-NEGOTIATION GOVERNMENT ESTIMATE AND OBJECTIVES.
- * DISCUSS AND DOCUMENT RESOLUTION IN AGREEMENT.
- * REMOVE FROM ESTIMATE IF NOT INCLUDED OR RESOLVED IN AGREEMENT. LATER CLAIM WOULD RESULT IN DOUBLE RECOVERY FOR SAME ITEM.
- * IF UNILATERAL, INCLUDE CONSIDERATION IN EQUITABLE ADJUSTMENT AMOUNT AND DOCUMENT.

Exhibit 7-5*3. Impact Costs

OCE WEIGHTED GUIDELINES METHOD FOR DETERMINING PROFIT

1. Use of Weighted Guidelines in Connection with Determining Fair and Reasonable Profit for Fixed-Price Construction Contracts and Modifications. In preparing Government estimates and/or where profit is negotiated as an element of price, either prime or subcontractor, a reasonable profit shall be negotiated or determined for each procurement action by using the following procedure as a guide:

<u>Factor</u>	<u>Rate</u>	<u>Weight</u>	<u>Value</u>
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	<u>25</u>		
	100		%

2. Based on the circumstances of each procurement action, each of the above factors shall be weighed from 0.03 to 0.12 as indicated below. The value shall be obtained by multiplying the rate by the weight. The value column when totaled indicates the fair and reasonable profit percent-age 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 weighing should be 0.03; as the degree of risk increases the weighing should be increased up to a maximum of 0.12. Lump sum items will have, generally, a higher weighed value than unit price items for which quantities are provided. Other things to consider: The portion of the work to be performed; reasonableness of negotiated costs; amount of labor included in costs; whether the negotiation is before or after performance of work; etc.

b. Relative Difficulty of Work. If the work is most difficult and complex the weighing should be 0.12 and should be proportionately reduced to 0.03 on the simplest of jobs. This factor is tied in to some extent with the degree of risk. Some things to consider: the nature of the work; by whom it is to be done; where; what is the time schedule; etc.

c. Size of Job. All work not in excess of \$100,000 shall be weighed at 0.12. Work estimated between \$100,000 and \$5,000,000 shall be proportionately weighed from 0.12 to 0.05. Work from \$5,000,000 to \$10,000,000 shall be weighed at 0.04 and work in excess of \$10,000,000 at .03.

d. Period of Performance. Jobs in excess of 24 months are to be weighed at 0.12. Jobs of lesser duration are to be proportionately weighed to a minimum of 0.03 for jobs not to exceed 30 days. Although EFARS provides that no weight is to be allowed where additional time is required, an Engineer Board of Contract Appeals has ruled that a weight can be assigned for this element if the changed work requires more time than the originally specified work, even if interim or final completion dates are not extended

e. Contractor's Investment. To be weighted from 0.03 to 0.12 on the basis of below average, average or above average. Things to consider: use of Government-owned property; equipment and facilities expending assistance; etc., for average Government assistance, use 0.12.

f. Subcontracting. To be weighed inversely proportional to the amount of subcontracting. Where 8% or more of the work is to be subcontracted, the weighing is to be 0.03 and such weighing proportionately increased to 0.12 where all the work is performed by the contractor's own forces.

3. When considered necessary because of unusual circumstances or local conditions, the range of weight may be increased to an upper limit of 0.15 if supported by adequate justification and approval of the Huntsville Center engineer.

4. Facilities Capital Cost of Money (FCCM). In accordance with EFARS, the FCCM will not be recognized as an allowed cost in construction contracts where the method of computing profit is other than the method prescribed in FAR. Inasmuch as the OCE weighted guideline method is prescribed for profit evaluation, the FCCM should not be allowed as a separate cost in the prime settlement. The only exception to this rule is that FCCM may be included in equipment use rates without a reduction in profit allowance. If during negotiations, an impasse is reached relative to the EFARS instructions, it would be an acceptable alternative to follow FAR instructions. Under FAR, FCCM can be allowed as a separate cost element provided that profit (computed by methods other than the manufacturing weighted guidelines prescribed therein) is reduced by the amount of FCCM allowed. If an impasse persists after presentation of the above alternate approach, the matter should be forwarded to CH-CA for consideration.

5. CEHND Form 971, Reasonable Profit on Fixed-Price Construction Contracts, and charts for Weighted Guideline Profit Determination for size of job, period of performance, and subcontracting, are pages 3, 4 and 5 to this exhibit

WEIGHTED GUIDELINE PROFIT DETERMINATION					
SIZE OF JOB:	FACTOR			FACTOR	
0	100,000	0.120	900000	3,000,000	0.079
100,000	200,000	0.119	3,000,000	100,000	0.077
200,000	300,000	0.117	100,000	200,000	0.076
300,000	400,000	0.116	200,000	300,000	0.074
400,000	500,000	0.114	300,000	400,000	0.0734
500,000	600,000	0.113	400,000	500,000	0.071
600,000	700,000	0.111	500,000	600,000	0.070
700,000	800,000	0.110	600,000	700,000	0.069
800,000	900,000	0.109	700,000	800,000	0.067
900,000	1,000,000	0.107	800,000	900,000	0.066
1,000,000	100,000	0.106	900,000	4,000,000	0.064
100,000	200,000	0.104	4,000,000	100,000	0.063
200,000	300,000	0.103	100,000	200,000	0.061
300,000	400,000	0.101	200,000	300,000	0.060
400,000	500,000	0.100	300,000	400,000	0.059
500,000	600,000	0.099	400,000	500,000	0.057
600,000	700,000	0.097	500,000	600,000	0.056
700,000	800,000	0.096	600,000	700,000	0.054
800,000	900,000	0.094	700,000	800,000	0.053
900,000	2,000,000	0.093	800,000	900,000	0.051
2,000,000	100,000	0.091	900,000	5,000,000	0.050
100,000	200,000	0.090	5,000,000	10,000,000	0.040
200,000	300,000	0.089	OVER	10,000,000	0.300
300,000	400,000	0.087			
400,000	500,000	0.086			
500,000	600,000	0.084			
600,000	700,000	0.083			
700,000	800,000	0.081			
800,000	900,000	0.080			

Exhibit 7-5*4. HQUSACE Weighted Guidelines Method for Determining Profit (Continued)

Weighted Guideline Profit Determination - Continued

Period of Performance	Factor
OVER 24 MONTHS -----	0.120
23 TO 24 MONTHS -----	0.116
22 TO 23 MONTHS -----	0.112
21 TO 22 MONTHS -----	0.109
20 TO 21 MONTHS -----	0.105
19 TO 20 MONTHS -----	0.101
18 TO 19 MONTHS -----	0.098
17 TO 18 MONTHS -----	0.094
16 TO 17 MONTHS -----	0.090
15 TO 16 MONTHS -----	0.086
14 TO 15 MONTHS -----	0.082
13 TO 14 MONTHS -----	0.079
12 TO 13 MONTHS -----	0.075
11 TO 12 MONTHS -----	0.071
10 TO 11 MONTHS -----	0.068
09 TO 10 MONTHS -----	0.064
08 TO 09 MONTHS -----	0.060
07 TO 08 MONTHS -----	0.064
06 TO 07 MONTHS -----	0.052
05 TO 06 MONTHS -----	0.049
04 TO 05 MONTHS -----	0.045
03 TO 04 MONTHS -----	0.041
02 TO 03 MONTHS -----	0.038
01 TO 02 MONTHS -----	0.034
UNDER 30 DAYS -----	0.030

SUBCONTRACTING

80% OR MORE -----	0.030
70% TO 80% -----	0.042
60% TO 70% -----	0.055
50% TO 60% -----	0.068
40% TO 50% -----	0.080
30% TO 40% -----	0.092
20% TO 30% -----	0.105
10% TO 20% -----	0.118
0% TO 10% -----	0.120

REASONABLE PROFIT ON FIXED-PRICE CONSTRUCTION CONTRACTS

PROJECT R&D Missile Rehab
 PAGE OF 1

LOCATION Redstone Arsenal, AL
 DATE 31 May 85

Fair and reasonable profit on fixed price construction contracts and modifications.

FACTOR	WEIGHTED	RATE	WEIGHT	VALUE
Degree of Risk (Where the risk is very small weighting should be .03)	0.03 to 0.12	1820%	0.08	1.60
Relative Difficulty of Work (If work is most difficult and complex the weighting should be .12)	0.12 to 0.03	15	0.08	1.20
Size of Job (100,000 to 5,000,000)	0.12 to 0.05	15	0.10	1.50
(5,000,000 to 10,000,000) (work not in excess of \$100,000 shall be weighted at .12) (between \$100,000 and 5,000,000 from .12 to .05) ((\$5,000,000 to \$10,000,000 at .04 and in excess of \$10,000,000 at .03)	0.04	15	0	0
Period of Performance (Jobs in excess of 24 mos. are to be weighed at .12)	0.12 to 0.03	15	0.04	0.60
Contractor's Investment (.03 to .12 on the basis of below average, average and above average)	0.12 to 0.03	5	0.08	0.40
Assistance by Government (.12 to .03 on the basis of average to above average)	0.12 to 0.03	5	0.12	0.60
Subcontracting (80% or More .03) (To be weighted inversely proportional to the amount of subcontracting).	.03 to 0.12	25	0.12	3.00
			100%	8.9%

REASONABLE PROFIT FACTOR, (MAX = 0.12)

Exhibit 7-5*4. HQUSACE Weighted Guidelines Method for Determining Profit (Continued)

FACILITIES CAPITAL COST OF MONEY (FCCM):

1. REDUCTION OF PROFIT OBJECTIVE AND
2. FCCM ADJUSTMENT FOR OWNED EQUIPMENT WHEN EQUIPMENT COST GUIDE RATES ARE USED

1. References:

FAR 15.903(c), 31.205-10
DFARS 215.973
1995 EFARS 15.973

2. General. Facilities Capital cost of Money is an important cost determined by applying a cost-of-money rate to the net book value of tangible and intangible capital assets which are employed in contract performance. This cost is an imputed cost attributable to all contractors without regard as to whether the contractor assets were acquired through equity or borrowed capital. A Cost of Money is not a form of interest on borrowing, but rather an element, which represents an allocation of the contractor's cost for having his assets committed to the performance of a specific contract.

3. Department of Defense Profit Off-Set Policy.

a. DFARS 215.973 requires an offset to the pre-negotiation profit objective based on 1% of the total job cost or the cost of facilities capital dollar amount whichever is less.

b. This adjustment is needed for the following reason: The values for the profit factors used in the weighted guidelines method were adjusted to recognize the shift in FCCM from an element of profit to an element of contract cost (FAR 31.205-10) and reductions were made directly to the profit factors for performance risk. In order to ensure that this policy is applied to all DOD contracts which allow FCCM, similar adjustments shall be made to contracts which use alternate structured approaches. (i.e., COE Weighted Guidelines Method).

4. Allowability as a Cost. Whether or not the contract is otherwise subject to CAS (Cost Accounting Standards) the cost of money is allowable **IF:**

a. It is calculated and allocated to contracts and vested in accordance with FAR 31.205-10 and FAR 30.417. Normally, require a recent audit verifying the calculation.

b. The contractor maintains adequate records to demonstrate compliance with this standard.

c. Included in the capitalized cost that provides the basis for allowable depreciation and/or amortization of assets.

d. And it is NOT simply the contractor's actual interest cost.

Exhibit 7-5*5. Application of Facilities Capital Cost of Money (FCCM) on Modification

5. Example: Calculation of Factors

		Project Pool	G&A Pool	
Gross Assets	(A)	\$14,500,000	\$78,900,000	
Accumulated Deprec.	(B)	<u>- 8,400,000</u>	<u>- 45,700,000</u>	(Includes owned equip)
Net Book Value	8	\$ 6,100,000	\$33,200,000	(Excludes owned equip)
Secty of Treasury Interest Rate	(D)	X 9.0%	X 9.0%	
Cost of Money to Be Allocated	(E)	\$ 549,000	\$ 2,988,000	
Allocation Base: Total Cost of Sales	(F)	\$ 28,000,000	\$ 1,188,563	(Excludes owned equip)
Cost of Money Factor* (E/F)		0.01961	0.00251	

(A), (B), 8 average values for the year

(D) FAR 30.414-40(b). Published every 6 months.

* Appendix A to FAR 30.414 requires 5 decimal places.

6. Application of Factors.

Total Project Cost (or Cost of Modification)	\$300,000	(owned)
Direct Equipment	30,000	(rented)
	200,000	
Direct Labor	50,000	
Subcontract Costs	110,000	
Field Overhead	39,500	
G&A	12,368	
Bond	6,800	
Total Job Cost	\$748,690	
Less Owned Equipment	300,000	
Total	\$448,690	

***NOTE:** If the cost of the work being priced includes equipment and that equipment is priced based on the Equipment Ownership and Operating Expense Schedule, Cost of Facilities Capital will already be included in the equipment rates. **Do not calculate FCCM on equipment when the rates from the Schedule are used. If actual cost for equipment is used, no adjustment is needed.**

Exhibit 7-5*5. Application of Facilities Capital Cost of Money (FCCM) on Modification
(Cont.)

G&A Allocation:			
Total Cost		\$ 448,690	
CFC Factor		<u>X .00251</u>	
			\$1,126
Project Allocation:			
Total cost		\$ 448,690	
CFC Factor		<u>X .01961</u>	
			\$8,799
1.	Total CFC applicable to action		\$9,925 *
2.	1% off-set X \$748,690		\$7,487 **
	* Add to cost after profit is applied.		
	** Reduce PNO Profit by lessor of 1. or 2.		

Profit:			
Say 8% X \$748,895	=	\$ 59,895	
Reduction		<u>- 7,487</u>	
PNO Profit	=	\$ 52,408	

Summary for PNO:			
Total Job Cost		\$748,690	
CFC (See 1. Above)		9,925	
PNO Profit		<u>\$ 52,408</u>	
Subtotal Before		\$811,023	

NOTE: The allocation base, direct job or project costs, must be consistent with the method used to allocate the cost. Thus, in this example, the allocation base was total job or project costs. The factor was then applied to the amount negotiated, which represents the amount the total job, or project costs would increase as a result of this negotiation.

| Exhibit 7-5*5. Application of Facilities Capital Cost of Money (FCCM) on Modification **(Cont.)**

CEHND-CD-CA (415-10a)

3 September 1997

MEMORANDUM FOR CEHNC-CD (Field and Center Personnel)

SUBJECT: Policy Guidance for Treatment of Proposal Preparation Costs on Modifications

1. This is to provide guidance to contract administration personnel on a policy for payment of proposal preparation costs on modifications for changes to fixed-price construction work. This policy is limited to the ChemDemil contracts, issued by IOC. The following procedures should, if followed by HNC field offices, result in a consistent HNC approach to payment for proposal preparation costs. Each contract must be analyzed individually.
2. In general, the contractor has the contractual duty to prepare and submit change order proposals, in response to an RFP. The contractor will incur costs for this effort; the extent will depend upon the complexity and scope of the proposed change.
3. If the contractor has field office personnel available to prepare change proposals, the Government has paid for their proposal preparation effort. The contractor should utilize these personnel to the extent possible. There should be no direct cost included in the modification proposal for proposal preparation by field office personnel, unless the change is initiated past the contract completion date and the Government is otherwise liable for extended overhead.
4. If the contractor's home office estimating staff prepare change order proposals, the cost is usually absorbed in the contractor's G&A overhead (indirect) mark-up on the direct costs of the changed work. These costs are usually included in the contractor's overhead rate and provide compensation, regardless of the actual cost.
5. An exception is where the change is so significant and the cost of proposal preparation is so extraordinary that the field office staff cannot prepare the proposal and the contractor's G&A rates are insufficient for absorption of the costs. In such a case, reasonable, **direct costs** of off-site proposal preparation are allowable, in lieu of paying for it in the overhead rates.
6. Another exception is when the change is too complex for the on-site staff to prepare the proposal and where the SC can prove that it did not include any costs for preparation of complex change order proposals by home or branch office estimating in its Best and Final Offer overhead rates. We may entertain paying direct costs for the off-site estimators in such cases. The costs must be reasonable.

| Exhibit 7-5*6. Policy Guidance for Treatment of Proposal

Preparation Costs on Modifications

7. For the situations addressed in 5 and 6 above, the HNC ACO has directed that the SC must certify in the settlement for each modification that includes a direct charge for off-site proposal preparation costs that:

- ! No direct or indirect change order proposal preparation costs were included in the contract BAFO proposal;
- ! All proposal preparation costs and all salaries of those personnel preparing change order proposals have been otherwise excluded from all indirect cost pools used to compute overhead and excluded from indirect overhead charges included in the modification proposal;
- ! Proposal preparation costs are not otherwise duplicated in the change order proposal price.

8. For changes requiring an audit, the Resident Engineer will request the auditor verify the above restrictions.

9. Do not reimburse the contractor for additional efforts to rework a change proposal due to gross mistakes by the contractor's estimators or their failure to follow customary or FAR required procedures. These costs are not considered Areasonable.

10. If the Government initiates the change, then cancels or otherwise never issues the modification, the contractor might be entitled to recover reasonable proposal preparation costs. However, if the change must be canceled due to lack of cooperation, non-performance by the contractor, or outrageous pricing, do not reimburse the contractor for proposal preparation costs.

11. FAR 31.201-3 says, in part: *AA cost is reasonable if, in its nature and amount, it does not exceed that which would be incurred by a prudent person in the conduct of competitive business.* It further states: *ANo presumption of reasonableness shall be attached to the incurrence of costs by a contractor... the burden of proof shall be upon the contractor to establish that such cost is reasonable.* The FAR principle of reasonableness applies to both the amount and the conduct of the contractor. The contractor also has a contractual responsibility to reasonably cooperate in settling mods.

| Exhibit 7-5*6. Policy Guidance for Treatment of Proposal **(Continued)**

Preparation Costs on Modifications (continued)

FIELD OVERHEAD EXAMPLE

TASK: Find field overhead allowance for a modification to a \$10 million, 20-month construction project.

1. With no time extension.
2. With time extension.

GIVEN: Field Office Budget (included in original bid or contract proposal):

Mobilization	\$ 120,000
De-mobilization	40,000
Project Manager	80,000
Quality Control Staff	120,000
Safety Manager	60,000
Payroll Tax/Insurance	78,000
Supplies	20,000
Office Rent	40,000
Miscellaneous	<u>12,000</u>
Total	\$ 570,000

Direct Costs: \$8,150,000

Placement Schedule (Direct Costs)

<u>Month</u>	<u>Cost</u>
2	\$ 160,000
4	410,000
6	820,000
8	1,630,000
10	3,260,000
12	5,380,000
14	6,930,000
16	7,740,000
18	7,990,000
20	8,150,000

Exhibit 7-5*7. Analyzing and Calculating Field Overhead

Assume now that four months into the project it is necessary to make a major modification. The contractor has submitted with its cost or pricing data the following actual costs to date and proposed field overhead rate:

<u>Item</u>	<u>Cost to Date</u>
Mobilization	\$ 120,000
Salaries	52,000
Payroll Tax/Insurance	15,000
Rent	8,000
Misc. & Supplies	<u>4,000</u>
	\$ 208,000

Direct Cost to Date: \$ 410,000

Proposed Field Overhead Rate: $\$208,000/\$410,000 = 50.7\%$

Solution:

1. Analyze each indirect cost element by behavior category:
 - X Variable (proportional to amount of work, not time related).
 - X Fixed (time related, not related to volume of work).
 - X One-time (sunk costs, non-recurring).
 - X Semi-variable (exhibits more than one of the above types of behavior - analyze each part separately).

2. Analyze each element as to reasonableness, cost trends, correlation to remaining work (e.g., if only 40% of original QC staff or field office staff necessary for the period of time extension delay, reduce salaries, etc.)

Analysis:

Four Months Costs Segregated by Type Behavior

	<u>Fixed</u>	<u>Variable</u>	<u>One-Time</u>	<u>Semi-Variable</u>
Mobilization			\$120,000	
Salaries	\$52,000			
Payroll Tax/Insurance	15,000			
Rent	8,000			
Misc. & Supplies	<u>\$ 4,400</u>			
	\$75,000	\$ 4,400	<u>\$120,000</u>	\$ 0

X Direct Cost to Date: \$410,000

X Salaries are running on-schedule and consistent with as-bid conditions. Miscellaneous and supplies are fairly consistent with budget.

Exhibit 7-5*7. Analyzing and Calculating Field Overhead **(Continued)**

Conclusion:

1. Field overhead with no time extension:

$$\frac{\$ 4,400}{\$410,000} \times 100\% = 1.07\% \quad \text{Say } 1.1\% \text{ of direct costs.}$$

2. Field overhead with compensable time extension:

X Allow 1.1% of direct costs. Also allow extended field overhead
For the compensable portion of the time extension.

X Extend field overhead = $\frac{\$18,750}{1 \text{ month}} \times \frac{1 \text{ month}}{30 \text{ days}} = \$625/\text{day}$

X Allow 1.1% of direct costs plus \$625/day time extension for field overhead.

NOTE: A Compensable \cong means that the Government is exclusively responsible for the time extension, after deducting concurrent delays or contractor delays. When both parties are responsible for a percentage of a delay period (e.g., 100 days delay; Government caused 45% of the delay; contractor caused 55%, etc.), prorate the number of days to obtain number of compensable days. If it can't be determined which party is responsible for the delay, an uncompensable time extension would normally be due.

EICHLEAY/"UNABSORBED"/"EXTENDED" OVERHEAD

1. Attached to this exhibit are sample calculations of "extended home office overhead," promulgated by the Kellogg Corporation in a June 1989 newsletter, discussion concerning the sample, and general information on this subject for your reference.
2. Attempts by contractors to improperly claim unabsorbed overhead must be challenged. Note the different formulas in the example and how they differ for calculated "damages" the contractor will claim. Be especially wary of proposals using the "Modified Eichleay Formula."
3. In general, unabsorbed overhead isn't applicable to delays or additional work under the Changes clause. Its applicability is rare and is limited to certain delays due to directed or constructive (total) suspensions of work. Modifications should normally include home office overhead as a percentage of direct and indirect job costs for both increase and credit modifications.

| Exhibit 7-5*8. Contractor Overhead Calculations

KELLOGG CORPORATION

**"CALCULATING DAMAGES FOR EXTENDED HOME OFFICE OVERHEAD"
(JUNE 1989)**

The Eichleay Formula is the best known and most widely used method for calculating home office overhead damages. It may be interesting to create a set of facts so that the damages resulting from three versions of the Eichleay Formula can be compared. Therefore, assume the following:

Original Contract Price	\$2,250,000
Total Contract Billings	2,925,000
Total Company Billings for Organization Contract Period	8,200,000
Total Company Billings for Actual Contract Period	11,700,000
Contract Billings for Extended Period	450,000
Direct Costs Incurred During the Extended Period (excluding job site overhead)	360,000
Total Home Office Overhead for Actual Contract Period	1,520,000
Total Home Office Overhead for Org. Contract Period	1,350,000
Total Fixed Home Office Overhead for Original Contract Period	950,000
Home Office Overhead as a Percent of Direct Costs	15%
Original Days of Contract Performance	90 Days
Actual Days of Contract Performance	120 Days
Number of Days Delay	30 Days

[CEHNC-CD-CA NOTE: Claims for "extended" or "unabsorbed" home office overhead will be recognizable as a daily rate for a specified period.]

Version #1: Original - Eichley Formula

(1) Total Contract Billings x Total Home Office = Home Office
 divided by Overhead for Overhead
 Total Contract Billings Actual Contract Allocable to
 for Actual Cont. Period Period Contract

Sample Calculation (1): $\frac{\$ 2,925,000}{11,700,000} = 25\% \times 1,520,000 = \$380,000$

(2) Allocable Home Office Overhead = Daily Home Office Overhead
 divided by Actual Days of Contract
 Performance Allocable to Contract

Sample Calculation (2): $\frac{\$380,000}{120 \text{ Days}} = \$3,170/\text{Day}$

(3) Daily Home Office x No. of Days = Extended Home Office
 OH Allocable to Contract of Delay Overhead Damages

Sample Calculation (3):
 $\$3,170/\text{Day} \times 30 \text{ Days} = \$95,100$

Modified Version 1 of Eichley Formula

Original Cont. Price x Total Home Office = Home Office
 divided by Total Overhead for Overhead
 Cont. Billings for Original Contract Allocable
 Original Period Period Contract

Sample Calculation (1):
 $\frac{\$2,250,000}{8,200,000} = 27\% \times 1,350,000 = \$365,000$

(2) Allocable Home Office Overhead = Daily Home Office Overhead
 divided by Original Days of Cont. Performance Allocable to Contract

Sample calculation (2): $\frac{\$365,000}{90 \text{ Days}} = \$4,055/\text{Day}$

(3) Daily Home Office x Number of Days = Extended Home Office
 Overhead Allocable of Delay Overhead Damages
 to Contract

Sample Calculation (3): $\$4,055/\text{Day} \times 30 \text{ Days} = \$121,650$

[CEHNC-CD-CA NOTE: The advantage to contractor is that damages can be determined before extended period is over.]

Exhibit 7-5*8. Contractor Overhead Calculations - Continued

Modified Version 2 of Eichley Formula

$$(1) \text{ Original Cont. Price} \quad \times \text{ Total Fixed Home Office} = \quad \text{Fixed Home Office Overhead Allocable to Contract}$$

$$\text{divided by} \quad \text{Overhead for Original} \quad \text{Contract Period}$$

$$\text{Original Cont.} \quad \text{Contract Period}$$

$$\text{Period} + \text{Cont.} \quad \text{Contract Period}$$

$$\text{Billings for} \quad \text{Contract Period}$$

$$\text{Extended Period}$$

Sample Calculation (1):

$$\frac{\$2,250,000}{\$8,200,000 + 450,000} = 25\% \times \$950,000 = \$247,000$$

$$(2) \text{ Fixed Home Office Overhead Allocable to Cont.} = \text{Daily Fixed Office Overhead Allocable to Contract}$$

$$\text{divided by} \quad \text{Original Days of Contract Performance}$$

Sample Calculation (2):

$$\frac{\$247,000}{90 \text{ Days}} = \$2,745/\text{Day}$$

$$(3) \text{ Daily Fixed Home Office Overhead Allocable to Contract} \times \text{Number of Days of Delay} = \text{Extended Overhead Damages}$$

Sample Calculation (3):

$$\$2,745/\text{Day} \times 30 \text{ Days} = \$82,350$$

[CEHNC-CD-CA NOTE: This formula is often applied by Government auditors. All variable type costs must be removed from the G&A pool.]

Direct Cost Markup Method

$$(1) \text{ Direct Costs Incurred During the Extended Period} \times \text{Home Office Overhead \% of Direct Costs} = \text{Extended Home Office Overhead Damages}$$

Sample Calculation (1):

$$\$360,000 \times 15\% = \$54,000$$

"As can be seen by the above calculations, Modified Version 1 of the Eichley Formula produces a significantly higher value for extended home office overhead damages than the original version, whereas Modified Version 2 produces a significantly lower value. The direct cost markup method produces a value lower than all versions of the Eichley Formula. No specific set of rules clearly identifies the most appropriate method. The deciding factor must be: Use the method, which more fairly approximates an accurate allocation of **your** home office overhead costs."

[CEHNC-CD-CA NOTE: The above samples are not intended to be precise; the math is rounded off. The samples are intended to illustrate use of the formulas.]

Exhibit 7-5*8. Contractor Overhead Calculations **(Continued)**

COMMENTARY ON KELLOGG CORPORATION SAMPLE
AND
"EXTENDED" OR "UNABSORBED" HOME OFFICE OVERHEAD

1. The example was created to illustrate use of different formulas and their results. The circumstances created to support the example, however, can be challenged, if a contractor imitates them in a real contract case. Unfortunately, many contractors and Government negotiators do not have any understanding of unabsorbed overhead or how to apply it. They use the formulas because they are convenient and are generous. The purpose of this guidance is to help the Government negotiator understand some of the theory and rationale underlying the concept of unabsorbed overhead, when it does and doesn't apply and how to challenge unwarranted claims. This commentary addresses unabsorbed overhead in general and the sample in detail.

2. It is necessary to first understand how construction companies normally account for their "General and Administrative" expenses. These are the indirect costs of maintaining the home office and construction branch offices, if any. In general, G&A are normally charged to projects as an average percentage of the cost of all jobs or contracts ("cost of sales"). FAR Part 31.203 gives a detailed discussion. The formula for calculating a G&A rate generally looks like this:

$$\text{G\&A rate} = \frac{\text{X\% of Home Office Cost Pool} + \text{Branch or Div Ofc Pool} \times 100\%}{\text{Total Cost of Sales of Branch or Division}}$$

where X = share of home office costs allocated to the Branch or Division.

On Government contracts, the home and branch office cost pools must also comply with the allowability, allocability, and reasonableness requirements of FAR Part 31. Thus, not all "legal" home or branch office costs are allowable or allocable to Government contracts. The G&A rate theoretically represent conditions during the time of performance of the contract or modification being negotiated. In practice the G&A rate is usually calculated from the contractor's latest fiscal accounting period and tested for a reasonable correlation to current or projected conditions.

3. The above accounting practice treats G&A as a "variable, indirect cost." In other words, G&A recovery is related to the amount of contract costs incurred, even though G&A is actually a "semi-variable, indirect cost" (composed of both fixed, daily costs and costs which vary with the amount of work being performed). Accounting for G&A as a variable cost (%) is the most practical method for contractors to price work in a way to be reasonably assured of G&A recovery over the long term.

4. FAR Part 31.203(d) requires that a contractor's method of allocating indirect costs "be in accordance with generally accepted accounting principles which are consistently applied." Contractors are not allowed to charge G&A on the basis of "actual costs" for one change, then as a "daily cost" on the next change, or on a percentage basis on another change, etc.

5. Unabsorbed overhead recovery was originally conceived in Government supply contracts, where tooling or production on an assembly line was completely suspended for extended periods, solely due to Government acts or

| Exhibit 7-5*8. Contractor Overhead Calculations - Continued

omissions (e.g., Allegheny Sportswear Co., ASBCA No. 4163, 25 March 1958, 58-1 BCA 1684 and Carteret work uniforms, ASBCA No. 1015, 25 July 1952 and ASBCA No. 1647, 20 August 1954). In those cases, the manufacturer's overhead costs were largely fixed and could not be reduced, thus were not fully "absorbed" without unfairly increasing allocation to other production lines or contracts. A classic case of unabsorbed overhead would occur if the contractor's entire production were shutdown for extended periods. In calculating the equitable adjustment for the suspension of work on the above cases, it was impossible for the manufacturer to apply the normal accounting practice (allocating overhead as a percentage of costs), since there were no direct costs incurred. To recover overhead costs incurred but not calculable in the ordinary manner, the manufacturers developed "unabsorbed overhead" formulas to allocate a prorated share of daily overhead. The boards have accepted this concept under limited circumstances.

6. The Eichleay case (ASBCA NO. 5183, 29 July 1960, 60-2 BCA) created the formula now most widely adopted by the construction industry for delay claims. Its applicability has been upheld by boards and courts in limited cases where the previously mentioned conditions existed on construction contracts. Its use has also been adopted by the manufacturing industry. The analogy to the manufacturing shutdown discussed above must be established for the concept to be valid on a construction contract. Eichleay application should be limited to those extreme cases (analogous to the manufacturing plant shutdown) where it's impossible to apply normal accounting practice. Normal practice would be to calculate G&A as a percentage of suspension costs, if any, and assume that the contractor will absorb his home overhead costs over the long run.

7. The Kellogg Corporation sample uses the term "extended home office overhead." In this case, as in most, the life or existence of the home office is not "extended" by the owner's "delay." The home office will still exist after this project is over. Treating home office expense as an "extended" or fixed, daily cost is inconsistent with normal accounting practices (variable, indirect cost). Therefore, challenge the entire amount as non-existent, inappropriate and inapplicable if a contractor uses this terminology. Chances are, he will not be able to explain the concept of his damages, let alone justify them.

8. It appears that the sample is a representation of "unabsorbed overhead." As discussed later, actual claims or requests for adjustment must provide proof that unabsorbed overhead actually existed. The sample did not include such evidence. A claim for unabsorbed overhead is really a request to recoup increased overhead costs allocated to other work because of a work stoppage which occurred on the delayed contract. The mere extension of the completion date should not be considered a work stoppage on a delayed contract (Montoya Construction Co., Inc. ASBCA 34691, 89-1 BCA). Stated another way, unabsorbed overhead is that amount of indirect expense actually incurred, which would have been allocated to the contract had the delay not occurred, and is not recoverable in the revenue from any other work (*Government Contract Accounting*, Howard P. Wright and James P. Bedingfield, 1979, page 347). The theory is that there must have been virtually no costs incurred on the job for an extended period. Thus, the contract must have no cost base to have its share of the home office, indirect, G&A burden charged against. In addition, the delay must have tied up the contractor's resources, e.g., equipment,

Exhibit 7-5*8. Contractor Overhead Calculations - Continued

plant, bonding capacity, etc., to the extent that the resources could not be diverted to other work or such that the Contractor was prevented from taking on other work during the delay period (Capital Electric Co. vs U.S., 729, F. 2nd 743, 1984).

9. The burden of proof is on the contractor to demonstrate that Government caused delay (no concurrent delays by contractor, third parties, weather, etc.) caused the contractor's other contracts to be burdened with increased overhead. (Savoy Construction Co., ASBCA 21218, et al, 80-1, BCA para. 14392). The contractor must be able to distinguish and segregate the owner suspension from other excusable or contractor-caused delays (Novak and Co., Inc. vs. Facilities Development Corp. 498 N.Y.S. 2nd 492 - N.Y. AD, 1986). If the work under a delayed contract has been performed, regardless of when, there cannot be unabsorbed overhead unless (i) the total overhead cost has been increased or (ii) other work had to be turned away. The sample does not indicate or prove that either of the two conditions occurred.

10. As stated above, once an owner-caused suspension delay is established, the contractor must prove an actual economic impact, showing it was impossible to obtain other work to perform during the suspension, thereby absorbing home office overhead on other work (Capital Electric). The contractor must make an effort to mitigate the effects of the stoppage by diverting idle resources to other work, reducing variable G&A costs, commensurate with the job shutdown, or obtaining other work to absorb the overhead. If he offers no financial documentation of financial impact, Eichleay has been denied, even with proof of owner-caused suspension (LaCoste Builders, Inc. ASBCA 29884, Nov 23, 1987; Willie J. Brown D/B/A WB Const. Co., ASBCA 42493, Jul 17, 1991). If the contractor failed to make a reasonable effort to obtain other work to direct the idle resources to, unabsorbed overhead recovery is not allowable (Vepco, Inc. ASBCA No. 29983, Feb 27, 1986). In the Kellogg sample, no explanation of the delay or proof of economic loss was offered, so the claim for unabsorbed overhead must be denied.

11. Unabsorbed overhead applies to directed or constructive suspensions of work under contract clause, *Suspension of Work* (Capital Electric). It does not generally apply to delays under the *Changes Clause*, *Differing Site Conditions Clause*, etc., (Numerous board and court cases, see Construction Claims Monthly, Feb 1991 for a good discussion). This generally excludes use of the formula in proposals under those clauses. The standard G&A markup on additional job costs are applicable. If there was an extended period of Government-caused suspension of work preceding issuance of the change and the prerequisites discussed above are met, proving there was unabsorbed overhead, there could be recovery for a portion of the period preceding issuance of the change (A.A. Beiro Construction Co., Inc. ENG BCA 5103, June 28, 1991; I.P.S. Group, Inc., ASBCA, 33182, Aug 15, 1988).

12. Three other considerations are important. First, the delay must be unreasonable. An amount of time considered to be reasonable, if any, for Government action to resolve the problem which caused the delay should be removed from the overall period of suspension for causation and calculation of any unabsorbed overhead (Day and Zimmermann-Madway, ASBCA 13367, 71-1 BCA; Santone Building and Supply Co., ASBCA 9668, 1964, E.C. Morris and Son, Inc. ASBCA 36706, Feb 15, 1991). Secondly, profit is not allowed on "unabsorbed

Exhibit 7-5*8. Contractor Overhead Calculations - Continued

overhead" recovery, since it's a result of a suspension of work. Thirdly, the contractor can only recover unabsorbed overhead for the portion of owner-caused delay, which extends the performance period past the scheduled completion date. Beyond that, there are no damages (C.F.I. Construction Co DOTBCA 1782, Jan 13, 1987). Float in the project schedule belongs to the owner. Always examine the schedule. **There is no unabsorbed overhead if the contractor completes the contract within schedule, regardless of delay.**

13. Contractors often experience some slowdown or suspension delays on their contracts and not only on their Government contracts. Another argument against claimed unrecovered overhead is that the contractor's G&A rate is effectively raised due to delays on any of his projects. Remember that G&A rates reflect long term, average experience, including normally encountered delays. Suspension type delays reduce the "total cost of sales" used in the denominator decreases, the G&A percentage increases. Subsequent modifications will incorporate the higher G&A rate. If the higher G&A rate is applied to future contracts and modifications on Government and commercial contracts and the contractor receives compensation for "unabsorbed overhead", duplicate recovery occurs. Argue that the effects of normal delays on his Government and commercial contracts are already a factor in the normal G&A rate calculation. The Government already shares the burden of past delays on commercial and Government contracts, including his own delays, as these are built-in to the G&A rate. If we allow unabsorbed overhead he will recover twice for the same delays.

14. It's important to distinguish "revenues" or contract "billings" from "cost of sales" or "contract costs." Unabsorbed overhead is not created by delayed "billings" or delayed "revenues." Unabsorbed overhead is a result of a suspension which eliminates or reduces job costs to the extent that there is no cost base to charge home office indirect costs to. As stated in paragraph 2, if there is no cost base, normal accounting practices cannot be used to allocate overhead to the delay adjustment. "Billings" are used in formulas for unabsorbed overhead only because there are not enough "costs" to charge G&A percentage to (R.W. Contracting, Inc., ASBCA No. 24627, April 4, 1984, BCA 84-2).

15. "Unabsorbed overhead" is not "unrecovered overhead." The argument that the contractor did not recover all of his overhead chargeable to your project or to other projects is irrelevant to the question of whether there was "unabsorbed overhead." If the contractor expended costs on your project, there is a cost base to allocate home office overhead to on a percentage basis consistent with standard accounting practice. The Government is responsible to include its share of G&A in any equitable adjustment while the contractor "absorbs" the rest, even if he doesn't recover it.

16. In the Kellogg Corporation sample, delays due to additional work do not justify unabsorbed overhead. The sample does not attribute delays to a suspension. The delay itself is only 30 days. However, the sample states that there were \$360,000 of direct job costs incurred during the delay period. The obvious conclusion is that there could not have been any "unabsorbed overhead," as the contractor could allocate G&A to at least \$360,000 during the period. The sample did not reveal the amount of job overhead expended during the "delay period," but G&A is normally allocated to those costs, too. Applying the contractor's G&A rate of 15% to the \$360,000 job costs, equals \$54,000 G&A allocation.

Exhibit 7-5*8. Contractor Overhead Calculations - Continued

17. The originally anticipated revenue from this project was

$$\frac{\$ 2,250,000}{90} = \$25,000/\text{day}$$

The actual revenue from this job was

$$\frac{\$ 2,925,000}{120} = \$24,375/\text{day}$$

Several conclusions can be drawn. The delay had a negligible effect on daily contract revenues, so probably had little effect on daily job costs. There was no shift of G&A burden to the contractor's other work. Even if work on the project stopped briefly, it appears that additional work was issued (\$675,000 of billings), increasing the contract cost base beyond that originally anticipated. This allowed the contractor to "absorb" the overhead from the "stopped period." This should be examined in all claimed cases of unabsorbed overhead.

18. This contract represented 25% of total company sales during the actual 120-day performance period.

(a) \$ 2,925,000 Job billings = 25% of total billings

\$11,700,000 Total billings over the 120 days

(b) Total G&A for the delay period is:

$$\begin{array}{r} \$1,520,000 \text{ Actual } 120 \text{ days} \\ -1,350,000 \text{ Original } 90 \text{ days} \\ \hline = 170,000 \text{ for } 30 \text{ days} \end{array}$$

(c) 25% of \$170,000 = \$42,500 overhead allocable to this project for the delay period.

(d) If \$54,000 can be charged to the project during the delay period (see paragraph 13), the job will more than absorb its share of G&A during the delay period. "Unabsorbed overhead" is nonexistent here.

19. Calculation of unabsorbed overhead is an inconsistent accounting practice, contrary to FAR 31.203(d). In the rare event that "unabsorbed overhead" is applicable to a suspension of work, FAR 31.201-2 limits allowability of costs resulting from accounting practices inconsistent with FAR part 31.2 to not exceed what would have resulted from practices consistent with FAR 31.2.

20. Even assuming that there was "unabsorbed overhead" on the project, one must examine the calculation to approximate an equitable solution. The sample yields inequitable results:

(a) Using the "Original Eichleay Formula"

\$95,000 > \$42,500 actual share of G&A during delay period

\$95,100 > \$54,000 at 15% G&A charged to the during delay period

Exhibit 7-5*8. Contractor Overhead Calculations (Continued)

(b) The Modified Eichleay Formula is even worse. The advantage to the contractor in using this method is that the recovery can be made before the extended period is over, which should instantly be a sign that there is no proof that the contractor will have unabsorbed overhead. If the delay is over, the formula should not be applicable.

\$121,650 > \$42,500 actual share of G&A.

\$121,650 > \$54,000 at 15% G&A.

(c) Modified Version 2 - Eichleay Formula is often applied by Government auditors. They examine the home office cost pool and eliminate all variable costs (those costs which fluctuate with work volume) leaving only the fixed (time related) G&A costs. If Eichleay must be used, this is the preferred version. It more closely approximates the direct cost markup method here, but still results in excessive recovery (see DCAA pamphlet 7641.45).

\$82,350 > \$42,500 actual share of G&A.

\$82,350 > \$54,000 at 15% G&A.

21. In conclusion, field offices must challenge claims for "extended home office overhead," "daily G&A rates," "unrecovered home office overhead," "unabsorbed overhead," etc., whenever possible. Unabsorbed overhead may be valid in certain, unusual circumstances. It is not necessarily valid simply because there was a suspension of work on a project. The burden is on the contractor to prove that the necessary conditions existed. Proving the claim may require him to open his entire accounting records to show how the delay affected his other contract work.

Exhibit 7-5*8. Contractor Overhead Calculations (Continued)

**HNC GOVERNMENT ESTIMATE APPROVAL AUTHORITY
CHEMICAL DEMILITARIZATION DIRECTORATE**

Category and Limits	Approved for Accuracy	Approved for Use in Acquisition
CSDP < \$500K Field Originated Change	RE Chief of Contract Admin	Resident Engineer or Deputy RE
ALL < \$10 Million Other than A-E (Except Field Changes Noted Above) Originated Changes)	Director of Organization with Preparation Responsibility	Director of Organization with Program Management Responsibility
All > \$10 Million Other than A-E (Including CSDP Design Originated Changes)	Director of Engineering	DC Alternate DD
A-E < \$2 MIL	Director of Organization with Preparation Responsibility	Director of Organization with Program Management Responsibility
A-E > \$ 2 MIL	Director of Organization with Preparation Responsibility	DC, Alt. DD
Universal Alternate	DE, DD, DC	DE, DD, DC

NOTE: All estimates of a controversial or politically sensitive nature shall be coordinated with the commander prior to being approved for use.

Exhibit 7-5*9, Government Estimate Approval Authority

CHAPTER 7. CONTRACT ADMINISTRATION

SECTION 6. UNDEFINITIZED CONTRACT MODIFICATIONS (UCM) (NOTICES TO PROCEED (NTP)/SUSPENSIONS OF WORK)

7.6.1 Policy. When the Contracting Officer directs a contractor to perform work or to suspend work for the convenience of the Government prior to an agreed upon price for the action, it is an undefinitized contract modification. In order to manage the contract efficiently, the Contracting Officer must establish a not-to-exceed (NTE) obligation ceiling for the anticipated work and must state the NTE ceiling in the direction forwarded to the contractor. The contract modification remains undefinitized until negotiations take place and the total absolute value of the work performed is agreed upon by both parties. Therefore, definitization reflects an agreement on price, time, and materials' costs for a specific amount of work accomplished. UCM's are used in lieu of supplemental agreements in situations where preparing for negotiations might cause a critical delay in construction. Huntsville Engineering Support Center's policy is: (1) to limit the use of UCM's to those situations where it is **not** possible to agree on all terms (price and time) of the proposed work or suspension; and (2) to execute a bilateral modification ordering the change or suspension prior to the need date. All offices must make every attempt to settle changes/suspensions prior to the need date. Inconvenience is not an acceptable excuse for issuing an UCM in lieu of forward pricing. UCM's must be considered the exception rather than routine actions. **CAUTION:** Do not issue interim payment on UCM's unless absolutely necessary, as this practice has a tendency to discourage early settlement.

7.6.2 Separate Modifications. Issue each unpriced change order as a separate modification on Standard Form 30 (SF 30) with a unique modification number. Support each modification by a **Memorandum of Facts (MOF), bond letters, a preliminary estimate, approval of funds pre-validation, and a Statement in Support of a UCM, signed by the Contracting Officer.** The total estimated value of the action (the definitized modification) determines whether the UCM is within the authority of the ACO. The total absolute value of the change includes both cost increases and decreases.

7.6.3 Funding.

a. Before the UCM is issued, the Resident Office (RO) will assign a change request number, then initiate and get funds prevalidation approved by the Project Manager.

b. If a detailed Government Estimate has not been prepared, the RO will develop a rough-order-magnitude (ROM) cost estimate to cover all anticipated costs, including impacts and extended overhead. As a minimum, the ROM, or preliminary estimate, should be based on a "price" method, e.g., unit cost basis, with the summary sheet signed by the Resident Engineer (RE). The ROM estimate will be replaced by a detailed Government Estimate prior to negotiations. If the detailed estimate amount is greater than the ROM estimate, one of the following must occur:

(1) Immediately increase the funds to cover the difference in the increase between the ROM and detailed estimate.

(2) If funds are not available, reduce the scope of the ordered change/suspension by a separate modification under the unpriced change order so that the cost of the directed action is under or equal to the total amount of funds available and obligated.

7.6.4 Statement in Support of an Undefined Contract Modification.

a. The purpose of the UCM statement is to justify and explain why the action has to be taken prior to definitization (negotiation) and the consequences if the action is not taken prior to definitization. The RO will prepare a Statement in Support of a UCM. The Contracting Officer must sign the statement, approving the action, prior to issuance of the UCM.

b. The Statement in Support of a UCM will be a Memorandum for Record (MFR) and will include the following information:

- (1) Contract number, title, location, and change request number.
- (2) Scope of work involved in the modification or change.
- (3) The reason normal contract modification procedures and lead times are not practicable.
- (4) The consequence if the date the services are required is not achieved.
- (5) The date the requirement was first identified.

(6) The definitization schedule for the UCM. See guidance in paragraph 7.6.9 and Exhibit 7-6*1, Parts A-1, B-1 and C-1.

(7) An NTE price ceiling on the change order prior to negotiation, or explain why the use of an NTE price is not practicable. The NTE is the fiscal ceiling of the Government's obligation for the ordered change. **Note that this NTE price obligation must also be stated in the modification to the contractor.**

7.6.5 Guidance for Not-To-Exceed Obligation in Change Order Actions.

a. It is customary to establish the NTE obligation ceiling, which the definitized modification cannot normally exceed, and include this amount in the direction sent to the contractor. Construction Directorate's policy is to use a NTE obligation ceiling in a manner which will minimize the likelihood of a work suspension or impact claim if the limit is reached prior to definitization of the change. ***The Government must not reveal its pricing position prior to negotiations.***

b. **The RO and the contractor should enter into a written agreement on a NTE price when practical. If both mutually agree on a NTE price for the work ordered by the modification, then execute a bilateral modification.** To do this, both the contractor and the Contracting Officer or Administrative Contracting Officer must sign the modification (mark Block 13E on the SF 30). The contractor must sign this document and return one copy to the issuing office. Modify the NTE restriction in Block 14 to state something to the effect: "It is agreed that the obligation to the Government for the work ordered herein shall not exceed \$_____."

c. The RO must be sure that the contractor understands the following limitations during discussions on NTE pricing:

(1) If the contractor agrees to a NTE price for all or part of the work before the notice to proceed (NTP) is issued, the work included in the NTE agreement cannot exceed the agreed NTE ceiling, even if the work agreed to actually costs the contractor more than the ceiling amount.

(2) If the NTE was based on a portion of the work, the contractor cannot over obligate the Government by performing additional work prior to definitization of the modification. In this case, if the contractor must proceed with additional work prior to definitization, the Government must issue another modification and adjust the NTE ceiling.

(3) The contractor is not guaranteed settlement at the NTE price.

(4) If there is no advance agreement, the NTE price is still the ceiling. If the ceiling is reached before the change order work is complete, the contractor must either stop work on the change or absorb any costs incurred beyond the ceiling.

d. If it appears that there will be a stoppage, the Government must either act to definitize the change or adjust the NTE ceiling. **If it is not possible to settle the modification bilaterally due to disagreement over the price or time, the Contracting Officer should issue the definitized modification under the unilateral procedures. (See chapter 7, section 14).**

e. The limitations described in paragraphs *b* and *c* above are general. Examine each situation on its own merits. If the contractor's expenses exceed the NTE or he refuses to accept the final equitable adjustment, etc., contact CD-CA for guidance.

f. The final negotiated price of the change order must be based on the NTE, if applicable, and on reasonableness, cost allowableness, cost allocability, audit, if applicable, proof of actual costs, etc., (see FAR 31.201.) Cost of an undefinitized modification must be negotiated with and included as, a part of the definitized modification.

g. Use of a NTE price will result in additional pressure on the Resident Office to expedite settlement of changes, especially when dealing with either an uncooperative contractor or a contractor who deliberately or otherwise over represents the cost of a change order.

h. One way to avoid a price impact prior to negotiation and definitization is to either consider limiting the scope of the NTP to only ordering long-lead material items or requesting work which is required immediately. This action is less likely to reveal the overall Government negotiating position and helps protect the Government from over obligation in the event that full settlement of the change would exceed available funding.

i. The RO must be extremely cautious when establishing a NTE price not to commit the Government to a settlement based on a NTE price which cannot be justified as fair and reasonable at the time of definitization. **If the total change exceeds the ACO's authority, only the Contracting Officer can approve the equitable adjustment.**

j. As a rule of thumb, for those changes where circumstances allow definitization of the modification in a timely manner, limit the NTE funds obligation to no more than 50% of the best estimate (ROM, IGE, or Contractor's Proposal) of the cost of the work ordered. For example, if the UCM directs execution of a \$1,000,000 change and we feel we can definitize the modification prior to the contractor expending 50% of the change order, set the NTE at \$500,000.

k. There will be, by necessity, exceptions to the 50% rule of thumb. When this occurs, coordinate the exception with the HNC-ACO and with CD-CA before preparing the modification. For example, assume the best guess of the cost of the change is \$1,000,000. Of this total, \$800,000 is for switchgear, which will be a long lead item. The NTE must be sufficient to allow the contractor to order (obligate) the switchgear, in addition to any other work on the change, prior to definitization. If we arbitrarily limit the NTE to 50% of the change, we may stop the job and incur suspension impact costs.

l. Situations may arise where all or more than 50% of the change must be accomplished immediately in order to avoid impacting the schedule. The Resident Office should coordinate those situations with CD-CM/HNC ACO.

m. Other techniques may be used, when appropriate, as long as the Government's Estimate, funds available, and the negotiating position for the overall changes are not revealed to the contractor.

n. If necessary, issue a subsequent modification adjusting the NTE up or down. Normally, agreement with the contractor is advised before lowering the NTE price, especially if he has begun expenditures on the change.

o. There may be situations where an NTE price is not practicable or possible. Address these actions individually, based on the circumstances. If necessary, contact CD-CA for specific guidance.

p. Do not confuse an NTE obligation with an interim payment prior to definitization. See paragraph 7.6.8, hereinafter.

7.6.6 Procedures for Issuance of a UCM by the Contracting Officer.

a. When the UCM exceeds the ACO's authority, the RO will assign a change request number and a modification number. If the funds have not been committed by an approved pre-validation of funds, the RO will coordinate this procedure with the ChemDemil PM. When an estimate is required, prepare the official Government Estimate, or as a minimum, a preliminary estimate including a summary sheet signed by the RE. In addition, prepare a Statement in Support of a UCM, the modification for the unpriced change order, and a MOFs. Mail or electronically transmit the original documents to CD-CA. It is not mandatory to transmit the entire ROM estimate with the supporting documents to CD-CA; send only a copy of the signed, ROM estimate summary. In addition, provide the contractor's facsimile number and telephone number.

b. If the ChemDemil PM is processing the pre-validation of funds for a UCM already sent to CD-CA, PM will be responsible for getting the approved funding citation in the contract document file.

c. CD-CA will review the SF 30 and supporting documents and verify the accuracy of the unpriced modification. CD-CA will coordinate correction of any discrepancies with the field office. As an option, the field will correct the SF 30 and transmit the corrected SF 30 to CD-CA. CD-CA will also: (1) prepare the Consent of Surety (SF 1414 or SF 1415), if applicable and (2) post the necessary information in the contract. CD-CA will staff the documentation through CD and applicable elements of HNC.

d. Due to the urgency of a NTP, CD-CA will be responsible for coordinating the modification for the unpriced NTP change order through the remaining appropriate channels, including CEHNC-CH, -RM, -OC and -CT, to the Contracting Officer, and return the NTP to CD-CA as soon as possible.

e. CD-CA will telex executed copies of the modification to the responsible field activity, confirm receipt, and forward advanced-signed copies to RM and CT. CD-CA or the resident office will mail a "duplicate" original of the executed modification and, where applicable, the Consent of Surety to the contractor by transmittal forms letter (exhibit 7-6*2).

f. Within 72 hours of signing, CD-CA will report any modifications in excess of \$25,000 to CT who will report to HQUSACE.

g. The field office will distribute the modification and return a complete copy of the record file to CD-CA. CD-CA will keep a copy of each modification file for the unpriced change, including significant supporting data, i.e., MOF; Government estimate cover sheet or preliminary estimate summary sheet; UCM statement; funds citation; and will be responsible for keeping copies of all modifications connected with the applicable UCM or unpriced change order together in the Directorate Office so that the Contracting Officer can review the complete action under the change case each time a separate modification is processed.

h. The field office will distribute a duplicate original of the definitized modification pending finalization for the unpriced change order. If a Consent of Surety is involved, the RE will hold the distribution of the modification in abeyance until the Government receives the original properly executed Consent. The RE will not make payment on the modification until the consent is received and the modification has been distributed.

i. Field offices retain the record files of all modifications and make applicable distribution.

j. Follow the same procedures for any additional modifications relative to the UCM/unpriced change order.

7.6.7 Procedures for Issuance of a UCM by the Administrative Contracting Officer.

a. When the UCM is within the ACO's authority, the field activity will assign a change request number. If the funds have not been committed by an approved pre-validation of funds, the field activity will coordinate this procedure with the ChemDemil PM. When an estimate is required, prepare the official Government Estimate, or, as a minimum, a preliminary estimate consisting of a summary sheet signed by the RE. Also, prepare the Statement in Support of a UCM. Mail or electronically transmit the original documents to CD-CA and forward to CD-CA the approved pre-validation of funds, if available.

b. If the ChemDemil PM is processing the pre-validation of funds for a UCM, the PM will be responsible for getting the approved funding citation to CD-CA.

c. CD-CA will be responsible for reviewing, coordinating corrections with field personnel, and staffing the UCM statement and supporting documents for the UCM notice to proceed through CEHNC-OC and -CT to the Contracting Officer.

d. CD-CA will notify the resident activity when the Contracting Officer approves the Statement in Support of the UCM. CD-CA will mail the original documents to the field activity.

e. The field activity will immediately prepare the Standard Form 30 modification for the unpriced change, Consent of Surety (SF 1414), where applicable, and Memorandum of Facts. Telex an executed copy of the SF 30 to the contractor, confirming receipt. Mail the contractor a "duplicate" original of the unpriced modification and, where applicable, the original of the Consent by transmittal forms letter. If hand delivered, annotate the date received in Block 15 on the original SF 30, the date retained by the Government, and provide a "duplicate" original to the contractor.

f. The field activity will immediately record the obligation in CEFMS.

g. The field activity will report the modification to CD-CA, so that CD-CA may in turn report the modification to CT, if over \$25,000.

h. The field activity will retain each original modification record. Provide significant copies of each record file to CD-CA, i.e., SF 30; MOF; Government Estimate cover sheet or preliminary estimate summary sheet and UCM Statement.

i. The field activity will distribute the modification and, at the same time, send a duplicate original of the UCM to CT for the contract record file pending finalization of the definitization modification. If Consent is involved, the RE will hold the distribution until the original Consent is executed by the contractor and surety/sureties and returned to the Government. The RE will hold payment of the modification until the Government has received the executed Consent of Surety.

j. Follow the same procedures for any additional modifications relative to the unpriced change order.

7.6.8 Procedures for ACO or Contracting Officer Modifications.

a. The effective date of the UCM/unpriced change order will be the date of execution by the ACO or the Contracting Officer. This modification may contain a temporary bid item and an indicated amount for an interim payment prior to the modification definitization. However, HNC's policy is not to issue interim payments on UCM's unless absolutely necessary. Accomplish any increases or decreases in scope, or increases in the interim payment amount prior to definitization of the unpriced change order, by separate modifications with unique modification numbers, each referencing the same change request number.

b. When a partial NTP initiates an action, issue subsequent NTP by separate modifications with the same unpriced change order request number, accompanied by a MOF. Precede each modification by a Statement in Support of a UCM and, if applicable, an amended prevalidation of funds and a revised estimate.

c. The definitized modification will be the bilateral agreement between the Government and the contractor, or the Government's unilateral position, if an agreement cannot be reached between the parties. *The effective date of the bilateral modification will be the latest date of execution by both parties or a date mutually agreed to by both parties* (per FAR and EIG follow-up inspection). The effective date of the unilateral modification is the date executed by the Contracting Officer. If the modification is issued unilaterally, follow the procedures in chapter 7, section 14.

d. Requirements for the Unpriced Modification. Include the following items, when applicable, in the modification for the undefinitized modification:

(1) Description of the change order, including any revisions to drawings and specifications. Briefly summarize any previous UCM's covering the same change case. See guidance in paragraph 7.6.5, above for additional descriptive information pertaining to the NTE ceiling obligation to the Government.

(2) Temporary bid item and interim amount, or states that a price adjustment will be definitized in a subsequent modification. The HNC policy is that interim payments will be used sparingly. Limit this practice to those situations where a substantial early contractor investment is required. The temporary bid item amount for interim payment purposes shall be limited to 75% or less of the NTE obligation. However, the actual payment to the contractor will not exceed 65% of the interim amount until a qualifying proposal is received from the contractor. Do this by including a statement on the SF30 that payment will be limited to 65% of the interim payment amount prior to receipt of a qualifying proposal. This satisfies the requirements of DFARS 217.7404-4 to limit payment to 50% of the value of the UCM (Government's Estimate) prior to receipt of a qualifying proposal ($65\% \times 75\% = 50\%$).

(3) The number of calendar days needed for a time extension, if any, will be definitized in a subsequent modification. If you can determine the time extension needed by the change, include it in the unpriced modification so the contractor can incorporate the time change in his progress schedule.

(4) State when the Contractor's proposal is required, if not already in hand. Include a statement that any additional time for proposal submittal must be justified and requested by the contractor, in writing, and approved by the Contracting Officer.

(5) Optional information: A proposed date for negotiations and point of contact.

e. *Signature.*

< The Contracting Officer must approve all decisions to issue undefinitized contract modifications by signing a UCM.

< The ACO will execute all unpriced modifications within his or her authority.

< The Contracting Officer will execute modifications for unpriced change orders when the estimated value of the UCM exceeds the ACO's authority.

- < An officer of the corporation, the individual owner, both parties of a joint venture, or the contractor's authorized representative, as noted to the Government in writing, will sign the definitization modification.
- < For a unilateral definitization modification, see section 14, chapter 7.

f. Each subsequent undefinitized modification, when multiple modifications are necessary, should briefly summarize previous modifications and the cumulative totals for NTE funds, interim payment and time. This will help the reader tie all associated UCMs together. See the examples at the end of this chapter.

7.6.9 Schedule for Definitizing an Unpriced Contract Modification.

a. Contractor proposals should be received by the Government within a maximum of 30 days. For complex proposals, where cost or pricing data and certification are required, the Contracting Officer may extend the submission date. However, such extension shall not affect the overall definitization period.

b. Whenever practicable, definitization shall be complete within 120 calendar days or before completion of 50% of the work, whichever is first. When field pricing support/audit is required, definitization shall be complete within 180 calendar days or before completion of 50% of the work, whichever comes first.

c. Possible steps in the definitization process are:

- (1) Obtain Change Request Number.
- (2) Request proposal from the contractor.
- (3) Prepare preliminary estimate or detailed Government Estimate.
- (4) Prepare pre-validation of funds.
- (5) Prepare Statement in Support of a UCM.
- (6) Prepare Memorandum of Facts.
- (7) Prepare unpriced NTP modification (SF 30).
- (8) Prepare Consent of Surety: Use SF 1414 (= \$50,000 <\$100,000), or SF 1415 (= \$100,000 or -->) (ACO: field mods; CD-CA: Division mods.)
- (9) Prepare defined Government estimate.
- (10) Receive contractor's proposal.
- (11) Prepare revised pre-validation of funds.

- (12) Prepare Technical Analysis (formal if >\$500,000, include in cost analysis, if >\$100,000 and <\$500,000).
- (13) Request audit if considered necessary (>\$500,000).
- (14) Perform price analysis of all proposals and cost analysis for proposals >\$100,000.
- (15) Prepare Pre-negotiation Objectives.
- (16) Conduct Negotiations.
- (17) Prepare revised Government Estimate.
- (18) Prepare revised pre-validation of funds.
- (19) Receive revised contractor's proposal.
- (20) Prepare Price Negotiation Memorandum.
- (21) Obtain Certificate of Current Cost or Pricing Data. (>\$500,000).
- (22) Prepare definitization modification (SF 30).
- (23) Prepare Consent of Surety, SF 1414 or SF 1415.
- (24) CRB (definitization modification >\$500,000).

d. State the percentage of UCM work completed by the contractor prior to definitization in the Price Negotiation Memorandum. In addition, provide an explanation in the PNM for any deviation from the definitization schedule.

7.6.10 Submission of Timely Qualifying Proposals.

a. In order to induce contractors to submit timely proposals, ACO=s should:

- (1) Communicate to contractors, as part of the post-award orientation (FAR 42.5), the importance of timely proposals and subsequent negotiations.
- (2) Ensure that contractors understand the expenditure restrictions and that, if work continues after NTE limitations are reached, incurred costs are at the contractor's own risk.
- (3) Negotiate profits that reflect the reduced cost risk to the contractor for costs incurred during performance before negotiation of the final price.

(4) Bring to the attention of the contractor's executive management and the Contracting Officer, through CD-CA, the contractor's failure to submit a qualifying proposal or to participate in timely negotiations.

7.6.11 NTP Necessary After Agreement Reached.

If, on modifications outside the ACO's authority, it is necessary to issue NTP after agreement has been reached on time and price, but before the Directorate staff and Contracting Officer can review and execute the definitized modification, use the following procedure:

- a. Prepare a separate NTP modification, i.e., a supplemental agreement under the *Changes Clause*.
- b. Try to limit the NTP to only that work necessary before the definitized modification can be issued, such as, ordering long lead-time materials, etc.
- c. The modification will normally be unpriced in that there will be no interim payment line item(s) or contract price adjustment.
- d. Time extensions may be addressed in the NTP modification as long as supporting documentation justifying the time extension is included when forwarding the NTP modification to CEHNC. Include documentation of coordination and agreement by the customer, where applicable. The PMCD site manager shall be coordinated with for any time extension on the Chemical Demilitarization Stockpile and Alternative Technologies Programs.
- e. The modification will direct full or partial NTP based on tentative settlement reached for (price) and (time) on (date), subject to final review and acceptance by the Contracting Officer.
- f. When possible, the NTP modification should include a bilateral agreement on the NTE price. The NTE price should be based on the settled price for the work ordered to proceed.
- g. Submit to CD-CA for review and processing.

7.6.12 Claims/Constructive Changes.

- a. The RE receiving claims will review and analyze the claim and forward to CD-CA with a recommendation as to entitlement. The field office will prepare a Fact Sheet, in accordance with procedures outlined in section 16 of this chapter.
- b. In accordance with normal claim procedures, CD-CA coordinates Construction Directorate's analysis and recommendations through Engineering Directorate and Office of Counsel, and other Center elements as appropriate. If there is full concurrence that no merit to the claim exists, the matter is continued under the claim procedures in section 16 of this plan. If merit is found to exist, the matter may be remanded to the responsible field activity for negotiation as a change.

c. An obligation in the form of an undefinitized contract action occurs when a claim is recognized as having merit, either ascertained by the RE or HNC elements, if the claim is retained in the Directorate Office. A memorandum, through the responsible ChemDemil PM, will transmit the pre-validation and will state that the document represents an obligation arising out of a meritorious claim. The field activity will prepare this package, if the package has been remanded to the field for negotiation. If the matter is retained in the District for resolution, the office handling the claim will prepare the funding documents.

7.6.13 Suspension of Work. A suspension of work order is also recognized as a UCM, when the terms cannot be definitized prior to the suspension. Include a Statement in Support of a UCM, a MOF, and a pre-validation of funds with a suspension of work. Some information required in the Statement, as indicated in the above paragraph 7.6.4, does not fit the situation where a suspension of work is involved.

7.6.14 Ratification. When the expected price of a previously issued NTP on an undefinitized contract action exceeds the ACO's authority, the RO will issue a letter of ratification signed by the Contracting Officer. If the definitized modification is to be done in the immediate future, accomplish the ratification by that means.

7.6.15 Sample Formats. Exhibits 7-6*1 and 7-6*2 contain samples of several formats, which are listed below:

Exhibit 7-6*1/A-1	Statement in Support of an UCM for Notice to Proceed
Exhibit 7-6*1/A-2	Standard Form (SF) 30 for Notice to Proceed Modification
Exhibit 7-6*1/A-3	Page 2 of Notice to Proceed Modification
Exhibit 7-6*1/A-4	Memorandum of Facts for Notice to Proceed Modification
Exhibit 7-6*1/B-1	Statement in Support of an UCM for Interim Payment
Exhibit 7-6*1/B-2	Standard Form (SF) 30 for Interim Payment Modification
Exhibit 7-6*1/B-3	Page 2 of Interim Payment Modification
Exhibit 7-6*1/B-4	Memorandum of Facts for Interim Payment Modification
Exhibit 7-6*1/C-1	Statement in Support of an UCM (Revises SOW, Interim Payment and Obligation Ceiling)
Exhibit 7-6*1/C-2	Standard Form (SF) 30 for UCM (Revises SOW, Interim Payment and Obligation Ceiling)
Exhibit 7-6*1/C-3	Page 2 of Revision Modification (Revises SOW, Interim Payment and Obligation Ceiling)
Exhibit 7-6*1/C-4	Memorandum of Facts for Revision Modification (Revises SOW, Interim Payment and Obligation Ceiling)
Exhibit 7-6*1/D-1	Standard Form (SF) 30 for Definitization Modification
Exhibit 7-6*1/D-2	Page 2 of Definitization Modification

Exhibit 7-6*1/F-1	Statement in Support of a Notice to Proceed UCM
Exhibit 7-6*1/F-2	Standard Form (SF) 30 for Notice to Proceed Modification
Exhibit 7-6*1/F-3	Page 2 of Notice to Proceed Modification
Exhibit 7-6*1/F-4	Memorandum of Facts for Notice to Proceed Modification
Exhibit 7-6*1/G-1	Statement in Support of an UCM for Suspension of Work
Exhibit 7-6*1/G-2	Standard Form (SF) 30 for Suspension of Work Modification
Exhibit 7-6*1/G-3	Page 2 of Suspension of Work Modification
Exhibit 7-6*1/G-4	Memorandum of Facts for Suspension of Work Modification
Exhibit 7-6*2	Transmittal Form Letter for a UCM
Exhibit 7-6*3	Sample UCM

CEHNC-CD-CA (file number)	(DATE)
MEMORANDUM FOR RECORD	
SUBJECT: Statement in Support of an Unfinalized Contract Modification (UCM), Contract DACA87-96-C-0139, Large Aircraft Maintenance Dock, Maxwell Air Force Base, AL - Change Case MX-6-139-15 (A00012)	
1. Scope of Work. (Complete.)	
2. Reason Normal Contract Modification Procedures and Lead Times are not Practicable and Consequences if the Date the Services are Required is not Achieved. (Complete. Justify and explain why we cannot definitize the change before issuing the UCM and what the consequences will be if the notice to proceed isn't issued.)	
3. Date the Requirement was First Identified. (Complete.)	
4. Definitization Schedule:	
CC MX-6-139-15 (A00012):	(date)
Contractor's Proposal Received:	(date)
Defined Government Estimate:	(date)
Technical Analysis and Pre-negotiated Objectives:	(date)
Negotiation Complete:	(date)
Definitized Modification:	(date)
5. The contractor agreed to a not-to-exceed (NTE) price of \$40,000 based on his estimated costs to procure materials during the early stages of this change order, prior to the estimated definitization date.	
LOUIS J. MARTINEZ Contracting Officer	
(NOTE: The above Definitization Schedule should not exceed 120 days. Provide dates in Definitization Schedule if possible. Also, the Technical Analysis and Pre-negotiation Objectives can be combined when an audit is not required. Where an audit is required, the definitization schedule could allow a longer period of time (up to 180 days).)	

Exhibit 7-6*1/A-1 Statement in Support of an UCM for Notice to Proceed

AMENDMENT OF SOLICITATION/MODIFICATION OF CONTRACT			1. CONTRACT ID CODE	PAGE OF PAGES 1 2
2. AMENDMENT/MODIFICATION NO. DACA87-96-C-0139-A00012	3. EFFECTIVE DATE 97 Oct 23	4. REQUISITION/PURCHASE REQ. NO. MX-6-139-15	5. PROJECT NO. (If applicable)	
6. ISSUED BY U.S. Army Engineering and Support Center ATTN: CEHNC-CT/A. Prince P.O. Box 1600 Huntsville, AL 35816-1801 C06 (205) 895-0000	CODE	7. ADMINISTERED BY (If other than Item 6) U.S. Army Engineering and Support Center ATTN: CEHNC-CD-CA/D. Williams P.O. Box 1600 Huntsville, AL 35816-1801 A25 (205) 895-0000	CODE	
8. NAME AND ADDRESS OF CONTRACTOR (No., street, county, State and ZIP Code) Mountain Construction Company P. O. Box 1234 Montgomery, AL 36789			(<input checked="" type="checkbox"/>) 9A. AMENDMENT OF SOLICITATION NO.	
			9B. DATED (SEE ITEM 11)	
			(<input checked="" type="checkbox"/>) 10A. MODIFICATION OF CONTRACTS/ORDER NO. DACA87-96-C-0139	
			10B. DATED (SEE ITEM 13) 96 Sep 07	
CODE	FACILITY CODE			

11. THIS ITEM ONLY APPLIES TO AMENDMENTS OF SOLICITATIONS

The above numbered solicitation is amended as set forth in Item 14. The hour and date specified for receipt of Offers is extended, is not extended.

Offers must acknowledge receipt of this amendment prior to the hour and date specified in the solicitation or as amended, by one of the following methods:

- (a) By completing Items 8 and 15, and returning _____ copies of the amendment; (b) By acknowledging receipt of this amendment on each copy of the offer submitted; or (c) By separate letter or telegram which includes a reference to the solicitation and amendment numbers. FAILURE OF YOUR ACKNOWLEDGMENT TO BE RECEIVED AT THE PLACE DESIGNATED FOR THE RECEIPT OF OFFERS PRIOR TO THE HOUR AND DATE SPECIFIED MAY RESULT IN REJECTION OF YOUR OFFER. If by virtue of this amendment you desire to change an offer already submitted, such change may be made by telegram or letter, provided each telegram or letter makes reference to the solicitation and this amendment, and is received prior to the opening hour and date specified.

12. ACCOUNTING AND APPROPRIATION DATA (If required)
2152050000 088130 2559001D763200100000 E314 01110 \$0.00 (Mod Obligated Amount NTE \$40,000)

13. THIS ITEM APPLIES ONLY TO MODIFICATIONS OF CONTRACTS/ORDERS, IT MODIFIES THE CONTRACT/ORDER NO. AS DESCRIBED IN ITEM 14.

(<input checked="" type="checkbox"/>)	A. THIS CHANGE ORDER IS ISSUED PURSUANT TO: (Specify authority) THE CHANGES SET FORTH IN ITEM 14 ARE MADE IN THE CONTRACT ORDER NO. IN ITEM 10A. Contract Clause CHANGES
(<input checked="" type="checkbox"/>)	B. THE ABOVE NUMBERED CONTRACT/ORDER IS MODIFIED TO REFLECT THE ADMINISTRATIVE CHANGES (such as changes in paying office, appropriation date, etc.) SET FORTH IN ITEM 14, PURSUANT TO THE AUTHORITY OF FAR 43.103(b).
	C. THIS SUPPLEMENTAL AGREEMENT IS ENTERED INTO PURSUANT TO AUTHORITY OF:
	D. OTHER (Specify type of modification and authority)

E. IMPORTANT: Contractor is not, is required to sign this document and return _____ copies to the issuing office.

14. DESCRIPTION OF AMENDMENT/MODIFICATION (Organized by UCF section headings, including solicitation/contract subject matter where feasible.)
TO AVOID DELAYING THE PROJECT, YOU ARE DIRECTED TO PROCEED WITH THE WORK REQUIRED BY CHANGE REQUEST MX-6-139-15.

THE OBLIGATION TO THE GOVERNMENT FOR THE WORK ORDERED HEREIN SHALL NOT EXCEED \$40,000.00 PRIOR TO EXECUTION OF THE DEFINITIZATION MODIFICATION FOR THIS CHANGE ORDER.

See page 2 for continuation of Block 14.

Except as provided herein, all terms and conditions of the document referenced in Item 9A or 10A, as heretofore changed, remains unchanged and in full force and effect.

15A. NAME AND TITLE OF SIGNER (Type or print)		16A. NAME AND TITLE OF CONTRACTING OFFICER (Type or print) I. M. Fair	
15B. CONTRACTOR/OFFEROR (Signature of person authorized to sign)	15C. DATE SIGNED	16B. UNITED STATES OF AMERICA BY _____ (Signature of Contracting Officer)	16C. DATE SIGNED 23 Oct 97

NSN 7540-01-152-8070 PREVIOUS EDITION UNUSABLE 30-105-02 STANDARD FORM 30 (REV. 10-83) Prescribed by GSA FAR (48 CFR) 53.243 USAPPC V2.00

Modification No. DACA87-96-C-0139 (A00012)

Page 2 of 2

DESCRIPTION OF CHANGE: Revise the AFFF Fire Protection System and increase capacity of each ground storage reservoir from 75,000 to 90,000 gallons; to provide for removal of AFFF retention tanks and construction of a retention structure in the south drainage ditch; and to provide for an automatic slide gate rather than a manual slide gate.

CHANGES IN THE DRAWINGS: See attachment 1.

CHANGES IN THE SPECIFICATIONS: See attachment 2.

CHANGES IN THE BIDDING SCHEDULE: None. Changes will be definitized in a subsequent modification.

CHANGE IN THE CONTRACT PRICE: Un-priced. Price adjustments will be definitized in a subsequent modification.

ACKNOWLEDGE RECEIPT OF THIS DIRECTIVE, IN WRITING, TO THE AREA/RESIDENT ENGINEER.

IF NO PROPOSAL FOR THIS CHANGE HAS BEEN SUBMITTED, YOU ARE HEREBY DIRECTED TO SUBMIT A BREAKDOWN OF COSTS IN THE DETAIL REQUIRED BY THE CONTRACT CLAUSE, MODIFICATION PROPOSALS BREAKDOWN. YOUR PROPOSAL SHALL BE SUBMITTED TO THE AREA/RESIDENT ENGINEER WITHIN 30 CALENDAR DAYS OF THIS NOTICE TO PROCEED. ANY EXTENSIONS OF TIME FOR SUBMITTAL OF THE PROPOSAL MUST BE JUSTIFIED AND REQUESTED BY THE CONTRACTOR, IN WRITING, AND APPROVED BY THE CONTRACTING OFFICER.

(NOTE: SEND A DUPLICATE FILE COPY OF THE MODIFICATION AND SUPPORTING DATA TO CD-CA WHEN THE ORIGINAL MODIFICATION PACKAGE IS SENT TO HNC FOR SIGNATURE BY THE CONTRACTING OFFICER. CD-CA WILL BE RESPONSIBLE FOR KEEPING ALL MODIFICATIONS CONNECTED WITH THE APPLICABLE CHANGE ORDER TOGETHER SO THAT THE CONTRACTING OFFICER CAN REVIEW THE COMPLETE ACTION UNDER THE CHANGE CASE.)

Exhibit 7-6*1/A-3 Page 2 of Notice to Proceed Modification (UCM)

MEMORANDUM OF FACTS
CONTRACT DACA87-96-C-0139
MODIFICATION NO. A00012
(CC MX-6-139-15)

1. Necessity for the Modification.

It was necessary to revise the design of the Underwing Aqueous Film-Forming Foam (AFFF) Fire Protection System to conform to the Air Force regulations (AFM 88-15).

2. Reason for Omission from Original Plans and Specifications.

User requested change. Cause Code is B/A. (Expand on the User's request.)

3. Contract Clause under Which Modification Issued.

Changes clause.

4. Justification of Price.

This is an un-priced order. The Government's estimated cost for the **entire** change is \$115,000. A not-to-exceed obligation of \$40,000.00, **(which is less than 50% of the IGE)**, is established based on the Contractor's estimated cost to procure materials prior to definitization of the change order. **(Note: refer to paragraph 7.6.5 for guidance in determining the NTE price.)**

5. Funding.

579330021520500000 088130 2559001D7632001000000 E314 01110 \$0.00 (Mod Obligated Amount NTE \$40,000) **Describe how the NTE obligation was determined. In this case the NTE obligation = the Contractor's proposed amount of \$40,000.00. Without the Contractor's proposed amount the NTE obligation would have been computed as 50% of the IGE or \$57,500.00. Exceptions to the 50% NTE obligation rule is recognized if the contractor can justify that 50% is an insufficient amount and work may stop if not funded.**

6. Time.

The contract time remains unchanged. Change in the performance, as justified, will be provided for in a subsequent modification.

I. M. Fair
Administrative Contracting Officer

Exhibit 7-6*1/A-4 Memorandum of Facts for Notice to Proceed Modification

CEHNC-CD-CA (file number)	(DATE)
MEMORANDUM FOR RECORD	
SUBJECT: Statement in Support of an Undefinitized Contract Modification (UCM), Contract DACA87-96-C-0139, Large Aircraft Maintenance Dock, Maxwell Air Force Base, AL - Change Case MX-6-139-15 (A00013), Interim Payment Modification	
1. Scope of Work. This modification provides for interim payment to the contractor until the modification can be definitized.	
2. Reason Normal Contract Modification Procedures and Lead Times are not Practicable and Consequences if the Date the Services are Required is not Achieved. (Complete. Justify and explain why we cannot definitize the change before issuing the UCM and what the consequences will be if the action is not taken.)	
3. Date the Requirement was First Identified. (Complete.)	
4. Definitization Schedule: CC MX-6-139-15 Contractor's Proposal Received: (date) Defined Government Estimate: (date) Technical Analysis and Pre-negotiated Objectives: (date) Negotiation Complete: (date) Definitized Modification: (date)	
5. A not-to-exceed (NTE) price of \$40,000 was obligated under CC MX-6-139-15, modification A00012, for procurement of materials, based on agreement with the contractor.	
LOUIS J. MARTINEZ Contracting Officer	
(NOTE: The above Definitization Schedule is only offered for guidance and should not exceed 120 days. Provide dates in Definitization Schedule if possible. Also, the Technical Analysis and Pre-negotiation Objectives can be combined when an audit is not required. Where an audit is required, the definitization schedule could allow a longer period of time (up to 180 days).)	

Exhibit 7-6*1/B-1 Statement in Support of an UCM for Interim Payment

AMENDMENT OF SOLICITATION/MODIFICATION OF CONTRACT			1. CONTRACT ID CODE	PAGE OF PAGES
2. AMENDMENT/MODIFICATION NO. DACA87-96-C-0139-A00013	3. EFFECTIVE DATE 97 Oct 26	4. REQUISITION/PURCHASE REQ. NO. MX-6-139-15	5. PROJECT NO. (If applicable)	
6. ISSUED BY U.S. Army Engineering and Support Center ATTN: CEHNC-CT/A. Prince P.O. Box 1600 Huntsville, AL 35816-1801 C06 (205) 895-0000	CODE	7. ADMINISTERED BY (If other than Item 6) U.S. Army Engineering and Support Center ATTN: CEHNC-CD-CA/D. Williams P.O. Box 1600 Huntsville, AL 35816-1801 A25 (205) 895-0000	CODE	
8. NAME AND ADDRESS OF CONTRACTOR (No., street, county, State and ZIP Code) Mountain Construction Company P. O. Box 1234 Montgomery, AL 36789			(<input checked="" type="checkbox"/>)	9A. AMENDMENT OF SOLICITATION NO.
				9B. DATED (SEE ITEM 11)
			(<input checked="" type="checkbox"/>)	10A. MODIFICATION OF CONTRACTS/ORDER NO. DACA87-96-C-0139
				10B. DATED (SEE ITEM 13) 96 Sep 07
CODE	FACILITY CODE			

11. THIS ITEM ONLY APPLIES TO AMENDMENTS OF SOLICITATIONS

The above numbered solicitation is amended as set forth in Item 14. The hour and date specified for receipt of Offers is extended, is not extended.

Offers must acknowledge receipt of this amendment prior to the hour and date specified in the solicitation or as amended, by one of the following methods:
 (a) By completing Items 8 and 15, and returning _____ copies of the amendment; (b) By acknowledging receipt of this amendment on each copy of the offer submitted; or (c) By separate letter or telegram which includes a reference to the solicitation and amendment numbers. FAILURE OF YOUR ACKNOWLEDGMENT TO BE RECEIVED AT THE PLACE DESIGNATED FOR THE RECEIPT OF OFFERS PRIOR TO THE HOUR AND DATE SPECIFIED MAY RESULT IN REJECTION OF YOUR OFFER. If by virtue of this amendment you desire to change an offer already submitted, such change may be made by telegram or letter, provided each telegram or letter makes reference to the solicitation and this amendment, and is received prior to the opening hour and date specified.

12. ACCOUNTING AND APPROPRIATION DATA (If required)
 21520500000 088130 2559001D7632001000000 E314 01110 (Total A00012 & A00013 NTE \$40,000.00)

13. THIS ITEM APPLIES ONLY TO MODIFICATIONS OF CONTRACTS/ORDERS, IT MODIFIES THE CONTRACT/ORDER NO. AS DESCRIBED IN ITEM 14.

- () A. THIS CHANGE ORDER IS ISSUED PURSUANT TO: (Specify authority) THE CHANGES SET FORTH IN ITEM 14 ARE MADE IN THE CONTRACT ORDER NO. IN ITEM 10A. **Contract Clause CHANGES**
- B. THE ABOVE NUMBERED CONTRACT/ORDER IS MODIFIED TO REFLECT THE ADMINISTRATIVE CHANGES (such as changes in paying office, appropriation date, etc.) SET FORTH IN ITEM 14, PURSUANT TO THE AUTHORITY OF FAR 43.103(b).
- C. THIS SUPPLEMENTAL AGREEMENT IS ENTERED INTO PURSUANT TO AUTHORITY OF:
- D. OTHER (Specify type of modification and authority)

E. IMPORTANT: Contractor is not, is required to sign this document and return _____ copies to the issuing office.

14. DESCRIPTION OF AMENDMENT/MODIFICATION (Organized by UCF section headings, including solicitation/contract subject matter where feasible.)
 A00012 (NTE \$40,000) directed the contractor to proceed with CC MX-6-139-15. This modification provides an interim payment pending final negotiations under this Change Case.
 THE OBLIGATION TO THE GOVERNMENT UNDER COR MX-6-139-15 PRIOR TO DEFINITIZATION SHALL NOT EXCEED \$40,000.
 See page 2 for continuation of Block 14.

Except as provided herein, all terms and conditions of the document referenced in Item 9A or 10A, as heretofore changed, remains unchanged and in full force and effect.

15A. NAME AND TITLE OF SIGNER (Type or print)		16A. NAME AND TITLE OF CONTRACTING OFFICER (Type or print)	
		I. M. Fair	
15B. CONTRACTOR/OFFEROR	15C. DATE SIGNED	16B. UNITED STATES OF AMERICA	16C. DATE SIGNED
(Signature of person authorized to sign)		BY (Signature of Contracting Officer)	26 Oct 97

Exhibit 7-6*1/B-2 Standard Form (SF) 30 for Interim Payment Modification (UCM)

Modification No. DACA87-96-C-0139 (A00013)

Page 2 of 2

CHANGES IN THE DRAWINGS: None.

CHANGES IN THE SPECIFICATIONS: None.

CHANGES IN THE BIDDING SCHEDULE: (Added Item).

<u>Item No.</u>	<u>Description</u>	<u>Estimated Quantity</u>	<u>Unit</u>	<u>Unit Price</u>	<u>Increase/ (Decrease)</u>	<u>Estimated Amount</u>
3.	Interim Payment for CC MX-6-139-15. (Temporary Bid Item)	1	Job	XXX	\$30,000.00	\$30,000.00

CHANGE IN THE CONTRACT PRICE: \$30,000.00 Increase
(A00012 – Un-priced)

CHANGE IN THE CONTRACT TIME: The contract time remains unchanged as a result of Modifications A00012 and A00013. Change in the contract performance time, as justified, will be provided in a subsequent modification.

THE ACTUAL PAYMENT TO THE CONTRACTOR SHALL NOT EXCEED 65% OF THE INTERIM PAYMENT AMOUNT UNTIL A QUALIFYING PROPOSAL IS RECEIVED FROM THE CONTRACTOR.

NEGOTIATIONS FOR THIS CHANGE ARE SCHEDULED FOR (Date) . PLEASE CONTACT (Name) AT (Telephone Number) FOR SPECIFIC DETAILS. (This is an optional statement.)

(NOTE: SEND A DUPLICATE FILE COPY OF THE MODIFICATION AND SUPPORTING DATA TO CD-CA WHEN THE ORIGINAL MODIFICATION PACKAGE IS SENT TO HNC FOR SIGNATURE BY THE CONTRACTING OFFICER. CD-CA WILL BE RESPONSIBLE FOR KEEPING ALL MODIFICATIONS CONNECTED WITH THE APPLICABLE CHANGE ORDER TOGETHER SO THAT THE CONTRACTING OFFICER CAN REVIEW THE COMPLETE ACTION UNDER THE CHANGE CASE.)

(THIS INTERIM PAYMENT MODIFICATION IS FOR SAMPLE PURPOSES ONLY. SEE INTERIM PAYMENT POLICY IN THE CONTRACT ADMINISTRATION PLANS.)

Exhibit 7-6*1/B-3 Page 2 of Interim Payment Modification (UCM)

MEMORANDUM OF FACTS
CONTRACT DACA87-96-C-0139
MODIFICATION NO. A00013
(CC MX-6-139-15)

1. Necessity for the Modification.

Notice to proceed for this change work was given to the contractor by modification A00012. This modification is necessary to provide interim payments to the contractor as work progresses under CC MX-6-139-15.

2. Reason for Omission from Original Plans and Specifications.

User requested change. Cause Code is B/A. (Expand on the User's request.)

3. Contract Clause under Which Modification Issued.

Changes clause.

4. Justification of Price.

The Government's estimated cost for the **entire** change is **\$115,000.00**. **Previous UCM** A00012 directed the contractor not to obligate the Government **to** more than **\$40,000.00** prior to definitization of the **Change Case**. The interim payment amount of \$30,000 is based on 75% of the obligation ceiling, **i.e. \$40,000.00 x .75 = \$30,000.00**. **(Refer to paragraph 7.6.8d.(2) to determine an interim payment amount.**

5. Funding.

No increase in funding. Modification A00012 increased the funding obligation NTE \$40,000. **This modification only provides an interim payment of \$30,000.00 or 75% of the NTE obligation of \$40,000.00.**

21520500000 088130 2559001D7632001000000 E314 01110

6. Time.

The contract time remains unchanged. Change in the performance, as justified, will be provided for in a subsequent modification.

I. M. Fair
Administrative Contracting Officer

Exhibit 7-6*1/B-4 Memorandum of Facts for Interim Payment Modification **(UCM)**

CEHNC-CD-CA (file number)	(DATE)
MEMORANDUM FOR RECORD	
SUBJECT: Statement in Support of an Undefined Contract Modification (UCM), Modification Contract DACA87-96-C-0139, Large Aircraft Maintenance Dock, Maxwell Air Force Base, AL - Change Case MX-6-139-15 (A00016)	
1. Scope of Work. This modification increases the ground storage tank size to 110 gallons and increases the monies available for interim payments, pending definitization of the action.	
2. Reason Normal Contract Modification Procedures and Lead Times are not Practicable and Consequences if the Date the Services are Required is not Achieved.	
(Complete. Justify and explain why we cannot definitize the change before issuing the UCM and what the consequences will be if the action is not taken.)	
3. Date the Requirement was First Identified. (Complete.)	
4. Definitization Schedule:	
CC MX-6-139-15	
Contractor's Proposal Received:	30 Days from A00014.
Defined Government Estimate:	30 Days from A00014.
Technical Analysis and	
Pre-negotiated Objectives:	40 Days from A00014.
Negotiation Complete:	60 Days from A00014.
Definitized Modification:	75 Days form A00014.
5. Undefined Contract Modification A00012 under CC MX-6-139-15 obligated a not-to-exceed price of \$40,000 for procurement of materials, based on agreement with the contractor. Under this same Change Case , Modification A00013 provided an interim payment amount of \$30,000.00 to the contractor as work progressed. The NTE price for this CC is increased \$80,000 by this modification and increases the revised interim payment amount by \$20,000. At this point, the total NTE ceiling obligation to the Government for CC MX-6-139-15 is revised from \$40,000.00 to \$120,000.00 and the interim payment amount is revised from \$30,000.00 to \$50,000.00 .	
LOUIS J. MARTINEZ Contracting Officer	
(NOTE: The above Definitization Schedule is only offered for guidance and should not exceed 120 days. Provide dates in Definitization Schedule if possible. Where an audit is required, the definitization schedule could allow a longer period of time (up to 180 days).)	

Exhibit 7-6*1/C-1 Statement in Support of an UCM
(Revises SOW, Interim Payment and Obligation Ceiling)

AMENDMENT OF SOLICITATION/MODIFICATION OF CONTRACT			1. CONTRACT ID CODE	PAGE OF PAGES 1 2
2. AMENDMENT/MODIFICATION NO. DACA87-96-C-0139-A00016	3. EFFECTIVE DATE 97 Nov 12	4. REQUISITION/PURCHASE REQ. NO. MX-6-139-15	5. PROJECT NO. (If applicable)	
6. ISSUED BY U.S. Army Engineering and Support Center ATTN: CEHNC-CT/A. Prince P.O. Box 1600 Huntsville, AL 35816-1801 C06 (205) 895-0000	CODE	7. ADMINISTERED BY (If other than Item 6) U.S. Army Engineering and Support Center ATTN: CEHNC-CD-CA/D. Williams P.O. Box 1600 Huntsville, AL 35816-1801 A25 (205) 895-0000		CODE
8. NAME AND ADDRESS OF CONTRACTOR (No., street, county, State and ZIP Code) Mountain Construction Company P. O. Box 1234 Montgomery, AL 36789			(<input checked="" type="checkbox"/>) 9A. AMENDMENT OF SOLICITATION NO.	
			9B. DATED (SEE ITEM 11)	
			(<input checked="" type="checkbox"/>) 10A. MODIFICATION OF CONTRACTS/ORDER NO. DACA87-96-C-0139	
			10B. DATED (SEE ITEM 13) 96 Sep 07	
CODE	FACILITY CODE			
11. THIS ITEM ONLY APPLIES TO AMENDMENTS OF SOLICITATIONS				
<input type="checkbox"/> The above numbered solicitation is amended as set forth in Item 14. The hour and date specified for receipt of Offers <input type="checkbox"/> is extended, <input type="checkbox"/> is not extended. Offers must acknowledge receipt of this amendment prior to the hour and date specified in the solicitation or as amended, by one of the following methods: (a) By completing Items 8 and 15, and returning _____ copies of the amendment; (b) By acknowledging receipt of this amendment on each copy of the offer submitted; or (c) By separate letter or telegram which includes a reference to the solicitation and amendment numbers. FAILURE OF YOUR ACKNOWLEDGMENT TO BE RECEIVED AT THE PLACE DESIGNATED FOR THE RECEIPT OF OFFERS PRIOR TO THE HOUR AND DATE SPECIFIED MAY RESULT IN REJECTION OF YOUR OFFER. If by virtue of this amendment you desire to change an offer already submitted, such change may be made by telegram or letter, provided each telegram or letter makes reference to the solicitation and this amendment, and is received prior to the opening hour and date specified.				
12. ACCOUNTING AND APPROPRIATION DATA (If required) 21520500000 088130 2559001D7632001000000 E314 01110 \$80,000 (Total A00012, A00013 & A00016 NTE \$120,000)				
13. THIS ITEM APPLIES ONLY TO MODIFICATIONS OF CONTRACTS/ORDERS, IT MODIFIES THE CONTRACT/ORDER NO. AS DESCRIBED IN ITEM 14.				
(<input checked="" type="checkbox"/>) A. THIS CHANGE ORDER IS ISSUED PURSUANT TO: (Specify authority) THE CHANGES SET FORTH IN ITEM 14 ARE MADE IN THE CONTRACT ORDER NO. IN ITEM 10A. Contract clause, CHANGES				
B. THE ABOVE NUMBERED CONTRACT/ORDER IS MODIFIED TO REFLECT THE ADMINISTRATIVE CHANGES (such as changes in paying office, appropriation date, etc.) SET FORTH IN ITEM 14, PURSUANT TO THE AUTHORITY OF FAR 43.103(b).				
C. THIS SUPPLEMENTAL AGREEMENT IS ENTERED INTO PURSUANT TO AUTHORITY OF:				
D. OTHER (Specify type of modification and authority)				
E. IMPORTANT: Contractor <input checked="" type="checkbox"/> is not, <input type="checkbox"/> is required to sign this document and return _____ copies to the issuing office.				
14. DESCRIPTION OF AMENDMENT/MODIFICATION (Organized by UCF section headings, including solicitation/contract subject matter where feasible.) AFFF Fire Protection System. YOU ARE DIRECTED TO PROCEED WITH THE WORK REQUIRED BY CC MX-6-139-15, AS REVISED. A00012 directed the contractor to proceed. A00013 provided an interim payment amount pending final negotiations. This modification revises the scope of work and interim payment amount, and raises the obligation ceiling prior to execution of the definitization modification for this change case. THE OBLIGATION TO THE GOVERNMENT FOR THE WORK ORDERED HEREIN SHALL NOT EXCEED \$80,000. THE TOTAL OBLIGATION UNDER THIS CHANGE CASE PRIOR TO DEFINITIZATION SHALL NOT EXCEED \$120,000. See page 2 for continuation of Block 14.				
Except as provided herein, all terms and conditions of the document referenced in Item 9A or 10A, as heretofore changed, remains unchanged and in full force and effect.				
15A. NAME AND TITLE OF SIGNER (Type or print)		16A. NAME AND TITLE OF CONTRACTING OFFICER (Type or print)		
		I. M. Fair		
15B. CONTRACTOR/OFFEROR	15C. DATE SIGNED	16B. UNITED STATES OF AMERICA	16C. DATE SIGNED	
(Signature of person authorized to sign)		BY _____	(Signature of Contracting Officer)	
			12 Nov 97	
NSN 7540-01-152-8070 PREVIOUS EDITION UNUSABLE		30-105-02	STANDARD FORM 30 (REV. 10-83) Prescribed by GSA FAR (48 CFR) 53.243	
USAPPC V2.00				

Exhibit 7-6*1/C-2 Standard Form (SF) 30 for UCM (Revises SOW, Interim Payment and Obligation Ceiling)

Modification No. DACA87-96-C-0139 (A00016)

Page 2 of 2

CHANGES IN THE DRAWINGS: See attachment 1.

CHANGES IN THE SPECIFICATIONS: See attachment 2.

CHANGES IN THE BIDDING SCHEDULE: (Changed Item).

Item No.	Description	Quantity	Estimated Unit	Price	Unit (Decrease)	Increase/ Amount	Estimated
3.	Interim Payment for MX-6-139-15. (Temporary Bid Item)	1	Job	XXX		\$20,000.00	\$50,000.00

CHANGE IN THE CONTRACT PRICE: \$20,000.00 Increase
(A00012 – Un-priced)
(A00013 - \$30,000)
(Total contract price for
CC MX-6-139-15 is \$50,000)

CHANGE IN THE CONTRACT TIME: The contract time is extended 37 calendar days and the date specified for completion in Special Clause 3 is changed from 5 March 1998 to 12 April 1998. Further time adjustments, as justified, will be provided in a subsequent modification.

ACKNOWLEDGE RECEIPT OF THIS DIRECTIVE, IN WRITING, TO THE AREA/RESIDENT ENGINEER.

YOUR REVISED PROPOSAL SHALL BE SUBMITTED TO THE AREA/RESIDENT ENGINEER WITHIN 30 CALENDAR DAYS OF THIS NOTICE TO PROCEED. ANY EXTENSIONS OF THE TIME FOR SUBMITTAL OF THE REVISED PROPOSAL MUST BE JUSTIFIED AND REQUESTED BY THE CONTRACTOR, IN WRITING, AND APPROVED BY THE CONTRACTING OFFICER.

THE ACTUAL PAYMENT TO THE CONTRACTOR SHALL NOT EXCEED 65% OF THE INTERIM PAYMENT AMOUNT UNTIL A QUALIFYING PROPOSAL IS RECEIVED FROM THE

(NOTE: SEND A DUPLICATE FILE COPY OF THE MODIFICATION AND SUPPORTING DATA TO CD-CA WHEN THE ORIGINAL MODIFICATION PACKAGE IS SENT TO HNC FOR SIGNATURE BY THE CONTRACTING OFFICER. CD-CA WILL BE RESPONSIBLE FOR KEEPING ALL MODIFICATIONS CONNECTED WITH THE APPLICABLE CHANGE ORDER TOGETHER SO THAT THE CONTRACTING OFFICER CAN REVIEW THE COMPLETE ACTION UNDER THE CHANGE CASE.)

CONTRACTOR.

Exhibit 7-6*1/C-3 Page 2 of Revision Modification
(Revises SOW, Interim Payment and Obligation Ceiling)

MEMORANDUM OF FACTS
 CONTRACT DACA87-96-C-0139
 MODIFICATION NO. A00016
 (CC MX-6-139-15)

1. Necessity for the Modification.

It was necessary to increase the capacity of each ground storage reservoir to 110,000 gallons in lieu of 90,000 gallons due to incorrect tank size criteria in the initial Air Force directive. By letter dated 8 November 1997, the Air Force corrected the criteria. This modification directs the contractor to proceed with the revised scope of work and also increases the amount of monies for interim payments to the contractor as the work progresses. The initial directive was given in Modification A00012.

2. Reason for Omission from Original Plans and Specifications.

User requested change. Cause Code is B/A.

3. Contract Clause under Which Modification Issued. Changes clause.

4. Justification of Price.

This **action** is an un-priced order, **it increases the interim payment to the contractor, and it increases the obligation ceiling.** The Government's total estimated cost for this change case is **increased from \$115,000.00 to \$219,900.** Modification A00012 directed the contractor not to obligate the Government more than \$40,000 prior to definitization of the **Change Case.** Modification A00013 under the same **Change Case** provided an interim payment amount of \$30,000. This modification revises the interim payment amount by \$20,000 and increase the obligation ceiling by \$80,000. At this point, the total obligation ceiling to the Government for CC MX-6-139-15 is a total of \$120,000 and the total interim payment amount is \$50,000..

5. Funding. 2152050000 088130 2559001D7632001000000 E314 01110 \$50,000
 (Total A00012 = **\$40,000.00**, A00013 = **0**, and A00016 = **\$80,000 for a total NTE amount of \$120,000**).

6. Time. The contract time is 37 calendar days based on the Government's analysis of the contractor's Network Analysis System. Further time adjustments, as justified, will be provided for in a subsequent modification.

I. M. Fair
 Administrative Contracting Officer

Exhibit 7-6*1/C-4 Memorandum of Facts for **UCM** Revision Modification
(Revises SOW, Interim Payment and Obligation Ceiling)

Missing

Exhibit 7-6*1/D-1 Standard Form (SF) 30 for Definitization Modification

7 -6.25

Modification No. DACA87-96-C-0139 (A00020)

Page 2 of 2

CHANGES IN THE DRAWINGS: None.

CHANGES IN THE SPECIFICATIONS: None.

CHANGES IN THE BIDDING SCHEDULE:

<u>Item No.</u>	<u>Description</u>	<u>Estimated Quantity</u>	<u>Unit</u>	<u>Unit Price</u>	<u>Increase/ (Decrease)</u>	<u>Estimated Amount</u>
3.	Interim Payment for CC MX-6-139-15. (Temporary Bid Item)	1	Job	XXX	(\$ 50,000.00)	0.00
1.	Large Aircraft Maintenance Dock	1	Job	XXX	\$254,822.00	\$3,163,189.00
2.	Site Work	1	Job	XXX	\$ 48,285.00	\$ 846,512.00

CHANGE IN THE CONTRACT PRICE: \$253,107 Increase
(A00012 – Un-priced)
(A00013 - \$30,000)
(A00016 - \$20,000)
(Total contract price for
CC MX-6-139-15 is \$303,107)

CHANGE IN THE CONTRACT TIME: None. Modification A00016 extended the contract time under CC MX-6-139-15 by 37 calendar days, changing the completion date specified in Special clause 3 from 5 March 1998 to 12 April 1998.

(NOTE: THIS MODIFICATION FINALIZING THE APPLICABLE CC WILL CONTAIN A PRICE NEGOTIATION MEMORANDUM (PN/M) INSTEAD OF A MEMORANDUM OF FACT (MOF).)

CEHNC-CD-CA (file number) (DATE)

MEMORANDUM FOR RECORD

SUBJECT: Statement in Support of an Undefinitized Contract Modification, Contract DACA87-97-C-0073, Design and Construction of commissary Renovation at Fort Rucker (A00008)

1. SCOPE OF WORK: Replacement of all existing gondola shelving in the sales area of the Commissary.

2. REASON NORMAL CONTRACT MODIFICATION PROCEDURES AND LEAD TIMES ARE NOT PRACTICABLE AND CONSEQUENCES IF THE DATE THE SERVICES ARE REQUIRED IS NOT ACHIEVED:

Price and time settlement was reached on 4 August 1997 by the Area Engineer in the amount of \$574,276 increase and 95-calendar days time extension. The definitization modification is expected to take 21 days for preparation, District review, and execution by the Contracting Officer.

Notice to proceed is necessary to permit the contractor sufficient time to order gondolas to be assured timely delivery to allow completion of the work within the allotted 95 calendar days time extension agreed to during negotiations.

3. DATE THE REQUIREMENT WAS FIRST IDENTIFIED: The requirement was identified by memorandum to the Area Engineer, Fort Rucker, AL, from the User (DeCA/Defense Commissary Agency), dated 9 July 1997.

4. DEFINITIZATION SCHEDULE:

Negotiation Complete:	04 August 1997.
Definitized Modification:	21 days after A00008.

5. The not-to-exceed obligation is based on the settled amount of \$574,276 increase in contract price.

GENE L. CURTIS
Contracting Officer

Exhibit 7-6*1/F-1 Statement in Support of a Notice to Proceed UCM

AMENDMENT OF SOLICITATION/MODIFICATION OF CONTRACT		1. CONTRACT ID CODE	PAGE OF PAGES 1 2	
2. AMENDMENT/MODIFICATION NO. DACA87-96-C-0073-A0008	3. EFFECTIVE DATE 97 Aug 16	4. REQUISITION/PURCHASE REQ. NO. FR-6-073-3	5. PROJECT NO. (If applicable)	
6. ISSUED BY U.S. Army Engineering and Support Center ATTN: CEHNC-CT/A. Prince P.O. Box 1600 Huntsville, AL 35816-1801 C06 (205) 895-0000	CODE	7. ADMINISTERED BY (If other than Item 6) U.S. Army Engineering and Support Center ATTN: CEHNC-CD-CA/D. Williams P.O. Box 1600 Huntsville, AL 35816-1801 A25 (205) 895-0000	CODE	
8. NAME AND ADDRESS OF CONTRACTOR (No., street, county, State and ZIP Code) Dave Burges Construction Co, Inc. P. O. Drawer 2482 Montgomery, AL 36123-0190		(<input checked="" type="checkbox"/>)	9A. AMENDMENT OF SOLICITATION NO.	
			9B. DATED (SEE ITEM 11)	
		(<input checked="" type="checkbox"/>)	10A. MODIFICATION OF CONTRACTS/ORDER NO. DACA87-96-C-0073	
			10B. DATED (SEE ITEM 13) 96 Apr 07	
CODE	FACILITY CODE			
11. THIS ITEM ONLY APPLIES TO AMENDMENTS OF SOLICITATIONS				
<input type="checkbox"/> The above numbered solicitation is amended as set forth in Item 14. The hour and date specified for receipt of Offers <input type="checkbox"/> is extended, <input type="checkbox"/> is not extended.				
Offers must acknowledge receipt of this amendment prior to the hour and date specified in the solicitation or as amended, by one of the following methods: (a) By completing Items 8 and 15, and returning _____ copies of the amendment; (b) By acknowledging receipt of this amendment on each copy of the offer submitted; or (c) By separate letter or telegram which includes a reference to the solicitation and amendment numbers. FAILURE OF YOUR ACKNOWLEDGMENT TO BE RECEIVED AT THE PLACE DESIGNATED FOR THE RECEIPT OF OFFERS PRIOR TO THE HOUR AND DATE SPECIFIED MAY RESULT IN REJECTION OF YOUR OFFER. If by virtue of this amendment you desire to change an offer already submitted, such change may be made by telegram or letter, provided each telegram or letter makes reference to the solicitation and this amendment, and is received prior to the opening hour and date specified.				
12. ACCOUNTING AND APPROPRIATION DATA (If required) 21520500000 088130 2559001D7632001000000 E314 01110 (NTE \$16,0000) and 2559001D7632005 (NTE \$558,276)				
13. THIS ITEM APPLIES ONLY TO MODIFICATIONS OF CONTRACTS/ORDERS, IT MODIFIES THE CONTRACT/ORDER NO. AS DESCRIBED IN ITEM 14.				
(<input checked="" type="checkbox"/>)	A. THIS CHANGE ORDER IS ISSUED PURSUANT TO: (Specify authority) THE CHANGES SET FORTH IN ITEM 14 ARE MADE IN THE CONTRACT ORDER NO. IN ITEM 10A.			
	B. THE ABOVE NUMBERED CONTRACT/ORDER IS MODIFIED TO REFLECT THE ADMINISTRATIVE CHANGES (such as changes in paying office, appropriation date, etc.) SET FORTH IN ITEM 14, PURSUANT TO THE AUTHORITY OF FAR 43.103(b).			
(<input checked="" type="checkbox"/>)	C. THIS SUPPLEMENTAL AGREEMENT IS ENTERED INTO PURSUANT TO AUTHORITY OF: Changes Clause			
	D. OTHER (Specify type of modification and authority)			
E. IMPORTANT: Contractor <input type="checkbox"/> is not, <input checked="" type="checkbox"/> is required to sign this document and return <u>2</u> copies to the issuing office.				
14. DESCRIPTION OF AMENDMENT/MODIFICATION (Organized by UCF section headings, including solicitation/contract subject matter where feasible.) REPLACE GONDOLA SHELVING. See page 1a for Detailed Scope of Work. To avoid delaying the project, you are directed to proceed with the work required by Change Case FR-6-073-3, based on tentative settlement reached on 4 August 1997, subject to the Contracting Officer's final review and concurrence in a subsequent modification. It is agreed that the obligation to the Government for the work covered herein shall not exceed \$574,276. See page 2 for continuation of Block 14. This modification is effective upon date and signature by the contractor in Blocks 15B and 15C. (NOTE: WHERE MOD IS SIGNED FIRST BY CONTRACTING OFFICER.)				
Except as provided herein, all terms and conditions of the document referenced in Item 9A or 10A, as heretofore changed, remains unchanged and in full force and effect.				
15A. NAME AND TITLE OF SIGNER (Type or print) Dave Burges, President		16A. NAME AND TITLE OF CONTRACTING OFFICER (Type or print) GENE L. CURTIS		
15B. CONTRACTOR/OFFEROR (Signature of person authorized to sign)	15C. DATE SIGNED 16 Aug 97	16B. UNITED STATES OF AMERICA BY (Signature of Contracting Officer)	16C. DATE SIGNED 12 Aug 97	

NSN 7540-01-152-8070
PREVIOUS EDITION UNUSABLE

30-105-02

STANDARD FORM 30 (REV. 10-83)
Prescribed by GSA
FAR (48 CFR) 53.243

USAPPC V2.00

Exhibit 7-6*1/F-2 Standard Form (SF) 30 for Notice to Proceed Modification

Modification No. DACA87-96-C-0073 (A00008)

Page 2 of 2

CHANGES IN THE DRAWINGS: None.

CHANGES IN THE SPECIFICATIONS: None.

CHANGES IN THE BIDDING SCHEDULE: None. Changes will be definitized in a subsequent modification.

CHANGE IN THE CONTRACT PRICE: None. Price adjustments will be definitized in a subsequent modification.

CHANGE IN THE CONTRACT TIME: The contract performance time is extended 95 calendar days and the date specified for completion in Part III, Section E, Paragraph 2, is revised from 29 November 1997 to 4 March 1998.

ACKNOWLEDGE RECEIPT OF THIS DIRECTIVE, IN WRITING, TO THE AREA/RESIDENT ENGINEER.

(NOTE: DETAILED SCOPE OF WORK, PAGE 1A, NOT INCLUDED WITH THIS SAMPLE.)

DEPARTMENT OF THE ARMY
MEMORANDUM OF FACTS
IN SUPPORT OF A MODIFICATION

1. Necessity for the Modification.

It was necessary to replace existing worn shelving in the sales area of the Commissary.

2. Reason for Omission from Original Plans and Specifications.

User requested change. Cause Code is B/A. The change is desired by the User to replace deteriorated shelving in the sales area of the Commissary.

3. Contract Clause under Which Modification Issued.

Changes clause.

4. Justification of Price.

A tentative settlement for the change request was reached on 4 August 1997 between the Contractor's Mr. Smith and the Government's Mr. Jones in the amount of \$574,276 increase in contract price and is the not-to-exceed obligation. This settlement is subject to my final review and concurrence in a subsequent modification. The Government's estimate is \$583,794 increase.

5. Funding. 215205 088130 2559001D7632001 E314 01110 (NTE \$16,000)
215205 088130 2559001D7632005 E314 01110 (NTE \$558,276)

6. Time.

The contract time is extended 95 calendar days based on the Government's analysis of the contractor's Network Analysis system showing the gondola shelving work must be done in conjunction with flooring in the sales area, a critical path activity. Agreement was reached during negotiations on 4 August 1997. I concur with this agreement

GENE L. CURTIS
Contracting Officer

Exhibit 7-6*1/F-4 Memorandum of Facts for Notice to Proceed Modification

CEHNC-CD-CA (file number) (DATE)

MEMORANDUM FOR RECORD

SUBJECT: Statement in Support of an Undefined Contract Modification, Contract DACA87-91-C-0221, Jet Fuel Storage, Homestead Air Force Base, FL, Change Case HM-1-221-6 (P00005)

1. SCOPE OF WORK: This modification is directive to suspend work for the convenience of the Government. Work shall be suspended through 31 March 1993, pending a decision by the Air Force to continue or terminate the contract for convenience.

2. REASON NORMAL CONTRACT MODIFICATION PROCEDURES AND LEAD TIMES ARE NOT PRACTICABLE AND CONSEQUENCES IF THE DIRECTIVE IS NOT ISSUED:

The Area Office and Construction Division orally requested a proposal from the Contractor on 29 and 30 October 1992. The Contractor is not able to commit to a definite cost impact yet. Therefore, we cannot reach bilateral agreement before the action is required. Homestead Air Force Base was largely destroyed by Hurricane Andrew in August 1992. The Air Force doesn't know at this point whether the base will be reconstructed. The user requested a suspension of work, through 31 Mar 1993, when more may be known concerning plans for reconstruction. It is necessary to suspend work now in order to reduce further obligations if construction continuous.

3. DATE THE REQUIREMENT WAS FIRST IDENTIFIED: 21 December 1992 message directive from HDQTRS Air Combat Command to SAD-PM-M, information copy to SAMPM-M.

4. DEFINITIZATION SCHEDULE:

Contractor's Proposal Received:	30 days after receipt of Directive
Defined Government Estimate:	30 days after Directive
Pre-negotiated Objectives:	45 days after Directive
Negotiation Complete:	45 days after Directive
Definitized Modification:	60 days after Directive

5. A not-to-exceed (NTE) price of \$60,000 has been unilaterally set for this modification, based on an estimated impact cost of \$20,000.00 per month for three (3) months, per oral estimates provided by the Contractor on 30 December 1992. The modification directs Contractor to provide fifteen (15) days notice prior to reaching the ceiling.

This document is executed for the government by the undersigned Contracting Officer, due to the temporary absence of the regularly assigned Contracting Officer, Patsy F. Newell.

GENE L. CURTIS
Contracting Officer

Exhibit 7-6*1/G-1 Statement in Support of an UCM for Suspension of Work

AMENDMENT OF SOLICITATION/MODIFICATION OF CONTRACT			1. CONTRACT ID CODE	PAGE OF PAGES
2. AMENDMENT/MODIFICATION NO. DACA87-91-C-0221 - P00005	3. EFFECTIVE DATE 92 Dec 31	4. REQUISITION/PURCHASE REQ. NO. MM-1-221-6	5. PROJECT NO. (If applicable)	
6. ISSUED BY U.S. Army Engineering and Support Center ATTN: CEHNC-CT/A. Prince P.O. Box 1600 Huntsville, AL 35816-1801 C06 (205) 895-0000	CODE	7. ADMINISTERED BY (If other than Item 6) U.S. Army Engineering and Support Center ATTN: CEHNC-CD-CA/D. Williams P.O. Box 1600 Huntsville, AL 35816-1801 A25 (205) 895-0000	CODE	
8. NAME AND ADDRESS OF CONTRACTOR (No., street, county, State and ZIP Code) JJC Contractors, Inc. 330 S. Congress Avenue, Suite 7 Boynton Beach, Florida 33426			(√)	9A. AMENDMENT OF SOLICITATION NO.
CODE				9B. DATED (SEE ITEM 11)
FACILITY CODE			×	10A. MODIFICATION OF CONTRACTS/ORDER NO. DACA87-91-C-0221
				10B. DATED (SEE ITEM 13) 91 Sep 30

11. THIS ITEM ONLY APPLIES TO AMENDMENTS OF SOLICITATIONS

The above numbered solicitation is amended as set forth in Item 14. The hour and date specified for receipt of Offers is extended, is not extended.

Offers must acknowledge receipt of this amendment prior to the hour and date specified in the solicitation or as amended, by one of the following methods:

(a) By completing Items 8 and 15, and returning _____ copies of the amendment; (b) By acknowledging receipt of this amendment on each copy of the offer submitted; or (c) By separate letter or telegram which includes a reference to the solicitation and amendment numbers. FAILURE OF YOUR ACKNOWLEDGMENT TO BE RECEIVED AT THE PLACE DESIGNATED FOR THE RECEIPT OF OFFERS PRIOR TO THE HOUR AND DATE SPECIFIED MAY RESULT IN REJECTION OF YOUR OFFER. If by virtue of this amendment you desire to change an offer already submitted, such change may be made by telegram or letter, provided each telegram or letter makes reference to the solicitation and this amendment, and is received prior to the opening hour and date specified.

12. ACCOUNTING AND APPROPRIATION DATA (If required)
21520500000 088130 2559001D7632001000000 E314 01110 (NTE \$60,000 Increase)

13. THIS ITEM APPLIES ONLY TO MODIFICATIONS OF CONTRACTS/ORDERS, IT MODIFIES THE CONTRACT/ORDER NO. AS DESCRIBED IN ITEM 14.

(√)	A. THIS CHANGE ORDER IS ISSUED PURSUANT TO: (Specify authority) THE CHANGES SET FORTH IN ITEM 14 ARE MADE IN THE CONTRACT ORDER NO. IN ITEM 10A.
	B. THE ABOVE NUMBERED CONTRACT/ORDER IS MODIFIED TO REFLECT THE ADMINISTRATIVE CHANGES (such as changes in paying office, appropriation date, etc.) SET FORTH IN ITEM 14, PURSUANT TO THE AUTHORITY OF FAR 43.103(b).
	C. THIS SUPPLEMENTAL AGREEMENT IS ENTERED INTO PURSUANT TO AUTHORITY OF:
×	D. OTHER (Specify type of modification and authority) Contract Clause 17, Suspension of Work

E. IMPORTANT: Contractor is not, is required to sign this document and return _____ copies to the issuing office.

14. DESCRIPTION OF AMENDMENT/MODIFICATION (Organized by UCF section headings, including solicitation/contract subject matter where feasible.)

YOU ARE DIRECTED TO SUSPEND ALL WORK ON THIS PROJECT, EFFECTIVE UPON RECEIPT OF THIS NOTICE THRU 31 MARCH 1993.

See Page 2 for Continuation of Block 14.

This document is executed for the Government by the undersigned Contracting officer due to the temporary absence of the regularly assigned Contracting Officer, Patsy F. Newell.

Except as provided herein, all terms and conditions of the document referenced in Item 9A or 10A, as heretofore changed, remains unchanged and in full force and effect.

15A. NAME AND TITLE OF SIGNER (Type or print)		16A. NAME AND TITLE OF CONTRACTING OFFICER (Type or print) GENE L. CURTIS	
15B. CONTRACTOR/OFFEROR (Signature of person authorized to sign)	15C. DATE SIGNED	16B. UNITED STATES OF AMERICA BY _____ (Signature of Contracting Officer)	16C. DATE SIGNED 92 Dec 31

NSN 7540-01-152-8070 PREVIOUS EDITION UNUSABLE 30-105-02 STANDARD FORM 30 (REV. 10-83) Prescribed by GSA FAR (48 CFR) 53.243 USAPP V2.00

Modification No. DACA87-91-C-0221 (A00005)

Page 2 of 2

CHANGES IN THE DRAWINGS: None.

CHANGES IN THE SPECIFICATIONS: None.

CHANGES IN THE BIDDING SCHEDULE: None. Changes will be definitized in a subsequent modification.

CHANGE IN THE CONTRACT PRICE: Un-priced. Price adjustment will be definitized in a subsequent modification.

CHANGE IN THE CONTRACT TIME: The contract performance time is extended by ninety (90) calendar days, and the date specified for completion in Special Clause 3 is changed from 5 December 1992 to 5 March 1993. Final adjustments, as justified, will be definitized in a subsequent modification.

ACKNOWLEDGE RECEIPT OF THIS DIRECTIVE, IN WRITING, TO THE AREA ENGINEER.

You are requested to submit a proposal to the Area Engineer within 30 days of receipt of this directive, in the detail required by Contract Clause, Modification Proposals - Price Breakdown.

THE OBLIGATION TO THE GOVERNMENT DUE TO THIS DIRECTIVE SHALL NOT EXCEED \$60,000.00. THE CONTRACTOR SHALL NOTIFY THE AREA ENGINEER AT LEAST FIFTEEN DAYS PRIOR TO INCURRING COSTS, WHICH WOULD EXCEED THIS CEILING OBLIGATION.

Exhibit 7-6*1/G-3 Page 2 of Suspension of Work Modification

MEMORANDUM OF FACTS
CONTRACT DACA87-91-C-0221
MODIFICATION NO. P00005
(CC HM-1-221-6)

1. Necessity for the Modification.

The Air Combat Command requested this suspension of work by message dated 21 December 1992.

2. Reason for Omission from Original Plans and Specifications.

None. Hurricane Andrew largely destroyed Homestead Air Force Base in August 1992. The Air Force does not presently know whether the base will be reconstructed, hence whether this project will be needed.

3. Contract Clause under Which Modification Issued.

Suspension of Work.

4. Justification of Price.

This is an un-priced order. A rough order of magnitude estimate is a \$60,000.00 based on \$20,000.00 per month for three (3) months. A not to exceed obligation of \$60,000.00 has been directed in this modification. The Contractor must notify the Government at least fifteen (15) days prior to incurring costs, which would exceed this obligation.

5. Funding.

215205 088130 2559001D7632001 E314 01110(NTE \$60,000.00 Increase)

6. Time.

This modification provides a ninety (90) day time extension based on the direct effect of the three (3) months suspension. Final adjustment will be definitized in a subsequent modification.

This document is executed for the government by the undersigned Contracting officer due to the temporary absence of the regularly assigned Contracting Officer Patsy F. Newell.

GENE L. CURTIS
Contracting Officer

Exhibit 7-6*1/G-4 Memorandum of Facts for Suspension of Work Modification

DEPARTMENT OF THE ARMY

HUNTSVILLE DIVISION, CORPS OF ENGINEERS
P.O. Box 1600
HUNTSVILLE, ALABAMA 35807-4301

REPLY TO
ATTENTION OF

(DATE)

INSTRUCTIONS TO ADDRESSEE(S) ON MODIFICATIONS:

Please take necessary action as checked below:

- o Execute ORIGINAL of Modification No. _____ to Contract No. _____.
The terms of this Supplemental Agreement, including price and/or time adjustments, if any, are the result of bilateral negotiations. Retain duplicate for your records.
- o Contractor and Surety execute ORIGINAL Consent of Surety.
- o Acknowledge receipt of DUPLICATE original undefinitized Modification No. _____ to Contract No. _____ to Resident Engineer.
Retain duplicate for your records.
- o Revise next monthly Progress Chart/NAS to show changes in contract price and/or time.
- o Acknowledge receipt of DUPLICATE original administrative Modification No. _____ to Contract No. _____. Retain duplicate for your records.

NOTE: A current Power of Attorney must be furnished if the modification is executed by other than an officer of the corporation. The original property executed Consent must be received by the Government before payment of the modification can be made. The Power of Attorney Certificate for the Surety's Agent must be dated on or after the date the Consent is signed by the Principle.

- o Return documents, as referenced above, to this office, ATTN: _____.
- o Duplicate Original for your records of Administrative Modification No. _____ to Contract No. _____.

Mailed By: _____

Exhibit 7-6*2. Transmittal form Letter for a UCM

AMENDMENT OF SOLICITATION/MODIFICATION OF CONTRACT			1 CONTRACT ID CODE Construct IGR	PAGE OF PAGES 1 4
2 AMENDMENT/MODIFICATION NO. A00077	3. EFFECTIVE DATE See block 16C	4 REQUISITION/CHANGE NO. 896-0018-021-032	5 PROJECT NO. (if applicable)	
8. ISSUED BY CODE: M		7 ADMINISTERED BY (if other than item 6) ANCDF Resident Engineer Office 3580 Morrisville Road Anniston, AL 36201		
8. NAME AND ADDRESS OF CONTRACTOR (No. street, county, State and ZIP Code): Westinghouse Electric Corp. 1425 Wilmer Avenue Anniston, AL 36201			9A. AMENDMENT OF SOLICITATION NO.	
			9B. DATED (SEE ITEM 12)	
			10A. MODIFICATION OF CONTRACT NO. DAAC09-96-C-0018	
			10B. DATED (SEE ITEM 13) 96 Feb 29	
CODE	FACILITY CODE			

11. THIS ITEM ONLY APPLIES TO AMENDMENTS OF SOLICITATIONS

The above numbered solicitation is amended as set forth in item 14. (The hour and date specified for receipt of Offers is extended. is not extended.

Offers must acknowledge receipt of this amendment prior to the hour and date specified in the solicitation or as amended, by one of the following methods:
 (a) By completing items 8 and 15, and returning _____ copies of the amendment; (b) By acknowledging receipt of this amendment on each copy of the offer submitted; or (c) By separate letter or telegram which includes a reference to the solicitations and amendment numbers. FAILURE OF YOUR ACKNOWLEDGMENT TO BE RECEIVED AT THE PLACE DESIGNATED FOR THE RECEIPT OF OFFERS PRIOR TO THE HOUR AND DATE SPECIFIED MAY RESULT IN REJECTION OF YOUR OFFER. If by virtue of this amendment you desire to change an offer already submitted, such change may be made by telegram or letter, provided each telegram or letter makes reference to the solicitation and this amendment, and is received prior to the opening hour and date specified.

12. ACCOUNTING AND APPROPRIATION DATA (if required)

FY97 PROC- 001X4T

Contract Amount Increased \$517,500.00. Available Funding Increased \$1,035,000.00.

13. THIS ITEM APPLIES ONLY TO MODIFICATIONS OF CONTRACTS. IT MODIFIES THE CONTRACT NO. AS DESCRIBED IN ITEM 14.

A. THIS CHANGE ORDER IS ISSUED PURSUANT TO (Specify authority) THE CHANGES SET FORTH IN ITEM 14 ARE MADE IN THE CONTRACT ORDER NO. IN ITEM 10A.

\$1,243-004 - CHANGES

B. THE ABOVE NUMBERED CONTRACT/ORDER IS MODIFIED TO REFLECT THE ADMINISTRATIVE CHANGES (such as changes in paying office, appropriation, etc.) SET FORTH IN ITEM 14, PURSUANT TO THE AUTHORITY OF FAR 43.103.61.

C. THIS SUPPLEMENTAL AGREEMENT IS ENTERED INTO PURSUANT TO AUTHORITY OF:

D. OTHER (Specify type of modification and authority)

E. IMPORTANT: Contractor is not. is required to sign this document and return original and _____ copies to the issuing office.

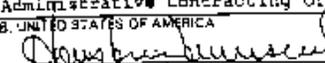
14. DESCRIPTION OF ~~AMENDMENT~~/MODIFICATION (Organized by UCF section headings, including solicitation/contract subject matter where feasible.)

Contract for ANNISTON CHEMICAL DISPOSAL FACILITY at Anniston, Alabama 36201
 AN021icNTP FOR STRUCTURAL STEEL, EXCEPT PTS
 AN052icNTP FOR PA5 STRUCTURAL STEEL REVISIONS

See Page 2.

ORIGINAL

Except as provided herein, all terms and conditions of the document referenced in item 9A or 10A, as heretofore changed, remains unchanged and in full force and effect.

15A. NAME AND TITLE OF SIGNER (Type or print) HOUSTON TOWNSEND Administrative Contracting Officer	15A. NAME AND TITLE OF CONTRACTING OFFICER (Type or print) HOUSTON TOWNSEND Administrative Contracting Officer
15B. CONTRACTOR/ISSUING OFFICE (Signature of person authorized to sign)	15B. UNITED STATES OF AMERICA BY  (Signature of Contracting Officer)
15C. DATE SIGNED	15C. DATE SIGNED 7/14/98

NSN 7540-01-152-8070
PREVIOUS EDITION UNUSABLE

30-105-2

STANDARD FORM 30 (REV. 10-83)
Prescribed by GSA
FAR (48 CFR) 53.243

Exhibit 7-6*3. UCM - Page 1.

MODIFICATION OF CONTRACT	DATE SIGNED See Block 16C	PAGE OF PAGES 2 4
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Contract No. DAAA09-96-C-0018
Modification No. A00077
Contractor: Westinghouse Electric Corp.
Contract Title: ANNISTON CHEMICAL DISPOSAL FACILITY
Location: Anniston, Alabama 36201

14. DESCRIPTION OF MODIFICATION (CONTINUED)

A. SCOPE OF WORK

ANO23lcNTP FOR STRUCTURAL STEEL, EXCEPT PFS

1. You are directed through issuance of Modification A00077 to proceed with fabrication, delivery, and installation of the affected structural steel revisions outside the limits of the PFS Structure itself as affected by Change Case AN-6-018-0023; PFS Revisions and Acid Wash Deletion. This Notice to Proceed does not include any structural steel within the new PFS structure itself.

1a. You are also directed to proceed with the relocation and installation of all security lighting foundations resulting from Change Case AN-6-018-0023, as shown on Drawing AN-16-E-17.

1b. Issuance of this modification also increases the total Not To Exceed Obligation to the Government as noted below.

2. Contract Modification A00057 authorized the contractor to proceed with the work outlined in ECPs ANAC491DFS and ANAP494PAS. Said modification established a Not to Exceed obligation and Interim Payment Amount of \$75,000.

3. Contract Modification A00064 authorized the contractor to proceed with engineering and shop drawing preparation for two MCC units identified as SPS-MCC-111 and SPS-MCC-112. Said modification established a Not to Exceed Obligation of \$10,000 and provided an interim payment amount of \$7,500.

4. With issuance of this modification, i.e., A00077, the Total Obligation to the Government for Change Case AN-6-018-0023 shall not exceed \$385,000 (\$75,000 [A00057]; \$10,000 [A00064]; \$300,000[A00077]).

AN52lcNTP FOR PAS STRUCTURAL STEEL REVISIONS

1. You are directed to proceed with all work identified as Change Case AN-6-018-0052, PAS Structural Steel Revisions.

1a. Issuance of this modification also increases the total Not to Exceed obligation to the Government as noted below.

2. Contract Modification A00028, suspended fabrication of the structural steel in the PAS area and established a Not To Exceed obligation of \$60,000.

2a. Issuance of Modification A00077 hereby lifts the suspension associated with modification A00028. As stated in modification A00028, all costs associated with the suspension and any additional rework will be settled as part of Change Case AN-6-018-0052.

3. Contract Modification A00039 authorized the contractor to proceed with structural steel engineering and shop drawing preparation, incorporating the applicable design revisions identified as Change Case AN-6-018-0052. Said modification established a Not To Exceed obligation and Interim Payment amount of \$200,000.

4. Contract Modification A00062 authorized the contractor to proceed with fabrication of the revised steel for column Lint A to C in Area 5, and Column Line C to F in Area 3.

STANDARD FORM (REV. 10-83)

Exhibit 7-6*3. UCM- Page 2.

MODIFICATION OF CONTRACT	DATE SIGNED	PAGE OF PAGES	
	See Block 16C	3	4

Contract No. DAAA09-96-C-0018
Modification No. A00077
Contractor: Westinghouse Electric Corp.
Contract Title: ANNISTON CHEMICAL DISPOSAL FACILITY
Location: Anniston, Alabama 36201

14. DESCRIPTION OF MODIFICATION (CONTINUED)

4a. Said modification increased the Not To Exceed obligation by \$90,000 for engineering and shop drawing preparation and established \$375,000 for fabrication, resulting in a net increase of \$465,000.

5. With issuance of this modification, the Total Obligation to the Government for Change Case AN-6-08-0052 shall not exceed \$1,460,000 (\$60,000 [A00028], \$200,000 [A00039], \$465,000 [A00062], \$735,000 [A00077]).

B. CHANGE IN CONTRACT SPECIFICATIONS

No Change.

C. CHANGE IN CONTRACT DRAWINGS

1. The attached list of contract drawings for Change Case Numbers AN-6-018-23 and AN-6-018-52 are hereby incorporated into the contract.

1a. Drawing numbers associated with Change Case AN-6-018-23 will only be used as they relate to structural steel revisions outside the limits of the PFS Structure itself.

1b. In those situations where identical drawing numbers have been issued, the most up date drawing shall be used.

2. Drawing # AN-16-E-17 is also incorporated into this contract as it relates to the relocation and installation of all security lighting foundations associated with CC AN-6-018-23.

D. CHANGE IN CONTRACT PRICE

Total contract price is increased by \$517,500.00.

1. AN0231c -- Contract Modifications A00057 and A00064 established interim payment amounts of \$75,000 and \$7,500 respectively. Contract Modification A00077 increases the interim payment amount by \$150,000; thereby providing a total allowable payment amount of \$232,500, pending definitization of Change Case AN0-6-018-23.

2. AN0521c -- Contract Modifications A00039 and A00062 established interim payment amounts of \$200,000 and \$299,250 respectively. Contract Modification A00077 increases the interim payment amount by \$367,500; thereby providing a total allowable payment amount of \$866,750, pending definitization of Change Case AN0-6-018-0052.

3. Price adjustments for Change Case Numbers AN-6-018-0023 and AN-6-018-0052 will be definitized in separate, subsequent modifications. See Section E (Closing Statement) for respective definitization schedules.

STANDARD FORM (REV. 10-83)

Exhibit 7-6*3. UCM - Page 3.

MODIFICATION OF CONTRACT	DATE SIGNED	PAGE OF PAGES	
	See Block 16C	4	4

Contract No. DAAA09-96-C-0018
Modification No. A00077
Contractor: Westinghouse Electric Corp.
Contract Title: ANNISTON CHEMICAL DISPOSAL FACILITY
Location: Anniston, Alabama 36201

14. DESCRIPTION OF MODIFICATION (CONTINUED)

The following revision shall be made to the pricing schedule.

NEW/ REVISED	ITEM NO.	DESCRIPTION	QUANTITY	UNIT PRICE	CHANGE AMOUNT
Revised	0004AA	Pollution Abatement System (PAS)	1.00	LS	\$517,500.00
				Total	\$517,500.00

E. CHANGE IN CONTRACT TIME

The contract completion date shall remain unchanged by reason of this modification.

The Contractor shall develop a Network Analysis System (NAS) fragnet incorporating the changes identified herein into the construction schedule. Said fragnet shall be prepared in accordance with the terms of the contract and shall be submitted to the Government for review and approval within 10 calendar days from the date of receipt of this modification.

F. CLOSING STATEMENT

1. AN0231c -- You are directed to notify the Contracting Officer at least fifteen days prior to the date you anticipate the obligation to the Government for Change Case AN-6-018-023 will exceed \$385,000. Further direction on how to proceed will be provided to you prior to the anticipated date. Funds may not be available for any work performed which results in costs exceeding the above stated amount.

2. AN0521c -- You are directed to notify the Contracting Officer at least fifteen days prior to the date you anticipate the obligation to the Government for Change Case AN-6-018-0052 will exceed \$1,460,000. Further direction on how to proceed will be provided to you prior to the anticipated date. Funds may not be available for any work performed which results in costs exceeding the above stated amount.

3. AN0231c and AN0521c

3a. The total Not To Exceed amounts stated in this modification, i.e., A00077 for Change Case Numbers AN-6-018-23 and AN-6-018-52, respectively do not necessarily represent the Government's estimate of the cost of the work to be performed. They are merely amounts administratively obligated so that work may proceed. The final negotiated settlement for each change case may be less than the Not To Exceed obligated amounts.

3b. Upon mutual agreement thereto, adjustments to the contract amount and contract duration; if applicable and adequately justified, will be addressed in separate, supplemental agreements.

3c. The following definitization schedules have been established for Change Case Numbers AN-6-018-23 and AN-6-018-52:

	CC 23	CC 52
Issue Request for Proposal	Completed	Completed
Receive Contractor's Proposal	15 Jul 98	20 Jul 98
Prepare Technical/Cost Analysis	17 Aug 98	30 Jul 98
Prepare POM	20 Aug 98	17 Aug 98
Conduct Negotiations	31 Aug 98	25 Aug 98
Prepare PNM	15 Sep 98	04 Sep 98
Permit Approval	28 Oct 98	N/A
Execute Definitization Modification	06 Nov 98	16 Sep 98

STANDARD FORM (REV. 10-83)

Exhibit 7-6*3. UCM - Page 4.

CHAPTER 7. CONTRACT ADMINISTRATION

SECTION 7. CONTRACTOR COST OR PRICING DATA (TRUTH IN NEGOTIATION)

7.7.1 Introduction.

a. Public Law 87-653, commonly called the Truth-in-Negotiation Act, was passed by Congress in 1962 requiring Contracting Officers, in certain circumstances, to obtain cost or pricing data from contractors, and to have the contractors certify that the data presented is current, complete, and accurate. The law also provides that where the certified data is not in fact current, complete, or accurate, the Government will have the right to revise the price downward, but not upward, to compensate for the defective data. The current threshold for obtaining cost or pricing data is \$500,000 (FAR 15.403-4).

b. The purpose of the Truth-in-Negotiation Act (the Act), including subsequent revisions is to require contractors to submit truthful cost or pricing data. While all elements of cost may not be ascertainable at the time a contract or modification is awarded, the law requires that those costs that *are* capable of being determined must be accurate, complete, and as current as practicable. The implementing instructions for obtaining cost or pricing data are FAR/DFARS 15.403. Based on the law, as implemented and supplemented by FAR, DFARS, and EFARS, cost or pricing data will be obtained based on the amount of the proposal, NOT the amount of the Government Estimate or any conjecture as to the final outcome of negotiations. The exception to submitting cost or pricing data is an event where a contractor withdraws his or her proposal and substitutes a proposal less than the specified threshold amounts.

c. Subcontractors may also be subject to the provisions of the Truth-in-Negotiation Act, the Competition in Contracting Act of 1984, and the FAR/DFARS/EFARS requirements. FAR considers suppliers as subcontractors. During a new contract negotiation where the prime contractor has not furnished two or more competitive subcontract quotations, the prospective subcontractors must submit cost or pricing data if their proposals are either: \$1,000,000 or more; or both more than \$500,000 and more than 10% of the prime contractor's total proposal. For contract modifications where the contract price exceeds the cost or pricing data threshold, subcontractors are subject to the same cost or pricing data and field pricing support report requirements as the prime contractor. If the contract action is in excess of \$500,000, subcontractors are subject to the same audit requirements. The requirements also apply to subcontractors and suppliers at any tier when the prime and higher tier subcontractors are required to submit data.

d. There are five so-called exceptions to the cost or pricing data and audit requirements (FAR 15.403-1b). These exceptions involve those instances where price is based upon either:

- (1) Adequate price competition,
- (2) Prices set by law or regulation (e.g., utility rates),
- (3) When a commercial item is being acquired,

(4) Certain exceptional cases where the Head of an agency may grant a (blanket) waiver on the basis of a written determination setting forth the reasons.

- (5) When modifying a contract or subcontract for commercial items.

The criteria for these exemptions are discussed in FAR 15.403-1(c).

In construction, there are no known instances where exception (4) would apply. Further, there are some limitations in the use of exception (1), (2), and (3). For example, in modifying an existing contract it would not be practical to obtain competitive price quotations at the prime contract level since one contractor is already obligated to the contract. However, if subcontract work is involved, the prime contractor may be able to obtain competitive quotations from several subcontractors, thereby allowing partial relief under exception (1). (The prime's costs would still be subject to cost or pricing data requirements.) Normally, in construction this exception applies to material suppliers and despite the request for exemption, the Government may perform a review (audit) to determine if the submitted data are indeed established catalog or market prices.

7.7.2 Cost or Pricing Data. (FAR 15.401)

a. Cost or pricing data consists of all facts, which can reasonably be expected to contribute to sound estimates of future costs, as well as the validity of costs already incurred. Contractors must submit, and identify in writing, all cost or pricing support data which is verifiable and factual, and must present historical or factual data to back up any judgmental costs or prices. The submittals should provide documentation such that a reviewer or auditor can readily understand the estimating and accounting practices used; the type of information available and how it pertains to the pricing; and the location of non-furnished supporting data. The Act, in essence, obligates the contractor to reveal to the Contracting Officer all data pertinent to the procurement action in question. The cost or pricing data must be sufficiently detailed to make any certification meaningful; to allow a timely and meaningful audit; and to allow for a timely, successful conclusion of negotiations.

b. DELETED

c. Contractors must furnish sufficient information to show the precise manner in which the cost or price proposal was derived (see exhibit 7-7*1). Because there are varying methods of estimating the following is a general outline of the types of information that the contractor should furnish see FAR15.408 for additional guidance. The proposal must include the following list of the cost and pricing elements:

(1) *Labor Costs.* Include the crafts to be used, the number of man-hours per craft, the wage rate applicable to each craft, and the benefits paid each craft. Show payroll tax and insurance applicable to each craft.

(2) *Materials and Installed Equipment.* Set forth the estimated or actual quantities of materials to be incorporated in the construction, together with the applicable unit costs of such materials. Similarly, furnish the quantities and unit costs of installed equipment.

(3) *Construction Equipment.* For contractor-owned equipment, include the hourly ownership and operating rates for each piece of equipment expected to be used on the project. The rate will be in

accordance with the Corps' Construction Equipment Ownership and Operating Expense Schedule, if actual costs for both ownership and operating costs for each class of equipment are not available. For equipment not owned by the contractor, an hourly rental rate and source must be furnished. For either type of equipment, the number of hours of anticipated use on the changed work and the hourly operating costs must be furnished. Also, details of any costs associated with mobilizing or demobilizing.

(4) Subcontract *Costs*. Since subcontract costs are a part of the cost or pricing data, present quotations/proposals in the same detail as that required of the prime contractor.

(5) Overhead. Breaks down the proposed overhead costs by individual cost elements and separate field office overhead and home office overhead. If overhead is expressed as a percentage of direct costs, the contractor will furnish the basis of the proposed rate.

(6) Other *Costs*. Show profit, bond, and taxes separately.

d. It is important that the contractor identify cost elements as either "factual" or "judgmental." For example, equipment operating time, estimated man-hours, and some material quantities may be considered judgmental. Proposed unit costs for materials, equipment, and labor wage rates should generally be factual; however, judgment may be involved in choosing the material or equipment being proposed, or choosing the craft or crew size needed to perform the work. It is the factual information, which is subject to post-award verification, and as such is subject to any certification by the contractor and price reductions in the event defective data is discovered.

7.7.3 Technical Analysis.

a. The technical analysis of a contractor's proposal determines the need for and reasonableness of the proposed resources to be used in the work, assuming reasonable economy and efficiency. Ultimately, the technical analysis is the basis for negotiating the technical aspects of a contract or modification.

b. FAR 15.404-1 (e) requires the Government to make a technical analysis of the proposal when "cost or pricing data" is required. In addition, Huntsville Center policy requires a technical analysis for **all** changes more than \$100,000. If an audit is necessary, provide the technical analysis for those areas requiring audit assistance to the auditor, as discussed later in paragraph 7.7.4. The technical analysis must be documented and incorporated (or referenced, if a separate report is prepared) into the Pre-negotiation Objective Memorandum.

c. *As a minimum*, include the following information in the technical analysis report(s):

(1) A description of the proposal and items analyzed. Qualified technical personnel should review their areas of expertise. The analysis can include separate reports or several reviews consolidated into one report.

(2) Data used in the analysis and the manner in which used.

(3) Constraints on the analysis (e.g., time limitations, lack of data, requested but not provided, etc.).

(4) Data requested and data received from the contractor. Describe how the analysis was conducted in the absence of required data.

(5) A detailed item-by-item description of the proposal analysis with findings, recommendations, and supporting rationale.

(6) A marked-up copy of the contractor's proposal shows the results of the technical analysis.

(7) Any special problems relating to the change. Identify any unacceptable item or items in the proposal which are not a part of the change involved.

(8) Information concerning any other change order action having a bearing on or relationship to the subject change.

(9) An evaluation of the judgmental aspects of the proposal for necessity and reasonableness.

(10) If applicable, the contractual basis for the change, e.g., in the case of a claim proposal, what the claim is based on. This could be a separate document.

(11) Identify whether or not the work has already been performed.

(12) The analyst should be aware that contractors typically include such items as equipment depreciation, home office shops, mechanics, parts inventory, etc., in their home office overhead pool. This is standard accounting practice for commercial construction and on Government contracts (FAR 31.2), unless a cost schedule, such as the Corps' Construction Equipment Ownership and Operating Expense Schedule is specified. Most contractors' accountants are not aware of special treatment when the Corps' guide is used. When it is used, all such costs must be removed from the G&A pool. The Corps' equipment schedule rates consider these costs. Duplication will occur if any costs separately proposed in the proposal or in the overhead rate are not removed. When an audit is required, *the analyst should not assume that the auditor would automatically handle such costs correctly*. Advise the auditor whether the Corps' schedule applied. Experience has shown that DCAA auditors, who normally audit defense contracts or non-Corps defense construction contracts, will not properly handle overhead and equipment costs, if not specifically alerted that the Corps' Equipment Schedule is applicable. Use caution when using previous audits for reference. Always check with the auditor to see how G&A and equipment costs were treated.

d. The detailed item-by-item analysis of the contractor's proposal and resulting findings and recommendations are the most important part of the analysis. This will identify areas of agreement or disagreement on the scope of the work. The supporting documentation should confirm the contractor's quantities or include the analyst's or the Government's estimated quantities for elements, which disagree. The reviewer should apply his or her own knowledge and experience to the analysis as well as other references, such as market analysis, previous contracts, previous modifications, stored material invoices, time and labor studies, observation, QA/QC reports, equipment lists, the Government's Estimate, etc. As a minimum, the detailed analysis should address the following for each item of the proposal:

(1) Labor: Proposed crew size, type and number of skilled and unskilled labor, supervision, production rates, labor hours, work shifts, work week, and overtime and shift differentials. The evaluation

should take into account the location, type of construction, and climatic conditions.

(2) Materials and Supplies: Proposed quantities and types of materials, supplies and installed equipment. This should include the quantities shown for waste and scrap. An evaluation of any price escalation to current or future levels. An analysis of methods used to determine shipping costs.

(3) Construction Equipment and Plant: Proposed equipment types, equipment spreads, production rates, and hours used. Comment on whether equipment is owned, rented, leased, on site, and if mobilization is required. Estimates of small tools and miscellaneous items. Advise whether or not the Special Clause, Corps of Engineers' Construction Equipment Ownership and Operating Expense Schedule is in the contract (see above discussion). Comment on whether equipment costs were based on the Equipment Ownership and Operating Expense Schedule, actual cost or rental rates. If rental rates are used, comment on the necessity for using rental equipment. Consider concurrent use or standby status of equipment. Consider whether equipment is in operable condition.

(4) Subcontractors: A review of the subcontractor's cost or pricing data should be in the same detail as required for the prime contractor. The analyst should study the appropriateness of the contractor's decision to either subcontract or perform the work. The reviewer must also analyze decisions by subcontractors to further subcontract their work. Excessive subcontracting results in multi-tiered markups to the Government. This must be weighed against the possibility of lower direct costs achieved by better efficiency of specialists.

(5) Alert the auditor, when applicable, to the contract Special Provision for use of the Corps of Engineers Equipment Ownership and Operating Expense Schedule. This special requirement determines how depreciation, repair costs, and rental costs must be allowed (e.g., as indirect or direct costs) to avoid duplication.

(6) The estimated effect of the change on the contract time and if the change will be concurrent with other Government or contractor delays. How much of the time is compensable.

(7) Analysis of the items included in the proposed field overhead, identifying nonrecurring costs, costs which will be incurred if additional time is required ("fixed costs"), costs which will vary and a result of the magnitude of the change ("variable costs"), or costs which may be "semi-variable," exhibiting both of the above characteristics. See Section 5 for an example of classification of field office overhead.

(8) An analysis of appropriateness of proposed impact on other work.

(9) An analysis of lab/testing or other special requirements, such as design, field engineering, consultants, etc.

(10) Analysis and comment on contingencies and their bases.

e. The technical analysis report is the vehicle through which the auditor can be asked to investigate the contractor's records concerning particular aspects of the proposal, therefore, when we fail to furnish an adequate technical analysis in a timely manner, we miss the opportunity to gain information that can be extremely valuable to the negotiator. The key to obtaining useful feedback is to take the time to clearly state

all information needs and recommendations to the auditor. The technical analysis report is a part of the documentation used to make cost analysis and to establish pre-negotiation objectives. It should be marked "For Official Use Only" and will not be furnished to the contractor before the modification is finalized. Also, since the technical analysis report will be included in the audit report, pertinent sections of the audit report or the entire audit report (as necessary) will be withheld from the contractor until the modification is finalized.

f. See Exhibit 7-7*2 for an example of a technical analysis report.

7.7.4 Audits. (FAR 15.404-2)

a. The Truth-in-Negotiation Act and the related Public Law 90-512 give the Government authority to examine the contractors' records in order to evaluate cost or pricing data. The implementing FAR/DFARS (with exceptions to be discussed in paragraph b. below) allow the Contracting Officer, prior to negotiations, request a Field Pricing Support Report (which may include an audit) on cost or pricing data submitted in connection with any contract or contract modification. The Contracting Officer should only request audit assistance for those areas of the proposal requiring DCAA field pricing support. As stated earlier, cost or pricing data is required for proposals of \$500,000 or more. In accordance with DFARS 215.404-2, the Contracting Officer should not request an audit for proposed negotiated contracts or modifications of an amount less than \$500,000, except when a reasonable pricing result cannot be established because of lack of knowledge of the particular contractor, sensitive conditions, or an inability to evaluate the price reasonableness through price analysis or cost analysis of existing data. **The Contracting Officer has the authority to require cost or pricing data and an audit of proposals of any amount exceeding \$100,000.**

b. The Contracting Officer need not request an audit when sufficient information is available to accurately price the contract or change, for example, if currently available (most recent complete calendar or fiscal year data) audit information (on the contractor and/or subcontractor) is available. An audit report covering current year financial data and most costs in the proposal would be sufficient to justify not requesting an audit. An audit report covering only current overhead costs might not suffice. If the audit report contains negative results regarding the previously submitted cost or pricing data, the field office should examine how the problem areas were resolved.

c. The Resident Engineer will prepare requests for audits and forward to DCAA with a copy to CD-CA, except where special circumstances or understandings warrant initiation of the requests in HNC. CD-CA will retain a copy of the request package in the event questions are directed to HNC. The request packages will include the contractor's proposal (cost or pricing data), the negotiator's technical analysis, the negotiator's instructions or requests for special audit attention, and the street address where the contractor's records are located (Post Office Box addresses are not acceptable). The request for audit should also cite a "due date" for the audit report, recognizing that experience shows that audits may require 30 to 45 days to complete. In view of this lead-time, audit requests should be made as soon as possible after receipt of the contractor's cost or pricing data.

d. The technical analysis, for those items requiring audit assistance, should accompany the request for audit. If the analysis cannot be furnished with the request for audit, advise the auditor of a date by which the analysis will be furnished so that the audit completion date can be adjusted accordingly. Throughout the years, experience has shown that even though an analysis was furnished to the auditors, the audit reports generally indicate that none was provided. Careful readings of such reports reveal, in most cases, that the

auditors are actually saying that an adequate or useful analysis was not provided. In the past, most analyses have been a generalized restatement of pricing elements, with a request that the auditors confirm the figures.

e. Audits of subcontractor cost or pricing data are handled the same as audits on prime contractor data. FAR 15.404-3 requires the prime contractor to perform price analysis of all significant subcontracts and cost analysis when subcontractor cost or pricing data is required, and to eventually certify that the data is accurate, current, and complete. However, since such evaluation would require a review of the subcontractor's records, accounting practice, etc., the proprietary nature of these sources tends to preclude one contractor searching through the records and business practices of another contractor. Accordingly, if prime contractor evaluates a subcontractor's data at all, it would likely be limited to technical and price aspects only. Thus, the Government has taken on the full responsibility of the audit evaluation of the subcontractor's cost or pricing data.

f. Audit results should be recognized as an evaluation of the contractor's submitted cost or pricing data. Audits do not provide the magic solution to the question of equitable price adjustments. All audits explicitly state that they are qualified as to quantitative (material quantities, labor hours, etc.) and qualitative (materials are as specified, equipment or labor is capable of performing, etc.) aspects of the proposal; and qualified to the extent that further technical considerations may alter the audit results. Audits also state that they are qualified to the extent that a post-award review may alter the results. Notwithstanding these qualifications, audit reports will either support, unsupported, question, or leave unresolved, the contractor's cost or pricing data. These categories of results can be explained as follows:

(1) Supported (reports generally reflect no comments on these elements). For these elements, the contractor has satisfactorily shown the auditor how the proposal was developed and supported. However, as explained above, these costs cannot be automatically accepted since technical aspects have not been fully evaluated.

(2) Unsupported. Normally these cost elements are primarily judgmental and the contractor has not shown a logical development of the costs, or has used outdated information. The reasons for un-supporting the costs are explained, and in most cases, instructions are given as to what is needed by the Contracting Officer in order to accept or rely on the proposed cost in question.

(3) Questioned. The questioned costs primarily relate to factual information or data, and involve those cases where a proposed cost is clearly included in two cost accounts (i.e., duplicated); or is clearly contradictory to hard-copy evidence presented in support of the cost element. Proposed costs may also be questioned if the contractor was totally unable to provide any support or logic whatsoever.

(4) Unresolved. Unresolved costs are generally those involving separate audit actions. For example, if the required audit on a subcontractor is performed by a separate audit office, the auditor performing the prime contractor audit will unresolve the subcontract price. Costs may also be unresolved when a contractor is able to develop a cost or price element, but is unable to show that the element is allocable to the contract or modification (change order) action.

g. Finally, in regards to audit results, complaints generally include comments that the audit was useless in negotiations, or that the auditor did not provide all of the information requested. It must be realized that:

(1) The audit involves evaluation of cost or pricing data as submitted by the contractor, and therefore, the audit will only be as good as the data submitted. Thus, if a contractor submits lump sum cost data (which is not technically cost or pricing data), the auditor may have no choice but to un-support the data submitted and outline what the Contracting Officer needs to demand from the contractor in order to have certifiable cost or pricing data.

(2) It is neither the auditor's duty nor responsibility to derive a breakdown of contractor-proposed costs and to then evaluate that breakdown. If the negotiator needs a breakdown, it should be demanded from the contractor prior to requesting an audit. As indicated earlier, the required cost or pricing data includes detailed breakdowns and supporting information and to forego this requirement, the results will be a meaningless audit and in most cases a long and arduous negotiation.

7.7.5 Cost and Price Analysis. (FAR 15.404-1)

a. When cost or pricing data are required, FAR requires a "cost analysis" of the proposal to evaluate the reasonableness of individual cost elements. In addition, Huntsville Center requires a cost analysis for all non-competitive modifications greater than \$100,000. FAR requires a price analysis for all pricing actions to ensure that the overall price offered is fair and reasonable. The analyses are documented in the Pre-negotiation Objective Memorandum. Inclusion of a marked-up proposal in the file is recommended. The proposal can also include technical and cost analyses. The pre-negotiation objectives, as explained in chapter 8, must consider the price and cost analysis in establishing individual cost objectives and the overall price objectives.

b. FAR 15.404-1 provides price analysis techniques, as follows:

- (1) Competitive: Comparison of proposed prices received in response to the solicitation.
- (2) Applying rough yardsticks such as cost per pound, per square foot, cubic yard, etc.
- (3) Comparison with price lists, published market prices (e.g., Engineering News Record), making market surveys of other suppliers.
- (4) Comparing prices with previous contracts, modifications, invoices, experience, etc.
- (5) Bottom line or sectional comparisons with the Government's Estimate (e.g., electrical, mechanical, etc.)
- (6) Analyze appropriateness of proposed subcontracting. Can the contractor perform the work himself? How many tiers of subcontractors are there? Etc.

c. FAR 15.404-1 provides cost analysis techniques, as follows:

(1) The detailed cost analysis should take into account the results of the audit and technical analysis. For example, if the auditor determines concrete unit prices, labor rates, labor fringe rates, bond rates, indirect rates, the cost analysis should consider these. Likewise, a cost analysis should call attention to elements of the audit report, which appear to be incorrect or unreasonable for further exploration with the auditor.

(2) The cost analysis should verify that the proposed cost elements are in accordance with the contract cost principles in FAR Part 31.

(3) Verify correct application of equipment rates (ownership, standby, rental, F.O.G., repairs, etc.).

(4) Necessity for and reasonableness of proposed costs and allowance for contingencies.

(5) Evaluation of escalation factors.

(6) Comparison of actual costs previously incurred for the same or similar work, previous proposals from this or other contractors, your previous experience, etc.

(7) Market surveys.

(8) Comparison of cost elements in the Government's Estimate.

(9) Review to ensure that complete cost data has been submitted.

d. A math check of the contractor's proposal is mandatory.

7.7.6 Pre-negotiation Objectives. See chapter 8 for detailed requirements of the pre-negotiation objectives.

7.7.7 Negotiation Record. The negotiator must use the proposal (cost or pricing data), profit analysis, the Government Estimate, and the audit report in negotiating an equitable price adjustment. In order for the full intent of the Act to be realized, direct the negotiation toward the contractor's submitted data, with revisions made in that data in accordance with the audit results and technical analyses. In other words, procedures such as offering to settle at a total price figure without defining how the total was derived from the data may well result in rendering the Act useless. This does not mean that the negotiator and contractor must agree on every element of the bottom line cost agreement. However, the negotiator must document those proposed cost elements, which were relied on and included within the settlement. If the Government did not rely on the contractor's data, there can be no recovery for defective data. When data is relied upon, the record of negotiation must so state, setting forth the specific data relied upon (FAR 15.406-3). Further, the record of negotiation must explain how the audit results were used or resolved, or if not used, why. If the record of negotiation is not explicit in these areas, the Act might not be enforceable. Include a marked-up proposal and refer to it in the Price Negotiation Memorandum, if possible, to reconstruct the settlement, item by item. See chapter 11 for detailed requirements for the Price Negotiation Memorandum.

7.7.8 Certification. Cost or pricing data, which is required to be submitted, is also required to be certified. The certification is to be obtained upon completion of negotiations, and therefore, applies to the cost or pricing data as revised during negotiations and is current as of the date of agreement. Even though subcontractors may have submitted cost or pricing data, only the prime contractor is required to furnish a certificate to the Government. The Government will recover damages from the prime contractor, regardless of whether the subcontractor's or prime's data was defective. However, as a matter of policy, but not mandatory, the contractor should be requested to furnish the Government copies of subcontractor certificates. These copies give the Government the opportunity to ascertain that the contractor is complying with contractual requirements for subcontract cost or pricing data/certification, and to determine that the contractor is legally covered in the event defective data is discovered in subcontract data. Include the certification(s) in the official modification file along with the Record of Negotiation. The certificate shown as Exhibit 7-7*3 prescribed by FAR 15.406-2.

7.7.9 Reporting Profit Statistics.

a. In accordance with DFARS 215.404-70, Resident Offices must prepare and forward a DD Form 1547, "Record of Weighted Guidelines Method Application", to CEHNC-CD-DA for any contract action of \$500,000 or more which requires cost and profit analysis.

b. CEHNC-CD-CA will forward the completed form to CEHNC-CT for upward reporting to HQ, USACE, within 120 days of final negotiations.

c. As the form was developed for use with the DFARS "Weighted Guidelines Method", some modified instructions are necessary for use with the "Corps of Engineers Alternate Structured Approach", with we use. Instructions and a sample form are provided in Exhibit 7-7*4.

d. Send the completed form to CEHNC-CD-CA in the reference copy of the modification file.

7.7.10 Post-Award. Current contract provisions, as well as the Act itself, permit the Government to conduct a post-award audit of the contractor's books and records to determine actual costs incurred in performance of a contract. Such post-award audits cannot be used for evaluating profit-cost relationships and are limited to the single purpose of determining whether or not defective cost or pricing data were, in fact, submitted either in support of the original contract price (if negotiated) or any modification to any contract. The post-award audits may result either from a specific request of a Contracting Officer or from audit action initiated independent of the Contracting Officer (such as the Defense Contract Audit Agency simply choosing to follow up on a previously audited/negotiated modification for which cost or pricing data was submitted). Whenever post-award audit is furnished, the Contracting Officer must respond as to (1) whether the defective data was indeed submitted and relied upon, and (2) the results of any contract action taken. At present, Government audit agencies are under directives to increase involvement in post-award audits, and therefore, the targets of such audits are being randomly chosen by the agencies without input from Contracting Officers. The Government may obtain a price reduction including profit of any significant amount by which the price to the Government was increased because of defective data. The price reduction is limited to only those cost elements represented as "factual".

7.7.11 Sample Formats. Also attached to this section is an example of Typical Detail and Identification of Cost and Pricing Elements as required in support of modification cost proposals, Exhibit 7-7*5.

7.7.12 Exhibits.

- Exhibit 7-7*1. Requirements for Cost and Pricing Proposals.
- Exhibit 7-7*2. Technical Analysis Report.
- Exhibit 7-7*3. Certification of Cost and Pricing Data.
- Exhibit 7-7*4. Weighted Guidelines (Sample and Instructions).
- Exhibit 7-7*5. Typical Detail and Identification of Cost and Pricing Elements.

**REQUIREMENTS FOR
COST AND PRICING PROPOSALS UNDER
TRUTH IN NEGOTIATION ACT**

1. Listing of all cost and pricing elements, e.g.,
 - Labor to be used.
 - Construction equipment to be used.
 - Materials and supplies which will be consumed or incorporated in the work.
 - Purchased end-items or components to be incorporated in or furnished as
 - Part of an end-item of construction.
 - Subcontract proposals, if used.
 - Indirect charges, job and home overhead
 - Profit (see the guideline for computing profit, Exhibit 4).

2. Identification of all cost elements, e.g.,
 - **FACTUAL** - Fixed or established and not controlled by job performance; wage agreements, suppliers' quotations, rental agreements, taxes, etc.
 - **JUDGMENTAL** - performance, efficiency, need.

Exhibit 7-7*1. Requirements for Cost and Pricing Proposal.

CEHNC-CD-CA (file number)

Date

MEMORANDUM FOR CONTRACTING OFFICER

SUBJECT: Civil Engineering Technical Analysis of Contractor's Proposal; Contract No. DAA09-92-C-XXXX, Anniston Chemical Agent Disposal Facility (ANCDF), Change Request AN-2-XXX-2

1. Following are the results of my technical analysis of Low Bid Construction Company, Inc.'s proposal for Change Request AN-2-XXX-2. This analysis was performed in response to your request dated 1 November 1994. It covers only direct work to be performed by the prime contractor. It does not address work to be performed by subcontractors or any indirect costs. The contractor was not contacted as part of this evaluation. Other Resident Office personnel have analyzed the mechanical and electrical parts of the proposal.
2. Comments are arranged to parallel the contractor's proposal. A marked-up copy of the proposal is attached which demonstrates the price effects of my recommendations, and to assist in understanding my comments.
3. Item 1, Required over-excavation of site:
 - a. The proposed quantity of 2,310 cubic yards is reasonable. The contract drawings show a neat-line quantity of 2,312 cubic yards calculated using the average-end area method at 100-foot intervals.
 - b. The proposal contains 80 hours each for a 490 track-hoe and 50 track-hoe. Both pieces of equipment are currently on-site and being used for similar types of work, as verified by I. M. Tuff, Project Engineer, on 10 January 1994. The estimated hours of usage appear high. Excavating 2,310 cubic yards with 160 hours of excavator indicates a productivity of 14.4 yards per hour. Considering the depth of cut and the soil type (sandy clay) the manufacturer's productivity handbook indicates a productivity of 22.4 cubic yards per hour for the 490 track-hoe and 17.6 cubic yards per hour for the 50 track-hoe. The average of these is 20 cubic yards per hour per machine. Review of the quality control reports for the first two weeks in February shows that the contractor was averaging 21 cubic yards per hour on the East Side of the project where conditions were similar but slightly more favorable. Accordingly, I recommend using an average productivity of 20 cubic yards per hour per machine. This results in 57.75 hours for each machine, which I have rounded up. I have assumed a 45-minute hour in these calculations. Please note that the proposed rates do not appear to be in accordance with the Equipment Ownership and Operating Expense Schedule, EP 1180-1-1, as required by contract for contractor owned equipment.
 - c. It includes two dump trucks as well as the loader, and that proposed loader time of 32 hours is reasonable (see below). Since the two trucks together should haul 90 cubic yards per hour and the loader can load approximately 72 yards per hour, the duration of this work activity is controlled by the loader. Since the two trucks will be operating for the same hours as the loader, a total of 64 hours (2 X 32) is recommended for the trucks. Again, the rate should be verified using EP 1180-1-1.

SUBJECT: Civil Engineering Technical Analysis of Contractor's Proposal; Contract No. DAA09-92-C-XXXX, Anniston Chemical Agent Disposal Facility (ANCDF), Change Request AN-2-XXX-2

d. The proposal indicates that the 2310 cubic yards will be loaded in 32 hours, indicating a productivity of 72.2 yards per hour. Assuming a 45 minute hour the manufacturer's productivity handbook indicates a productivity of 70 cubic yards per hour when loading from a stockpile. Accordingly, the proposed time appears reasonable, and I recommend that the 32 hours be accepted.

e. The contractor has proposed \$1,000 for rental of compaction equipment in conjunction with the item of work. The over-excavation does not require the use of compaction equipment, so any costs are inappropriate under this line item. I recommend that the entire amount of \$1,000 be removed.

f. The proposal includes a total of 240 operator hours under this item. The contractor does not clearly explain the source of this quantity, but it is noted that only 192 hours of equipment are proposed (80 hours of 490 track-hoe, 80 hours of 50 track-hoe, 32 hours of IT-80 loader). The difference of 48 hours is questioned as the number of operator hours should equal the number of equipment hours. In addition, 20 hours of the proposed time for both the 490 track-hoe and the 50 track-hoe were recommended for removal. That would further reduce the number of operator hours to 152 (240-48-40). I recommend that 152 operator hours be used. The collective bargaining agreement would allow the use of an apprentice in this loading operation, but the contractor does not have any apprentices on site. This appears reasonable as the majority of basic contract work would not qualify for apprentice work under the agreement.

g. I recommend that the total hours for teamsters be reduced from 74 as proposed to 64. This is to reflect the usage time for the trucks as recommended above. The teamsters will only be used when the trucks are operating. The contractor currently has one journeyman and one apprentice on site, as allowed by the collective bargaining agreement. Half of the recommended hours should be at the apprentice rate.

h. The contractor has proposed 80 laborer hours. This item does not require any direct labor, but it is normal for a contractor to assign a laborer as general support to operations similar to this one. Assuming that all excavation will be performed prior to any loading and hauling, the entire operation should take 92 hours (60 for excavators, 32 for the loader). With some over-lap of the excavation and the loading, 80 hours as proposed appears reasonable. I recommend the proposed number of labor hours be accepted.

4. Item 2, Concrete and masonry requirements; Install drain pipes through wall: The contractor has proposed 144 hours of journeyman plumber time to install 200 feet of 3 inch drain pipe. There are 20 required wall penetrations, each using 10 feet of pipe. This equates to 7.2 hours per penetration. Using a crew of two, each penetration should take approximately 2.5 hours to make. In addition, considering the number of fittings and working conditions, approximately 1 hour per location will be required for pipe installation. This indicates 7 hours per location compared with 7.2 hours as proposed. Since this work would normally be done with one journeyman and one apprentice at each location, I recommend that the total number of hours be accepted as proposed, but that the mix be revised to include half journeymen and half apprentices.

SUBJECT: Civil Engineering Technical Analysis of Contractor's Proposal; Contract No. DAA09-92-C-XXXX, Anniston Chemical Agent Disposal Facility (ANCDF), Change Request AN-2-XXX-2

5. Item 3, Drainage pipe and fabric installation:

a. The contractor has proposed 70 hours each for a 490 track-hoe and IT-18 loader working together to move and place 200 tons of stone (see below). That equates to 2.9 tons per hour. Considering the required reach and the bucket size of the track-hoe, and assuming a 50 minute-hour, this equipment should be able to place 4.2 tons per hour according to the track-hoe manufacturer's handbook. The loader should be capable of moving approximately 6 tons per hour, which is faster than the track-hoe can place it. A small loader could keep up with the track-hoe and would operate less expensively, but as the contractor has the IT-18 on site, it would not be cost-effective to mobilize a different loader for this item. Using 4.2 tons per hour, it should take 47.6, or 48, hours to place the stone. Accordingly, 48 hours for both the 490 track-hoe and the IT-18 loader are recommended for placing stone.

b. The contract has proposed 30 hours of truck time for moving stone to the general work area (the loader time discussed above was for moving stone stockpiled in the work area to the track-hoe which will place the stone). This proposed 30 hours is unreasonable. The total quantity is 200 tons, and the truck will haul 16 tons per load. Observations by I. M. Tuff, the project engineer, show that the contractor's trucks are averaging 30 minutes per round trip to the quarry. Production is therefore 32 tons per hour per truck, resulting in a total of 6 hours. Loading at the quarry is done by the quarry operator and is included in the purchase price of the stone.

c. The proposed 140 hours for operators and 30 hours for teamsters should be reduced to 96 and 6 hours, respectively, to agree with the equipment usage hours recommended above. The track-hoe and loader operators must both be journeymen to satisfy the local collectively bargaining agreement. The teamster could be either a journeyman or apprentice, and the contractor currently has both on the site. I recommend that an average of the two rates be used.

d. The contractor has proposed 204 hours of laborer time to support the French drains one placement. Compared to the 70 hours of equipment proposed, this indicates an average of 2.9 laborers throughout the placement operation. The quality control reports show that the contractor has consistently used three laborers on similar operations performed as part of the original contract. Accepting three laborers for the 48 hours of placement time recommended above results in 144 hours of laborer time. A reduction of 60 hours is recommended.

e. The contractor's proposal includes 20 tons of stone for French drains. This is an apparent error. The neat line quantity taken off the drawings is 94 cubic yards. An average 2 tons per cubic yard would result in 188 tons. Allowing 5% for placement outside neat line results in 197.4 tons, which I suggest rounding to 200 tons. Note also that the contractor used 200 tons as the basis for his equipment and truck production time calculations. I recommend that the objectives and negotiations be based on 200 tons.

6. Item 4, Modification of Existing Sumps:

a. The proposal includes 30 hours of 490 track-hoe time for ditching temporary lines. Recognizing the soil conditions at the site and the depth of cut, this productivity is supported by the manufacturer's productivity handbook. I recommend that it be accepted.

b. The proposal includes 16 hours of IT-18 loader time for moving and placing 12 tons of stone. This is excessive. Placement of this stone will be very similar to the placement of French drain stone discussed in Paragraph 5a, above. Using to production rate recommended their results in 3 hours of loader time instead of 16 as proposed.

c. The proposal does not include any truck or teamster time, although it will be necessary to move the stone to the site. A production of 32 tons per hour was used above, but the contractor will most likely have to make a separate trip for this partial load. As stated above, the project engineer has observed an average round-trip time of 30 minutes. I suggest that an hour of truck and teamster time be included under this item.

d. The proposal includes 46 hours of operator time, in agreement with the proposed equipment time. I recommend lowering this to 33 hours to agree with the equipment hour's recommend in Paragraphs 7a. and 7b. Laborer hours to install sumps should be 9 hours (3 laborers for 3 hours) instead of 48 hours as proposed. This provides the crew mix recommend for trench drain placement for the three hours of placement recommended above.

e. The proposal includes 160 laborer hours for sump maintenance, calculated on the basis of two laborers being required for the two weeks that the sumps are anticipated by the proposal to remain open. The sumps will most likely remain for approximately one week, the total hours of work as recommended. Two laborers are reasonable. Accordingly, I recommend that 80 laborer hours be allowed for sump maintenance.

f. The proposal includes 12 tons of #57 stone for fill for the sumps. The minimum quantity required by the drawings is 8 tons. Due to the placement method required and the location of the fill, 4 tons of waste and overage does not appear unreasonable. I recommend that the proposed quantity be accepted even though it is a 50% overage factor. The difference in material costs is not significant and attempts by the contractor to conserve materials would not be cost-effective in that the material savings would be consumed several times over by increased labor and equipment costs.

7. Item 5, Elevator Removal and Replacement: I have reviewed the contractor's proposal for this item and find all judgmental elements to be reasonable except for truck and teamster hours.

Based on a production of 32 tons per hour as discussed above, delivery of the 60 tons required by this item should require only two hours of truck and teamster time instead of the ten hours proposed.

8. Time extension: The contractor has not proposed a time extension. Assuming that the modification can be awarded in the next 90 days, no time is necessary, as the proposed work will be performed concurrent with other work on the critical path.

9. Impact: The contractor has not identified any impact cost in his proposal. I agree the proposed work can be incorporated into the contract without disrupting the other contract work.

F. C. SHORE
Civil Engineer

This is to certify that, to the best of my knowledge and belief, the cost or pricing data (as defined in Section 15-801 of the Federal Acquisition Regulation (FAR) and required under FAR Subsection 15-804.2) submitted, either actually or by specific identification in writing, to the Contracting Officer or to the Contracting Officer's representative in support of _____* are accurate, complete, and current as of _____**. This certification includes the cost or pricing data supporting any advance agreements and forward pricing rate agreements between offeror and the Government that are part of the proposal.

Firm_____

Signature_____

Name_____

Title_____

Date of Execution***_____

**Insert the day, month, and year when price negotiations were concluded and price agreement was reached.

***Insert the day, month and year of signing, which should be as close as practicable to the date when the price negotiations were concluded and the contract price was agreed to.

In view of the responsibility outlined in the double-asterisk note above, and the potential far-reaching effects of the Act itself, the certificate must be signed by an officer of the firm or a duly appointed Attorney-in-Fact.

*Identify the proposal, quotation, request for price adjustment, or other submission involved, giving the appropriate identifying number (e.g., RFP No.)

Exhibit 7-7*3 Example Format for A Certificate of Cost and Pricing Data.

INSTRUCTIONS FOR COMPLETING DD FORM 1547

(See attached sample for reference. Form may be neatly handwritten in dark ink.)

- Block 1. Leave blank.
- Block 2.a. Enter first 6 characters of contract number (e.g., DAAA09)
- Block 2.b. Enter contract year (e.g., 97 or 98 - DAAA09-97-C-0025).
- Block 2.c. Enter "C" (DAAA09-97-C-0025)
- Block 2.d. Enter last 4 digits of contract no. (E.g., 0025 - DAAA09-97-C-0025).
- Block 3. Enter modification number.
- Block 4.a. Enter year negotiation was finalized (use 2 digits, e.g., 97)
- Block 4.b. Enter month negotiation was finalized (use 2 digits, e.g., 03 for March).
- Block 5. Enter "CA01" for Military contract or "CW01" for Civil contracts.
- Block 6. Enter contractor's name.
- Block 7. Enter Code Number (CEC), if shown in block 14 of Contract, SF1442. Otherwise, leave blank.
- Block 8. See list on pages 8G/6 and 8G/7 of this Exhibit. Enter the code that best describes your project.
- Block 9. Enter C20.
- Block 10. Enter "J" (this is the designated code for Firm Fixed Price contracts).
- Block 11. Enter "3" (this is the designated code for construction/service contracts).
- Block 12. Enter "4" (this designates the use of the OCE Weighted Guidelines as an "Alternate Structured Approach" for determining profit).

Exhibit 7-7*4 Weighted Guidelines (Sample Format and Instructions)

(Blocks 13 through 20 are the “Objective”. Thus, the figures can be the pre-negotiation objectives, or the Government Estimate used in preparing the pre-negotiation objective, whichever provides amounts in the detail outlined.)

Block 13. Enter the total direct material cost, including sales tax, if any.

Block 14. Enter the total subcontractor cost.

Block 15. Enter the total direct labor cost, including “burden” mark-ups.

Block 16. Enter all other cost, except equipment, G&A and profit. Since the form has limited categories, the costs in this block would include field overhead, bonds, Goss Receipts tax, Builder’s Risk Insurance and any other costs not specifically covered elsewhere. Because costs such as bonds and gross receipt taxes are normally applied after profit, but must be included on this form prior to profit, later computations for Blocks 33 and 35 may be distorted.

Block 17. Enter the equipment cost.

Block 18. Enter the Subtotal of Blocks 13 through 17.

Block 19. Enter the dollar amount of G&A (home office overhead) allowances.

Block 20. Enter the total of Blocks 18 and 19. This should be equal to the Government Estimate, less the amount for profit. Also enter this amount in block 31, under the Objective heading.

Block 21-30. The OCE Weighted Guidelines are not compatible with the categories on this form. Leave these blocks blank.

Block 31. Enter the Total Price, less the Profit amount. You will need to determine these amounts from the original proposal, the pre-negotiation objective (or Government Estimate), and the final negotiated amount. The amount entered for the objective should be the same as the amount in Block 20.

Block 32. Since the facilities capital cost of money is taken into consideration in the OCE Weighted Guidelines, enter “0” in these three columns. (If facilities capital cost of money is allowed as a separate cost, remember to reduce the profit allowance accordingly.)

Exhibit 7-7*4 Weighted Guidelines (Sample Format and Instructions)

Block 33. Using the percentage rates shown in the proposal, the objective or Government Estimate, and the rate negotiated, figure the profit amounts by applying the rates to the amounts in Block 31. Enter these amounts in the appropriate columns in Block 33. Due to the anomaly created by having to include “post profit” costs, such as bonds and some taxes, in “pre-profit” totals, the amounts shown in Block 33 may not be exactly those shown in the actual proposal, objective or Government Estimate and settlement. However, since the weighted guideline computation sheet will be submitted to higher authority along with the DD Form 1547, it is considered best to have Block 35 match the guideline sheet; and to have the figures in Block 33 derived from the rates shown in Block 35.

Block 34. Enter the total of Block 31 and 33 (and 32, if used).

Block 35. Enter the profit rates shown in the proposal, objective or Government Estimate and the Negotiated amount.

Blocks 36, 38 and 39. Leave these blocks blank. Since the completed form will be submitted along with the modification to be executed, the Contracting Officer’s name, telephone number and a date will be entered by CDCA, depending upon when the Contracting Officer is available.

ATTACH A COPY OF THE WEIGHTED GUIDELINES COMPUTATION SHEET FOR THE OBJECTIVE RATE.

Exhibit 7-7*4 Weighted Guidelines (Sample Format and Instructions)

RECORD OF WEIGHTED GUIDELINES APPLICATION						REPORT CONTROL SYMBOL DD FORM 1547			
1. REPORT NO.		2. BASIC PROCUREMENT INSTRUMENT IDENTIFICATION NO.			3. SPIIN		4. DATE OF ACTION		
		b. PURCHASING OFFICE	b. FY	c. TYPE PROC INST COD	d. PRISN	a. YEAR	b. MONTH		
		DACA01	92	C	0036	P00003 93	02		
5. CONTRACTING OFFICER CODE					ITEM		COST CATEGORY		
CA01					13		MATERIAL		
					14		SUBCONTRACT		
					15		DIRECT LABOR		
					16		INDIRECT EXPENSES		
					17		OTHER DIRECT CHARGES		
					18		SUBTOTAL COSTS (13 thru 17)		
					19		GENERAL & ADMINISTRATIVE		
					20		TOTAL COSTS (18 + 19)		
							415,857		
							20,000		
							134,354		
							59,569		
							30,000		
							659,780		
							98,967		
							758,747		
WEIGHTED GUIDELINES PROFIT FACTORS									
ITEM		CONTRACTOR RISK FACTORS		ASSIGNED WEIGHTING		ASSIGNED VALUE		BASE (ITEM 18) PROFIT OBJECTIVE	
21		TECHNICAL		%					
22		MANAGEMENT		%					
23		COST CONTROL		%					
24		PERFORMANCE RISK (COMPOSITE)							
25		CONTRACT TYPE RISK							
				COSTS FINANCED		LENGTH FACTOR		INTEREST RATE	
26		WORKING CAPITAL						%	
		CONTRACTOR FACILITIES CAPITAL EMPLOYED		ASSIGNED VALUE		AMOUNT EMPLOYED			
27		LAND							
28		BUILDINGS							
29		EQUIPMENT							
30								TOTAL PROFIT OBJECTIVE	
NEGOTIATION SUMMARY									
				PROPOSED		OBJECTIVE		NEGOTIATED	
31		TOTAL COSTS		946,222		758,747		907,253	
32		FACILITIES CAPITAL COST OF MONEY (DD Form 1361)							
33		PROFIT		79,483		52,665		72,580	
34		TOTAL PRICE (Line 31 + 32 + 33)		1,025,905		816,412		979,833	
35		MARKUP RATE (Line 32 + 33 divided by 31)		8.4%		7.6%		8.0%	
CONTRACTING OFFICER APPROVAL									
38		TYPED/PRINTED NAME OF CONTRACTING OFFICER (Last, First, Middle Initial)			37. SIGNATURE OF CONTRACTING OFFICER			38. TELEPHONE #	
		Newell Patsy E.						(25G) 441-5590	
								39. DATE 93-03-12	
OPTIONAL USE									
98		97		88		99			

DD Form 1547, AUG 87

Previous editions are obsolete.

Exhibit 7-7*4 Weighted Guidelines (Sample Format and Instructions)

REASONABLE PROFIT ON FIXED-PRICE CONSTRUCTION CONTRACTS

PROJECT	DATE	PAGE	OF	
Pascagoula Harbor		42	42	
LOCATION	DATE			
Mississippi	13 Dec 92			
Fair and reasonable profit on fixed price construction contracts and modifications.				
FACTOR	WEIGHTED	RATE	WEIGHT	VALUE
DEGREE OF RISK	.03 to .12	20%	0.05	1.0
(Where the risk is very small weighting should be .03)				
RELATIVE DIFFICULTY	.12 to .03	15%	0.05	0.75
(If work is most difficult and complex the weighting should be .12)				
SIZE OF JOB	.12 to .05	15%	0.10	1.5
(100,000 to 5,000,000)	.04	15%		
(5,000,000 to 10,000,000)				
(Work not in excess of \$100,000 shall be weighted at .12)				
(Between \$100,000 and \$5,000,000 from .12 to .05)				
(\$5,000,000 to \$10,000,000 at .04 and in excess of \$10M at .03)				
PERIOD OF PERFORMANCE	.12 to .03	15%	0.03	0.45
(Jobs in excess of 24 mos. Are to be weighted at .12)				
CONTRACTOR'S INVESTMENT	.12 TO .03	5%	0.10	0.50
(.03 to .12 on the basis of below average, average and above average.)				
ASSISTANCE BY THE GOV'T	.12 to .03	5%	0.08	0.40
(.12 to .03 on the basis of average to above average.)				
SUB-CONTRACTING	.03 to .12	25%	0.12	3.00
(80% or more .03)				
(To be weighted inversely proportional to the amount of subcontracting).				
				7.60

SAM FORM 828
 JUL 82 (REV)
 Previous Editions are Obsolete

Exhibit 7-7*4 Weighted Guidelines (Sample Form 828)

OTHER SERVICES AND CONSTRUCTION CODES

<u>TITLE</u>	<u>CODE</u>
<u>CONSTRUCTION OF STRUCTURES & FACILITIES</u>	
<u>ADMINISTRATIVE FACILITIES & SERVICE BUILDINGS</u>	
Office Buildings	Y111
Conference Space & Facilities	Y112
Other Administrative Facilities & Service Buildings	Y119
<u>AIRFIELD COMMUNICATIONS & MISSILE FACILITIES</u>	
Air Traffic Control Towers	Y121
Air Traffic Control Training Facilities	Y122
Radar & Navigational Facilities	Y123
Airport Runways	Y124
Airport Terminals	Y125
Missile System Facilities	Y126
Electronic & Communication Facilities	Y127
Other Airfield Structures	Y129
<u>EDUCATIONAL BUILDINGS</u>	
Schools	Y131
Other Educational Buildings	Y139
<u>HOSPITAL BUILDINGS</u>	
Hospitals & Infirmaries	Y141
Laboratories & Clinics	Y142
Other Hospital Buildings	Y143
<u>INDUSTRIAL BUILDINGS</u>	
Ammunition Facilities	Y151
Maintenance Buildings	Y152
Production Buildings	Y153
Ship Construction & Repair Facilities	Y154
Tank Automotive Facilities	Y155
Other Industrial Buildings	Y159

Exhibit 7-7*4 Weighted Guidelines (Codes)

RESIDENTIAL BUILDINGS

Family Housing Facilities	Y161
Recreational Buildings	Y162
Troop Housing Facilities	Y163
Dining Facilities	Y164
Religious Facilities	Y165
Penal Facilities	Y166
Other Residential Buildings	Y169

WAREHOUSE BUILDINGS

Ammunition Storage Buildings	Y171
Food or Grain Storage Buildings	Y172
Fuel Storage Buildings	Y173
Open Storage Facilities	Y174
Other Residential Buildings	Y179

RESEARCH & DEVELOPMENT FACILITIES

Gov't-Owned Contractor Operated (GOCO) R&D Facilities	Y181
Gov't-Owned Gov't Operated (GOGO) R&D Facilities	Y182
GOCO Environmental Laboratories	Y183
GOGO Environmental Laboratories	Y184

OTHER BUILDINGS

Museums & Exhibition Buildings	Y191
Testing & Measurement Buildings	Y192
Other Miscellaneous Buildings	Y199

NON-BUILDING STRUCTURES

CONSERVATION & DEVELOPMENT FACILITIES

Dams	Y211
Canals	Y212
Mine Fire Control Facilities	Y213
Mine Subsidence Control Facilities	Y214
Surface Mine Reclamation Facilities	Y215
Dredging	Y216
Other Conservation & Development Facilities	Y219

Exhibit 7-7*4 Weighted Guidelines (Codes)

HIGHWAYS, ROADS, STREETS & BRIDGES

Airport Service Roads	Y221
Highways, Roads, Streets & Bridges (Including Resurfacing)	Y222
Tunnels & Subsurface Structures	Y223
Parking Facilities Conservation	Y224

ELECTRIC POWER GENERATION (EPG) FACILITIES

EPG - Coal	Y231
EPG - Gas	Y232
EPG - Geothermal	Y233
EPG - Hydro	Y234
EPG - Nuclear	Y235
EPG - Petroleum	Y236
EPG - Solar	Y237
EPG - Other - Including Transmission	Y239

UTILITIES

Fuel Supply Facilities	Y241
Heating & Cooling Plants	Y242
Pollution Abatement & Control Facilities	Y243
Sewage & Waste Facilities	Y244
Water Supply Facilities	Y245
Other Utilities	Y249

OTHER NON-BUILDING FACILITIES

Recreation Facilities (non-building)	Y291
Exhibit Design (non-building)	Y292
Unimproved Real Property (land)	Y293
Waste Treatment & Storage Facilities	Y294
All Other Non-Building Facilities	Y299

RESTORATION ACTIVITIES Y300MAINTENANCE, REPAIR OR ALTERATION OF REAL PROPERTY Z***

*** Uses last three digits of "Y" Category Codes.

Exhibit 7-7*4 Weighted Guidelines (Codes)

EXAMPLE OF
TYPICAL DETAIL AND IDENTIFICATION
OF COST AND PRICING ELEMENT IN SUPPORT OF
MODIFICATION COST PROPOSALS

a. LABOR

	(JUDGEMENTAL)	(FACTUAL)
1 Carpenter Foreman	@ 8 hrs 8 hours @ \$4.455	\$ 35.64
2 Carpenters	@ 8 hrs 16 hours @ \$3.955	63.28
1 Carpenter (Apprentice), 3rd	@ 8 hrs 8 hours @ \$2.955	23.64
2 Ironworkers	@ 8 hrs 16 hours @ \$4.800	76.80
1 Crane Operator	@ 8 hrs <u>8 hours</u> @ \$4.510	<u>36.00</u>
	56 hours	\$235.36
Travel, 7 man days	@ \$3.000	<u>\$ 21.00</u>
		\$256.36
OR		
Labor taxes, etc. (Payroll Addit.)	@ 16.65% on \$235.36	<u>\$ 42.63</u>
	Total Labor	\$299.04
FICA	4.4 %	
Federal Unemployment	0.4 %	
Workman's Compensation	7.4 %	
State Unemployment	2.7 %	
PL & PD	0.25%	
HW & Pension (Avg.)	1.5 %	

NOTE: Wages, travel & HW - Pension; W. Mont. H&H Labor Agreement 1966

b. CONSTRUCTION EQUIPMENT (JUDGEMENTAL) (FACTUAL)

(Example #1)

Crane, Bucyrus-Erie 61-B		
30 T. W/60' Boom	2 days @ \$140.72	\$281.44

NOTE: Ownership rates taken from AGC Equipment Owner Manual. Base figure used in computing this figure should be furnished.

(Example #2)

Crane, Bucyrus-Erie 61-B		
30 T. W/60' Boom	2 days @ \$100.00	\$200.00
Operator	1 6 hours @ \$ 5.00	<u>\$ 80.00</u>
		\$280.00

NOTE: Rented from Big Ben Equip. Co, rental invoice, copy enclosed, w/o operator. Transportation to and from job and operating costs not included. Operating cost/hour includes transportation, fuel, repairs, etc.

Exhibit 7-7*5 An example of Cost and Pricing Elements

c.	<u>MATERIALS AND SUPPLIES</u>	(JUDGEMENTAL)	(FACTUAL)
	Form Lumber 10 MFRM	\$120.00 / M	\$1,200.00
	(Big Pine Tbr. Co., our order No. L-2, Inv. Bp-2 enclosed)		
	Form Hardware 1 Lot, LS		\$120.00
	(Experienced cost, 10% of lumber cost)		
	Reinforcing Steel (See subcontracted items)		
	Concrete, Class A 100.00 C.T.	@ \$15.00	\$1,500.00
	(Concrete priced @ contract price for pay item pay item 7, \$21.00, less indirect, special forming and placement as priced herein and includes vibration, stripping and curing)		
	\$2,800.00		
d.	<u>PURCHASED END ITEMS</u>		
	1 Olympic Fdry. MGT-Pat. X, fob job	\$350.00	\$350.00
	(Olympic Fdry. In. OF-2 enclosed)		
e.	<u>SUBCONTRACT</u>		
	(FACTUAL)		
	Reinforcing Steel 6000#	@ \$0.16	\$960.00M \$960.00
	(Our subcontract No. 106, Rod & Wire Co., unit price. copy of subcontract furnished COE 6/26/87 with proposal under Mod. No 2)		
	Recap. Total Direct		
	(1) Labor, say		\$ 300.00
	(2) Equipment		280.00
	(3) Material		2,280.00
	(4) Purchased Items		350.00
	(5) Subcontract		960.00
		Total Direct	\$ 4,710.00
f.	<u>INDIRECT, JOB AND HOME OFFICE OH</u>		
	(For detail, see enclosed statements)	@ 10%	\$ 471.00
			\$ 5,181.00
g.	<u>PROFIT</u> (Computation as per guideline)	@ 7%	\$ 362.67
		Total Proposal	\$ 5,543.67

Exhibit 7-7*5 An example of Cost and Pricing Elements (Cont'd).

h. <u>OVERHEAD</u>	(Judgmental)	AND (Factual)
(1) Job OH (est.)	Supervision	\$100,000.00
	Office Space	20,000.00
	Clerical	24,000.00
	Telephone, etc	6,000.00
	Office Supplies	7,000.00
	Ins., etc.	9,000.00
	Utilities	12,000.00
	Safety	12,000.00
	Surveys	24,000.00
	Labor Taxes	120,000.00
	Travel & sub.,	
	Supr. Employees	15,000.00
	Taxes, bonds, etc.	<u>80,000.00</u>
	Total	\$429,000.00
(2) Home Office (G&A)		<u>30,000.00</u>
		\$459,000.00

Estimated direct costs = \$4,500,000; $\$459,000/4,500,000 = 10\%$

Exhibit 7-7*5 An example of Cost and Pricing Elements (Cont'd).

CHAPTER 7. CONTRACT ADMINISTRATION

SECTION 8. PRENEGOTIATION OBJECTIVE MEMORANDUM

7.8.1 General.

a. The pre-negotiation objective memorandum (POM), is an official documentation of the negotiation objectives set forth in a memorandum and signed by the negotiator. It is the negotiator's general plan for conducting negotiations, although it need not contain details of planned strategy, e.g., minimum or maximum negotiating position. The POM contains the negotiator's "fair and reasonable" price and time objectives, cost element objectives when a cost analysis is required, and the rationale and justification underlying these objectives. The POM justifies the negotiator's proposed settlement to reviewers, the Contracting Officer, the approving official (if applicable), and for the record. If the negotiator is the ACO or Contracting Officer, the memorandum also records their logic or rationale. The POM memorandum, with the Price Negotiation Memorandum (PNM), documents who, what, where, why, and how the action was anticipated and settled.

b. Pre-negotiation objectives are necessary for all negotiated pricing actions (FAR 15.406). Objectives represent the negotiator's pre-negotiation assessment of a fair and reasonable price and time settlement, after considering:

(1) Analyses of the contractor's proposal, as follows:

(a) Price: Always required. (See Chapter 7, Section 3 - Modification Process and Chapter 7, Section 7 - Truth in Negotiations, for procedures.)

(b) Technical: Required for all modifications more than \$100,000 (CEHNC Policy); recommended for modifications less than \$100,000, depending upon the scope and complexity of the action; required for modifications of \$100,000 or less if the negotiator does not have a working estimate to make a comparison with the proposal.

(c) Results of an audit and any exceptions allowed by the negotiator.

(d) Cost analysis: Incorporating the results of technical analysis, audit, market surveys, experience, etc; required for all modifications more than \$100,000 (CEHNC Policy); recommended for all modifications less than \$100,000 depending upon scope and complexity of the action; required for modifications of \$100,000 or less when there is no working estimate.

(e) Elimination of proposed costs which are inconsistent with normal accounting practices, unallowable or non-allocable under FAR Part 31.

(f) The facts of the situation: Cost impacts on the unchanged work; concurrently with other delays; acceleration; efficiencies; the effect on the schedule; knowledge of the contractor's operation; whether the work is forward priced or "after-the-fact," etc.

(g) Results of scope or fact finding sessions with the contractor, as appropriate.

(2) Comparison with the Government's Estimate.

(3) Price histories.

(4) Previous modifications for the same or similar work.

(5) Addressing profit objective when cost analysis is required, FAR 15.404-4. Compare proposed profit using the Corps of Engineers' Weighted Guidelines Method (EFARS 15.971).

(6) When a substantial portion of the work ordered under an undefinitized contraction modification (change order) is completed before final price is negotiated, the contractor assumes less risk. Consider this when developing a profit objective.

c. State the pre-negotiation objectives in terms of dollars and days time extension, showing the basis of each objective that will be considered during negotiations. When a cost analysis is required, separate cost objectives and profit objectives are necessary (explained later). In addition, a bottom line price objective is necessary for all pricing actions.

d. Without definite objectives, the negotiation will flounder and a successful settlement will be difficult, if not impossible to achieve. This could result in a settlement based on conditions that can neither be explained nor defended. Objectives such as "a fair and reasonable price," "the lowest price we can get," or "a price about 10% below the proposal," do not qualify as good objectives because they are too indefinite. State the cost and price objectives in terms of definite dollar amounts reflecting the team's evaluation of the terms and conditions of the intended contract action. If the team is considering alternative sets of conditions, each alternative set should have its own objective.

e. The POM's are pre-decisional material, marked "FOR OFFICIAL USE ONLY," and protected from release to the contractor prior to negotiations. See paragraph h below.

f. POM's are usually developed from a combination of factual and judgmental factors. The more judgment involved, the more flexible your negotiating position becomes. Everyone should know that POM's are only guides for the negotiation team and nothing more. If those who evaluate performances use POM's to measure success, they lose their significance. In such an event a team is likely to hedge and hesitate to produce honest estimates or estimates will be less definite. When an objective is based on a particular set of conditions, it is a reflection of the best judgment at the time and does not mean that it must remain rigid. If there is good reason to change judgment, based on different factors, the objective can be revised accordingly. A change in judgment may occur prior to or during the negotiation session. On the other hand, the change in judgment may emanate from the contractor's input or the Government team's interpretation of the projections. However, Government personnel should document all changes in the price negotiation memorandum and the revised Government estimate, if applicable, to clearly track the basis for the changes. Since the objective is a position hidden from the contractor's negotiators, a change in objectives does not indicate vacillation.

g. It is permissible, but not mandatory, to state a range for the cost, price, and time objectives between alternate positions. Some negotiators prefer to cite a minimum to maximum range for the objectives, explaining the basis for the range. Sometimes this technique can be dangerous, i.e., should a bilateral agreement fail, the contractor might obtain the POM in the "discovery" process of claims resolution or through the Freedom of Information Act. A unilateral modification containing the Contracting Officer's final assessment of the equitable cost or time adjustment for less than the highest objective(s) becomes more complicated to defend against a subsequent claim. At least at the pre-negotiation time frame, the range maximum was considered to be a "fair and reasonable" position. This is not to say that a unilateral modification containing less than the most liberal position will not be sustainable; it may well be. The problem becomes one of fully justifying why the previous position was later found to be incorrect or unreasonable. As a result, some experienced negotiators document only their most defensible or lowest position in the pre-negotiation objective, preferring to justify subsequent flexibility and more liberal settlement in the price negotiation memorandum (or unilateral modification). This is another reason why negotiators and reviewers should not measure success by how closely the final settlement parallels the pre-negotiation objectives. The key to justifying and selling a successful settlement is a clear presentation of how you applied good judgment, considering what you learned during negotiations, combined with the facts to form a sound rationale for the settlement.

h. Do not contrive "after the fact" or faked objectives, almost exactly matching the settled cost element, price, time, or profit agreements. It is impossible to consistently meet all pre-negotiation objectives. Negotiations are, by definition, a give-and-take process, leading to a mutually satisfactory conclusion. The negotiator should not be afraid to admit that the settlement was not exactly as planned. Contrived objectives always invite criticism from inspectors, reviewers, internal and external auditors and the Contracting Officer because they are not truthful. The negotiator and the Government both lose credibility in subsequent claim actions, when use of POM memorandums become necessary to reconstruct job history and to develop and support the Government's position. Integrity and honesty in practice and on record are fundamental principals of contract administration.

i. When negotiating a price based on a straight fixed-price contract, it is usually essential to plan more than one position. This holds true, especially if the Government is dealing with a contractor for the first time. Other positions may be necessary so that government negotiators may have some "bargaining room" or have any opportunity to "feel out" the contractor through the exchange of information in the negotiation process. When negotiating with a contractor with whom the Government has dealt for some time and has found reasonable, planning other positions may not be as significant.

j. There should be a logical flow from the pre-negotiation objective memorandum through the price negotiation memorandum allowing the reviewer to fully reconstruct the pre-negotiation plan and settlement.

7.8.2 Analyses Inclusion in the POM.

a. When cost analysis is required, the POM shall include a summary comparison in columnar format of (i) the proposal (ii) audit recommendations, (iii) cost/technical analysis, (iv) the Independent Government Estimate and (v) the cost objectives. Consider cost elements like the following, (but not limited to), as applicable:

- (1) Materials
- (2) Labor
- (3) Equipment
- (4) Subcontracts
- (5) Job Site Overheads
- (6) Other Costs
- (7) Extended Job Overhead
- (8) Impact
- (9) Acceleration
- (10) Home office overheads
- (11) Profit
- (12) Bond

b. State the bottom line cost objectives

c. When cost analysis is not required, summarize the results of the mandatory price analysis and the objective. When cost analysis is performed, as a minimum, analyze prices to determine that the overall cost objectives are fair and reasonable.

d. When multiple bid items or unit priced items are involved, the negotiator should use detailed work sheets for negotiating each, as necessary.

e. The columnar summaries and detailed cost objectives may be attachments to the POM. They do not necessarily have to be typed documents. They could also be marked-up copies of the proposal.

f. Include a summary of the time analysis and objectives.

7.8.3 Audit Exceptions. In addition to the summary listing of any applicable audit cost elements, the negotiator must explain in the detailed remarks any exceptions taken to the audit in developing the objectives.

7.8.4 Profit. AFARS require documentation of the profit analysis. When a cost analysis is required, related supplements to FAR 15.404-4 require basing the profit objective on the Corps of Engineers' Weighted Guidelines, and the pre-negotiation objectives shall include the profit analysis with a comparison of the proposed rate and amount to the objective rate and amount. Note that it is not mandatory to reach an agreement on the profit element of the overall settlement. FAR 15.404-4 advises not to attempt to obtain specific agreement during negotiations on exact values or weights assigned to the individual profit-analysis factors.

7.8.5 Format. Exhibit 7-8*1 depicts some sample formats for the Pre-negotiation Objective Memorandum. POMs for modifications which are expected to be completed and approved within the field ACO's authority will be signed by the Lead Negotiator and filed in the field's official copy of the contract modification. For those modifications, which are expected to exceed the ACO's authority, the Lead Negotiator will sign and forward the POM to CD-CA for proper staffing and signature by Office of Counsel and the HNC ACO. See Exhibits 7-8*1 and 7-8*2.

Prenegotiation Objectives

CONTRACT NO. DACA87-XX-X-XXXX

CHANGE CASE NO. XX-X-XX-X

1. **Modification Description.** Provide a general description of the proposed modification. If a claim, summarize who determined merit, when, etc.; reference the decision memorandum, MFR, analysis, etc. Provide information, including dates, concerning the request for proposal, any supplements, and notice to proceed. Identify all previous UCM.
2. **Proposal.** This paragraph includes information on the proposed price and time adjustments, date of the proposal, and revisions. State whether the proposal contains the required detail for analysis.
3. **Government Estimate.** This paragraph includes the estimated total price (not necessarily the total price objective) and time adjustments, including dates and amounts of original and revised estimates.
4. **Audits.** This paragraph refers to the audit report, preparing office, dates, etc. If an audit was not necessary, document the reasons, determination and concurrence by the Contracting Officer.
5. **Technical Analysis (when required).** If separate reports were not prepared, omit this paragraph and summarize the analysis in the columnar summary and in the remarks. Identify separate analyses prepared for the negotiator, and summarize the columnar summary and in the remarks.
6. **Cost Analysis (when required).** If separate reports were not prepared, omit this paragraph and summarize your analysis in the columnar summary and in the remarks. One or more separate analyses prepared for the negotiator are identified here and summarized in the columnar summary and in the remarks.
7. **Time.**
 - a. If a separate time analysis report has been prepared, reference the report and summarize the differences between the proposed and Government time objective.
 - b. If a separate analysis report has not been prepared, document the rationale for the Government objective in detail in this paragraph.
 - (1) If the objective is based on the effect of the action on the critical path, identify the NAS or bar chart critical items delayed.

1

- (2) If the objective is a no-cost time extension for change order work ordered after the required completion period, concurrent with the contractor's own delays, develop and explain the objective.

Such time extensions are based on the principal of "equity" whereby government personnel would have been assigned to the job to monitor the changed work, thus benefiting the Government, while the contractor's own supervisory personnel would have been assigned anyway to complete the project during the period the work was performed. Thus, there was no extra cost to the contractor.

(3) If the contractor's time bargaining position is not strong or the time justification is "gray," but the negotiator's objective is to be liberal with time, to use time as leverage for other concessions or issues, explain it here. The negotiation team must weigh the relative advantage and disadvantage of trade-offs, settlement opportunity, loss of liquidated damages relative bargaining strength, etc., in determining reasonableness of the objective.

c. Unsupported statements, like the following (from actual documents), are meaningless. They do not explain the basis underlying the objective. These statements do not provide documentation for analysis in the event of a future claim requiring reconstruction of the project history.

(1) "The Contractor did not request any time extension and the Government agrees."

(2) "Proposed time was 20 days, but 14 days is more reasonable."

(3) "The Contractor proposed 45 days. A review of the NAS confirms that this is reasonable."

(4) "The Contractor should reduce his request of 30 days to 10 days."

8. Summary of Cost Differences.

a. Columnar Summary. When a cost analysis is required, list the cost elements and profit in a columnar summary similar to that listed below. Multiple bid items are analyzed in like detail. Not that the columnar summary can be an attachment to the PNO memorandum. It will be acceptable to use columnar pad paper in either pencil, ink or typed, as long as it is neat and legible. The negotiator's primary effort should be devoted to the analysis.

<u>Element</u>	<u>Contr Prop</u>	<u>*Audit Results</u>	<u>Cost/Tech Analysis</u>	<u>Govt Estimate</u>	<u>** Objective</u>	<u>Remarks</u>
Material						a
Labor						b
Equipment						(etc.)
<u>Subcontracts</u> (Signification subcontracts may also be broken out.)						
Subtotal						
Field Overhead (Extended Overhead) (Impacts) (Acceleration) (etc)						
Subtotal Job Costs						
<u>Home Office</u>						
Subtotal						
Profit						
<u>Bond</u>						
Total						
* As applicable.						
**These amounts may be expressed as a range.						
<p>b. When a cost analysis is not required, the columnar summary is optional. If the negotiator uses this format, the appropriate level of detail is left to the discretion of the negotiator.</p> <p>c. The remarks include discussion of the various significant differences for each element, between the proposal and the audit, cost and technical analysis, and Government Estimate. Explain the basis for each objective. Discuss exceptions taken or clarifications to the audit report.</p> <p>9. Price Analysis and Objective (when technical/cost analyses are not applicable). If technical/cost analyses are not applicable (<\$100,000 and the negotiator did not perform cost or technical analyses), summarize the price analysis to the extent prices were analyzed, e.g., overall price, bid item prices, overall labor, equipment, materials, etc. A price analysis is required for all negotiated price actions regardless of amount. See section 7, chapter 3, Modification Process, and chapter 7, Truth in Negotiations, for price analysis procedures. Identify each price objective as a dollar amount or range. Do not use statements similar to, "The objectives are to assure mutual understanding of</p>						

the scope of work and settle at a fair and reasonable price." These are the **purposes** of negotiations;

Exhibit 7-8*1. Sample Format for Prenegotiation Objectives

objectives are target dollar values or ranges.

10. **Price Analysis (when technical/cost analyses are applicable).** If the action exceeds \$100,000 or if the negotiator performed technical and cost analyses, summarize the separate price analysis here, to determine whether the overall price offered is fair and reasonable [e.g., ensure that the sum of all of the individual costs of constructing a “toilet seat” do not add up to \$600!].

11. **Price Objective (when technical/cost analyses are applicable).** Identify the overall price objectives here, consistent with the bottom line objective shown in the columnar summary above and the price analysis. The price objective could be expressed as a range, e.g., the bottom line objective plus or minus 10%, a range between the bottom line objective and a reasonable price based on price analysis, etc. The objective must be consistent with the principle that the price adjustment is based on the reasonable, allowable cost impact on the contractor's operations.

12. **Signatures.** The lead negotiator signs the objectives. Other negotiating team members may also sign the objectives.

13. **Approvals.** For actions exceeding the Resident ACO's authority, the Contracting Officer will sign, approving the objectives.

CEHNC-CD-AN (415-10C)

6 August 1997

MEMORANDUM FOR RECORD

SUBJECT: Contract No. DAAA-09-96-C-0018, Anniston Chemical Agent Disposal Facility (ANCDF), Anniston Army Depot, Alabama; Pre-Negotiation Objectives for Change Case AN-6-018-0032 – “Warehouse Reconfiguration - Phase IV”

SECTION I

PRENEGOTIATION OBJECTIVE SUMMARY

Pricing Structure:

Direct Costs	\$146,814
Overhead	\$3,848
Profit	\$7,651
Bond	\$116
Total	\$158,429

Contract Time:

TIME SUMMARY:
The contract duration is not changed by the subject change case.

Subject change incorporates revisions to storage requirements of GFE, which require temperature, and humidity controlled storage. The revisions will allow for continued storage of the GFE in the Gadsden Warehouse Facility who does not have temperature and humidity controlled space as required for the stored GFE. The change also incorporates corrective action to repair GFE that was damaged by the Government during handling and subsequent storage in the warehouse. The overall cost objective of \$158,429 has been analyzed and represents a fair and reasonable price. **Section III, Cost Analysis**, evaluates the contractor’s proposed increased costs for the subject change.

SECTION II

Enclosures:

1. Original Independent Government Estimate approved July 29, 1997.
2. Contractor’s Cost Proposal submitted by Serial Letter Nos. WSN-96-00769 & WSN-96-00784.
3. Audit Report No. 4142-97D27000003 dated May 30, 1997.

SECTION III
COST ANALYSIS

I. SUMMARY COMPARISON

The chart below compares the contractor's proposal, the IGE, and the pre-negotiation objective for various elements of the proposed costs.

	CONTRACTOR (BNI)	IGE	PRE- NEGOTIATION OBJECTIVE	COMMENTS
LABOR	\$95,688	\$56,643	\$95,688	(a)
MATERIALS	20,022	3,932	20,022	(b)
EQUIPMENT	0	2,849	0	(b)
PER DIEM	2,781	0	0	g
SUBCONTRACT	11,650	1,148	11,650	(d)
BNI Subtotal	\$130,141	\$64,572	\$127,360	
BNI PROFIT	11,844	4,903	8,944	(e)
BNI PROFIT ON SUB	1,165	89	901	(e)
Subtotal	\$143,150	\$69,564	\$137,205	
BNI BOND & INS	2,949	1,433	2,826	
BNI Subtotal	\$146,099	\$70,997	\$140,031	
PROPOSAL PREP	6,422	0	5,419	(f)
TOTAL BNI	\$152,521	\$70,997	\$145,450	
WEC LABOR	877	0	877	(g)
WEC G&A on Sub	4011	1867	3825	
WEC G&A	23	0	23	
PROFIT ON BNI	7626	4044	7273	(I)
PROFIT ON WEC	393	0	378	(I)
WEC Subtotal	\$12,930	\$5,911	\$12,376	
PROPOSAL PREP	487	0	487	(j)
WEC BOND & INS	121	369	116	
WEC Subtotal	\$13,538	\$6,280	\$12,979	
GRAND TOTAL	\$166,059	\$77,277	\$158,429	(k)

Exhibit 7-8*2. PNO Sample from ANCDF

(a) The subcontractor (BNI) has proposed direct labor costs of \$95,688, including overhead and G&A, for 3,765 hours proposed for four employees (Warehouse Supervisor, Millwright GF, Warehouse Maintenance, and Warehouse Clerk) required for execution of the work required by the subject change. The IGE identified direct labor costs of \$56,643, including overhead and G&A, for 1,299 hours associated with two employees. The proposed labor allocation and associated labor costs appear reasonable and will be utilized as the pre-negotiation objective. Therefore, the pre-negotiation objective for labor costs is established as \$95,688 increase.

(b) The subcontractor (BNI) has proposed direct costs of \$20,022, including overhead and G&A, for materials and equipment required for performance of the change case scope of work. The IGE identified direct materials and equipment costs of \$6,781, including overhead and G&A, required for execution of the change case work. The proposed materials and equipment costs appear reasonable and will be utilized as the pre-negotiation objective. Therefore, the pre-negotiation objective for materials and equipment costs is established as \$20,022 increase.

(c) The subcontractor (BNI) has proposed direct costs of \$2,781, including overhead and G&A, for per diem as required for the subject change. The IGE did not include any costs related to per diem for this change case. The government does not anticipate the contractor requiring any personnel other than those who are permanently located onsite to perform the required scope of work. Therefore, the proposed per diem costs are considered unreasonable for this change and should be deleted from the cost proposal. The pre-negotiation objective for per diem costs is established as \$0.00.

(d) The subcontractor (BNI) has proposed direct costs of \$11,650, including overhead and G&A, for subcontractor labor and equipment required to perform the change case work. The IGE identified direct costs of \$1,148, including overhead and G&A, associated with other (subcontract) labor and materials associated with performance of the scope of work for the change. The IGE only have consideration for subcontract equipment and labor costs associated with rotating and re-aligning of the BRA Baghouse equipment for cleaning and prime painting. The contractor proposal was inclusive of costs necessary for accomplishing the change case scope of work required for all GFE to be relocated, leveled, and reconfigured. The contractor's proposed costs are considered reasonable for the change. Therefore, the pre-negotiation objective for subcontractor costs is established as \$11,650 increase.

(e) The subcontractor (BNI) has proposed profit rate of 10% for BNI direct costs and subcontractor costs. The IGE utilized a profit rate of 7.73% for BNI and BNI subcontract work. The proposed rate of 10% on BNI and subcontract work is considered excessive for this change. Therefore, a rate of 7.73% for BNI and BNI subcontract work respectively, will be established as the pre-negotiation objective for profit.

(f) The subcontractor (BNI) has included costs associated with proposal preparation for the subject change. The IGE did not include cost related to proposal preparation. The proposed amounts appear reasonable with the exception of costs associated with ODC (per diem, driving to/from Oakridge). The government does not anticipate the contractor requiring any personnel other than those who are permanently located onsite to perform work associated with preparation of cost proposal for the subject change. Therefore, the proposed costs of \$793, including overhead and G&A, for ODC should be deleted from the cost proposal. Additionally, the subcontractor (BNI) has proposed profit rate of 10% for BNI direct costs related to proposal preparation. As stated in item A(e) above, the IGE utilized a profit rate of 7.73% for BNI and BNI subcontract work. The proposed profit rate of 10% for BNI is considered excessive for this change. Therefore, a profit rate of 7.73% for BNI proposal preparation costs will be established as the pre-negotiation objective. As a result of this analysis, a pre-negotiation objective of \$5,419 increase is established for proposal preparation costs.

(g) The prime contractor (WEC) has proposed direct labor costs of \$877, excluding overheads and G&A, for 16 hours for one employee (System Engineer Mgr.) required for execution of the work required by the subject change. The IGE did not include costs related to prime contractor labor related to the scope of work for the change case. Analysis of the proposed labor associated with the change revealed that the proposed costs are reasonable. Therefore, \$877 increase is established as the pre-negotiation objective for prime contractor direct labor.

(h) The prime contractor proposed a profit rate of 5%, applied to subcontractor costs. The IGE for subject change utilized a profit rate of 5.55%, as established by the weighted guidelines method, to be applied to prime subcontractor costs. The proposed 5% rate is considered reasonable and will be established as the pre-negotiation objective for application to all prime subcontract costs. Additionally, the prime contractor proposed a profit rate of 8% to be applied to prime contractor direct costs. Since the IGE did not include any prime contractor direct labor, materials, or equipment costs, a profit rate for work performed by prime contractor personnel was not developed. Analysis of the contractor's proposed 8% profit rate revealed that it is reasonable for the subject change. Therefore, the proposed profit rate of 5% applied to prime subcontract cost and 8% applied to prime contractor direct labor costs are established as pre-negotiation objectives.

(i) The prime contractor (WEC) has included costs associated with proposal preparation for the subject change. The IGE did not include cost related to cost proposal preparation. The proposed 8 hours labor resulting in a total cost of \$487, which includes overhead and G&A, for a Systems Engineer Mgr. appears reasonable for the subject change case. Therefore, \$487 increase related to costs associated with prime contractor proposal preparation is established as the pre-negotiation objective.

(j) With consideration given to all of the above pre-negotiation objectives, the total negotiation objective for the subject change is to assure that the contractor has a complete understanding of the scope of work and settle for the total cost objective of \$158,429 increase with no increase to the contract duration.

PREPARED BY:

Allen Shelvin
Lead Negotiator

REVIEWED FOR LEGAL SUFFICIENCY:

Charles T. Frew
Office of Counsel

CONCUR WITH OBJECTIVES:

Houston Townsend
Administrative Contracting Officer

CHAPTER 7. CONTRACT ADMINISTRATION
SECTION 9. BUSINESS CLEARANCE MEMORANDUM

DELETED

CHAPTER 7. CONTRACT ADMINISTRATION

SECTION 10. THE PRICE NEGOTIATION MEMORANDUM (PNM)

7.10.1 General. Regulations require complete documentation and justification for issuing and negotiating all construction contract modifications. In the CSDP, justification for most modifications to the Construction Phases of the Systems Contracts will be documented through configuration management procedures and the resulting Engineering Change Proposals. All documentation supporting modifications must be clear, concise, and complete. Use CEHND Form 965a, Price Negotiation Memorandum - Construction Contracts (example attached as exhibit 7-10*1) and attach a Resume of Negotiations to record transactions. The PNM is supporting documentation for the SF 30, and it is also a "stand alone" summary document of the contract action. The PNM is distributed with the contract modification to various Program Offices.

7.10.2 Instructions for Completing PNM Forms.

a. CEHND Form 965a.

(1) Information for the first five blocks can be obtained from the contract.

(2) Appropriation Data and Amount: Appropriation data and amount of funding are provided in the Miscellaneous Commitment Document, ENG Form 3039, or other funding documentation.

(3) Necessity for Change and Reason for Omission from Plans and Specifications.

(a) State why the contract must be changed and why the work is necessary. Outline the events that make the change necessary. For example: "Review of the contract drawings revealed the need to relocate door number 52 to avoid conflicts with duct work;" or, "It is necessary to relocate door number 52 to avoid relocating an existing air handling unit." It is not acceptable to state that, "The change is necessary to relocate the door," since this is simply a statement of the change being made, not the reason it must be made.

(b) Next, explain the reason (or apparent reason) for omitting the changed work from the original drawings or specifications and why the contract did not contain the requirement at award. The reason for omission should generally correspond with the appropriate cause code.

(c) Where there are multiple reasons for omission (cause code sources), separate the various categories and discuss each one separately including the necessity.

(4) Government Representatives. List names and titles of government personnel taking part in negotiations.

(5) Contractor Representatives. List names and titles of contractor personnel taking part in negotiations.

(6) Place and Date of Negotiations. List where negotiations actually conducted. If by correspondence, give beginning date and final date of letters written.

(7) Final Negotiation Price. Insert the final negotiated change price.

(8) Time Duration. Make a definite statement that (a) no additional time is required or allowed, or (b) give the exact amount of time agreed upon.

(9) Initial Government Estimate and the Basis for Upward or Downward Revision. Self-explanatory. If the change is for \$25,000 or less and a Government estimate is not prepared, insert "N/A."

(10) Do not transmit CEHND Form 965a to the contractor. Due to the nature of the information described on this first page of the PNM, it is "For Official Use Only."

b. Resume of Negotiations.

(1) Prepare a complete resume of the actual price negotiation proceedings. Include dates and amounts of the original and any revised proposals; the dates of negotiations; and an outline of the justification for any time extension. Include other matters of record which constitute areas of mutual understanding and contain project data, contract appendices, forms, schedules, design and other criteria, materials and equipment furnished the contractor by the Government.

(2) In order to minimize the possibility of future claims concerning impact, obtain a clear understanding from the contractor that all costs including impact on the changed and unchanged work, if any, have been considered and fully documented in the resume of negotiations portion of the price negotiation memorandum. Do not rely on the statement, "... it was mutually agreed that the (revised) proposal includes all cost and time adjustments directly or indirectly attributable to the change", as being sufficient to address impacts. Get the contractor to confirm that he has considered all costs in the settlement, including impacts on the unchanged work. Identify in as much details as possible the areas of unchanged work that are impacted by the change. Clearly state in the resume of negotiations that impacts to the work were considered, discussed, and has been included in the (revised) proposal and final costs agreed to. If there are no impacts to the unchanged work associated with the change, then so state it. If the contractor reserves his rights to impacts in a future modification or claim, then clearly state this in the resume of negotiations and insure that any impact costs included in the Government Estimate are removed for purposes of comparison with the negotiated amount. See Chapter 7, Section 3, paragraphs d. and e. (7.3.11.d. & e.), for further discussions on impact costs and addressing impacts during negotiations.

(3) If the modification is the result of an unpriced contract action, document the reasons if the definitization schedule was not met.

(4) If the negotiator does not have the authority to sign the modification, be sure to state that the proposed settlement will be recommended to the ACO or Contracting Officer for acceptance.

(5) When certified cost or pricing data are required, refer to chapter 7 for requirements to document discussion and reliance on data submitted by the contractor and variances with audit recommendations.

(6) Problem Areas in PNM Highlighted by EIG. Problems listed below have occurred in the PNM resume when cost or pricing data is required. The negotiator also must consider these points when preparing the resume for all modifications exceeding \$500,000.

(a) The resume did not explain the basis of settlement identified by cost element. A marked-up proposal, signed by the contractor, dated consistent with negotiations and referred to in the resume, is acceptable. Otherwise, the PNM should include details and cost element amounts accepted by the Government.

(b) The resume did not reconcile the settlement to the pre-negotiation objectives. You should be able to track discussion of **each** objective and how it was resolved.

(c) The resume did not resolve differences between the audit and settlement (applicable when certified cost or pricing data are required). If the audit is not followed in settlement, you must explain why.

(d) The resume did not explain what reliance was placed on the contractor's factual and judgmental data (applicable when certified cost or pricing data is required). It did not document how factual inaccuracies in the proposal or non-allowable or non-allocable costs were treated in the settlement. In summary, when cost or pricing data are required, one cannot negotiate a bottom line settlement versus the Government Estimate. Agreement on individual cost elements/profit is not required, but if the proposal contains non-allowable or non-allocable costs (see FAR 31), inaccurate "facts," or audit questioned/unsupported costs, these must be eliminated or justified. Judgmental differences can be resolved by resorting to a lump sum or bottom line basis. A post audit, if performed, must be able to determine what is in the final settlement. A price reduction can only be obtained if the Government relied on the **factual** data and used it in the final price.

(5) Signatures.

If the negotiator is the ACO, the title block on the resume should reflect "Administrative Contracting Officer." When the negotiator is not the ACO, use the negotiator's position title, i.e., "Office Engineer."

7.10.3 Audit Resolution. Where an audit has been performed, CD-CA will provide a copy of the PNM and the pre-negotiation objectives to the auditor.

PRICE NEGOTIATION MEMORANDUM - CONSTRUCTION CONTRACTS		
PROJECT DESCRIPTION AND LOCATION:	CONTRACT NO:	
CONTRACTOR NAME AND ADDRESS:	CHANGE REQ NO:	TYPE OF FIRM: <input type="checkbox"/> INDIVIDUAL <input type="checkbox"/> PARTNERSHIP <input type="checkbox"/> JOINT VENTURE <input type="checkbox"/> CORPORATION INCORPORATED IN THE STATE OF _____
APPROPRIATION DATA AND AMOUNT:		
NECESSITY FOR CHANGE/REASON FOR OMISSION FROM ORIGINAL PLANS AND SPECIFICATIONS:		
GOVERNMENT REPRESENTATIVE (NAME AND ADDRESS):		
CONTRACTOR REPRESENTATIVES (NAME AND ADDRESS):		
PLACE AND DATE OF NEGOTIATIONS		
FINAL NEGOTIATED PRICE(S):		
TIME DURATIONS:		
INITIAL GOVERNMENT ESTIMATE/BASIS FOR UPWARD/DOWNWARD REVISION, IF APPLICABLE:		
ATTACHMENT: PRICE NEGOTIATION MEMORANDUM - RESUME OF NEGOTIATIONS		

CEHNC FORM 965a
1 NOV 94

Exhibit 7-10*1 Price Negotiation Memorandum

CHAPTER 7. CONTRACT ADMINISTRATION
SECTION 11. STANDARD FORM 30
AMENDMENT OF SOLICITATION/MODIFICATION OF CONTRACT

7.11.1 Introduction . Standard Form 30 (SF-30), when properly executed by the contractor and the Administrative Contracting Officer (ACO) or the Contracting Officer, constitutes a legal contract modification, thereby placing all responsibility for the final document on the ACO or the Contracting Officer. Field personnel will normally prepare the SF-30 for all in-scope contract modifications. The Directorate's review of modifications will be limited to that necessary to determine compliance with instructions; to post changes in the pricing schedule and the contract special/ technical provisions; to ensure that the change is under the appropriate contract clause and does not exceed the authority limits; and to ensure that the documents have been executed by authorized representatives of the contractor and the Government.

The Resident Management System (RMS) has been chosen as the Corps of Engineer Standard for preparation of SF-30s. Much of the format for the SF-30s is already predetermined and permits no changes by the REO. It is anticipated that a new Windows based version of RMS will be fielded within the next six to eight months. At that time, this section of the Plan will be updated to reflect the changes. Until then, the DOS Based RMS format will be used for preparing SF-30s.

7.11.2 Instructions for Preparing the SF-30 . (Exhibit 7-11*1 is an example.)

a. Block 1. Enter the appropriate page numbers, e.g., page 1 of 2 pages.

b. Block 2. Amendment/Modification No. The Resident Office will enter the six-digit modification number, e.g., A00002, A00003, A00020, A00021. This numbering system is in accordance with DFARS 204.70. Assignment of either an **A** or **P**, prior to the number, indicates which agency issued the modification. In nearly all circumstances, modifications issued by the **Center** will be preceded by an **A**, whereas those issued by **OSC** will be preceded by a **P**. **DO NOT ASSIGN A NUMBER UNTIL MODIFICATION IS READY TO BE ISSUED.** Refer to Section 6, Chapter 7 for procedures related to undefinitized modifications.

c. Block 3. Effective Date. A bilateral modification is not effective until it is signed by both parties, without any alterations by one party after the other has signed. The FAR 43.101(b) states, ". . . the effective date shall be the date agreed upon by the contracting parties." Normally this will not be possible, therefore; the effective date will be the latest signature date of the parties in Block 15 or 16. If a Suspension of Work, Notice to Proceed or Notice of Termination is initially issued by other than an SF-30, the effective date of the confirming SF-30 is the same date as the original action.

d. Block 4. Requisition/Purchase Req. No. Enter the change case number assigned by the REO.

e. Block 5. Leave Blank.

f. Block 6. Issued By: Enter the following address:
U.S. Army Engineering and Support Center, Huntsville, P. O. Box 1600, Huntsville, AL 35807-4301.

g. *Block 7. Administered By.* Enter U.S. Army Engineering and Support Center, Huntsville (1st line), street address of the applicable Resident Office (2nd line), and city, state and zip code of the applicable Resident Office (3rd line).

h. *Block 8. Name and Address of Contractor.* Enter the contractor's name and address exactly as shown on the contract.

i. *Blocks 9A and 9B.* Leave blank.

j. (1) *Block 10A.* Enter the contract number.

(2) *Block 10B.* Enter the date of contract award.

k. *Block 11.* Leave Blank.

l. *Block 12. Accounting and Appropriation Data.* This block describes the source and amount of funds to be obligated or deobligated through issuance of the modification. It is not necessarily the same amount as shown in Block 14, Change in Contract Price, therefore, do not refer to the change in contract price in Block 12. Information of that nature, i.e., change in contract price, is reserved for Block 14.

Show the exact funding citation shown on the approved Amendment to the Purchase Request and Commitment (PR&C) for increases in obligations, or as shown on the contracts for no-cost or credit modifications. Also, show the net increase or decrease in obligation by the fund citation. When a contract is funded by more than one account, show the citation for each affected account along with the change in obligation to be attributed to each account.

m. *Block 13.*

(1) "A" Check this block when issuing an undefinitized modification (e.g., notice to proceed) pursuant to the *Changes Clause*.

(2) "B" Check this block when issuing administrative changes, executed by the appropriate Contracting Officer or ACO.

(3) "C" Check this block when issuing a within the scope supplemental/bilateral agreement. Insert the title and numerical reference of the contract clause that affected the change; e.g., *Changes, 52.243-4; Differing Site Conditions, 52.236-2; Default (Fixed-Priced Construction), 52.249-10.*

(4) "D" Check this block when issuing unilateral modifications other than change order (Letter "A"). Insert the appropriate contract clause.

(5) "E" Check either, "is not" or "is," depending on the type of modification being issued. If the contractor signs, be sure and enter the number of signed copies that must be returned. Administrative changes do not require the contractor's signature. Supplemental agreements do require the contractor's signature. *Leave both blocks blank for a unilateral modification* since the contractor is given the opportunity, by transmittal letter, to accept the Government's offer.

n. Block 14.

(1) Description of Amendment/Modification. The description of the modification must be clear, complete, and concise. Signed modifications are stand-alone legal documents. **THEY MUST CLEARLY IDENTIFY ALL CHANGES IN THE TERMS OF THE CONTRACT.** The modification writer must always be cognizant that individuals not intimately involved in the change, be able to recognize and understand by reading the SF-30 and attachments; all changes to the plans, specifications, or any other terms of the contract. Those same individuals must be able to successfully post all changes to the contract documents, without referring to or referencing other sources. **DO NOT** refer to outside documents, e.g. letters, directives, requests for proposals, etc., unless they are included as attachments to the SF-30.

(2) A - SCOPE OF WORK. The modification writer should clearly and concisely state the Scope of Work to be performed through issuance of the modification. In the case of UCMs and definitization thereto; all previous NTPs should be discussed and brought forward up to and including the definitized modification. The total obligation to the Government, prior to definitization will also be stated here. When issuing a Suspension of Work, be sure to include as a minimum, the schedule of pertinent milestone dates and a date when the suspension will be lifted.

(3) B and C - CHANGE IN CONTRACT DRAWINGS/SPECIFICATIONS (respectively). If drawings and/or specifications are to be revised, it is necessary that the revisions be coordinated with prior modifications, and in some cases, other outstanding change requests. Indicate changes in the drawings and specifications by Enclosures 1 and 2. Where changes are not involved, state, "None." Do not use the statement, "Drawing changes will be shown on the as-built." Instead, where contract drawings are to be revised, *but not reissued*, list affected drawings on the enclosure applicable to the change in drawings and a general description of the drawing change provided.

(4) D - CHANGE IN CONTRACT PRICE. Following negotiations of an equitable price adjustment, complete this item to show the exact amount of the settled price, reflecting "increase" or "decrease." Whether an increase or decrease, all bilateral modifications, i.e.. Supplemental Agreements will include wording identifying the amount by which affected CLIN(s) change. In other words, state the amount the CLIN is changed **BY, FROM, and TO.** See section 6 for undefinitized modification and definitized modification language.

Where no change in contract price/value occurs, enter a statement to that effect.

(5) E - CHANGE IN THE CONTRACT TIME. Show the exact time extension in calendar days being granted under the contract. Also, signify the completion date being changed from the previous date specified to the revised completion date as currently modified. If the contract contains multiple completion dates, show the time extension being granted for each phase. In the event that a separate completion for the changed work is to be established, use the following statement: "A separate completion date of ____ is established for this work only. Liquidated damages do not apply thereto." If there is no change in contract time, enter a statement to that effect. **Note that in granting time extensions pursuant to the *Changes Clause*, the ACO must coordinate the time extension with the Program Manager and the Contracting Officer.**

When no change is made to the contract completion date, enter a statement to that effect.

(6) F - CLOSING STATEMENT. In accordance with FAR 43.204 (c) include the accord and satisfaction release language in its entirety in this section of the SF-30.

In consideration of the modification agreed to herein as complete equitable adjustments for the contractor's (insert date of final cost/price agreement) proposal for adjustment, the contractor hereby releases the Government from any and all liability under this contract for further equitable adjustments attributable to such facts or circumstances giving rise to the proposal for adjustment."

The FAR only requires the release language for bilateral supplemental agreements issued under the *Changes Clause*. However, it is recommended for all bilateral modifications, including VECP's, defaults, etc.

o. Signatures (Blocks 15 and 16 A, B and C).

(1) Whenever practical, the Resident Office will obtain the contractor's acceptance of the modification before presenting it to either ACO for signature (reference FAR 4.101 and 2.101). In most cases, it will not be practical for the contractor to sign bilateral modifications prior to signature by the HNC Administrative Contracting Officer, due to possible changes being made during HNC review. Therefore; in the case of bilateral modifications, should the contractor not be willing to sign the SF-30 after HNC ACO signature, the signed modification **DOES NOT** become a unilateral modification; consequently, the Resident Office will destroy it.

When the contractor is able to sign the modification first, forward the document to the HNC ACO. Signature by the HNC ACO after review indicates that he/she accepts the terms and conditions of the modification. Field Offices should leave Blocks 16A, B and C blank when modifications are to be signed by the HNC ACO. CD-CA will add the necessary data.

(2) Review of 15A and B after execution by the contractor is extremely important in that legal considerations require that a person authorized to bind the contractor sign the modification. Unless the owner of an individually owned company, or an officer (President, Vice President, or Secretary/Treasurer) of the corporation signs the modification, a Power of Attorney must be provided to the Government proving that, by action of the owner or the corporate board of directors, the person executing the modification is legally empowered to bind the company, or corporation, on contractual matters. For partnerships or joint ventures, there are a number of alternates to be considered. First, check the contract to determine if officers of both firms executed the contract. If officers of both firms executed the contract, then officers of both firms must execute the modifications, unless Powers of Attorney are provided by each firm authorizing one person to bind both firms, whereupon only one signature is required. If the contract is executed by only one person, representing both firms, then an appropriate Powers of Attorney already exists for that person and the modifications can be executed by that person. Regardless of the type of firm(s) involved, Powers of Attorney must designate the contract for which the authority is being granted, and must state that it will remain in effect until the Contracting Officer is notified otherwise. Often, Powers of Attorney limit the monetary and/or administrative authority being granted, and such limits should be duly noted.

(3) In lieu of Powers of Attorney, letters delegating authority may be acceptable provided they are signed by the owner of an individually owned company or President of a corporation, or Presidents of both firms involved in a partnership or joint venture, and provided that the letters clearly outline the authority being granted relative to modifications. If the letters are signed by persons other than the owner or the President(s), it is necessary to obtain additional documents such as Powers of Attorney or Corporate Business Charters showing that these persons have authority to redelegate their authority.

p. Miscellaneous

(1) For modifications issued pursuant to the *Default Clause*; include a brief description, time change, if applicable, and the statement, "The contract price remains unchanged." See examples in Section 15 of this chapter (7), Special Considerations, which includes considerations for Weather.

(2) The following guidance pertains to documentation of materials, supplies or contractor furnished equipment already purchased and required for the contract and deleted by a change. If the Contractor cannot return the excess materials for a credit, the Government will probably end up paying for the excess. In that case, all such property must be turned over to the Government and must be identified for tracking purposes in the SF-30 modification, definitizing the change. Either identify all of the excess property in the descriptive narrative or include an inventory list of all items in an attachment to the modification.

7.11.3 Procedures for Processing . (See also section 6 of this chapter for undefinitized modifications.)

a. For bilateral modifications within the ACO's authority.

(1) Under normal circumstances, the contractor should execute the bilateral modification before the ACO. In cases where the contractor's authorized official is not locally available and time does not permit normal mailing procedures, the Resident Office may have to 'overnight' mail the modification documents to the contractor or use some other expedited method. In extreme cases it may be necessary to fax the modification and consent, where applicable, to the contractor for signature and return, with the original to follow in the mail for signature, same date. Resident Offices should encourage the contractors to authorize an on-site representative to execute modifications within the same authority limits as the ACO.

(2) An original and one (1) copy of the SF-30 (pages 1 and 2), with all enclosures and attachments, should be sent to the contractor for execution of the bilateral agreement. Anyone distributing contractual information to contractors will ensure that there is a transmittal form with each transmittal to the contractor. This may be a standard form letter, facsimile header sheet, routing and transmittal sheet, etc., as appropriate. The person transmitting the documents will sign their name on the transmittal form, so there will be a record of who sent the information. The contractor will return the properly executed original. See chapter 13 relative to performance and payment bonds, and consents of surety and dollar limits for each.

(3) When the contractor returns the modification, the Resident Engineer will review the file to ensure that it is complete and correct, and that the contractor has not applied a reservation or

qualification. In the event the contractor adds a reservation or qualification, the modification becomes void and negotiations must be reopened to resolve the issue, or to ascertain the basis of the problem so that appropriate action can be determined. Check the contractor's signature block to ensure that the person signing the modification has the authority to bind the firm. If an unauthorized person has signed the modification, the contractor must provide a Power of Attorney. If Consent of Surety is involved, be sure that the surety representative has furnished a current Power of Attorney dated on or after the contractor executed the Consent.

(4) The Resident Office will retain the Official File. Assemble the modification and its complete supporting documentation so that the original of the SF-30 is accompanied by a supporting file containing all of the original or record file copies of correspondence, e.g., Modification Proposal Request; Prevalidation of Funds; Government estimates (original and revised); Pre-negotiation Objective Memorandum; Price Negotiation Memorandum; related correspondence; tax letter and Consent of Surety, etc.

(5) Assemble and forward a convenience file to CD-CA; consisting of a copy of the executed modification with copies of complete supporting file. It is not necessary to include copies of Parson's issued drawings or specifications. If the field office initiates sketches or changes include those sketches and affected specification pages.

(6) CEHNC-CT will report all modifications in excess of \$25,000 to the Contracting Officer within 72 hours of execution.

b. For bilateral modifications not within the ACO's authority.

(1) Upon completion of successful negotiations and execution of all supporting documentation, the RE will forward the SF-30 and all pertinent, i.e., supporting documents to CD-CA. Pertinent documents may, when applicable include the IGE/ROM, POM, PNM, Contractor's proposal, Certificate of Current Cost or Pricing Data, etc.

(2) CD-CA will review the SF-30 and all supporting documents for accuracy and completeness. Corrections if necessary will be coordinated with field personnel. Once any corrections are made, CD-CA will forward the package through the appropriate channels for concurrence to the HNC ACO for signature.

(3) If the HNC ACO signs the modification before the contractor, the modification will be faxed or overnight mailed to the Resident Office for Contractor signature. If the HNC ACO signs subsequent to the contractor, CD-CA/CT-D will mail the SF-30 along with other supporting documentation, e.g., SF-1415 - Consent of Surety and Increase in Penalty, to the contractor for execution of the consent. See Section 13 for additional information relative to Bonds/Consents of Surety.

When applicable, CD-CA/CT-D will prepare the SF-1415 - Consent of Surety and Increase in Penalty. Every effort will be made by HNC to simultaneously mail the SF-30 and necessary Consent documents to the contractor (see paragraph 3 above).

CD-CA will mail the official file copy to the Resident Office. Prior to mailing, CD-CA will copy the official file and make distribution within the Center. A convenience file will be maintained at HNC.

(4) Where Consent is involved, the RE Office will not make distribution if the original consent is not appropriately executed and returned to the Government. Payment of the modification will not be made until the modification has been distributed.

(5) CEHNC-CT will report all modification in excess of \$25,000 to the Contracting Officer within 72 hours of execution.

c. *(Modified) ENG Form 3762-2, Jun 98, Official Contract Record Checklist-Contract Modification/Delivery Order.* Place a check mark by all applicable documents listed on the form pertaining to each modification file. Include Modified Form 3762-2 in each official file sent to CD-CA.

AMENDMENT OF SOLICITATION/MODIFICATION OF CONTRACT		1. CONTRACT ID CODE		PAGE OF PAGES 1 2	
2. AMENDMENT/MODIFICATION NO. A00D02		3. EFFECTIVE DATE		4. REQUISITION/PURCHASE REQ. NO.	
5. PROJECT NO. <i>(if applicable)</i>		6. ISSUED BY CEHNC U.S. Army Engineering & Support Ctr., Huntsville, F.O. Box 1600 Huntsville, AL 35807-4307		7. ADMINISTERED BY (if other than item 6) ANCDF Resident Engineer Office 3580 Morrisville Road Anniston, AL 36201	
8. CODE M		9. CODE			
B. NAME AND ADDRESS OF CONTRACTOR (No., street, county, State and ZIP Code) Westinhouse Electric Corp. 1425 Wilmer Avenue Anniston, AL 36201			(X) 9A. AMENDMENT OF SOLICITATION NO. 9B. DATED (SEE ITEM 11) 10A. MODIFICATION OF CONTRACT/ORDER NO. DAAA09-96-C-0018 (X) 10B. DATED (SEE ITEM 13) 02/29/96		
CODE		FACILITY CODE			
11. THIS ITEM ONLY APPLIES TO AMENDMENTS OF SOLICITATIONS					
<input type="checkbox"/> The above numbered solicitation is amended as set forth in Item 14. The hour and date specified for receipt of Offers <input checked="" type="checkbox"/> is extended, <input type="checkbox"/> is not extended.					
Offers must acknowledge receipt of this amendment prior to the hour and date specified in the solicitation or as amended, by one of the following methods:					
(a) By completing Items 9 and 15, and returning _____ copies of the amendment; (b) By acknowledging receipt of this amendment on each copy of the offer submitted; or (c) By separate letter or telegram which includes a reference to the solicitation and amendment numbers. FAILURE OF YOUR ACKNOWLEDGEMENT TO BE RECEIVED AT THE PLACE DESIGNATED FOR THE RECEIPT OF OFFERS PRIOR TO THE HOUR AND DATE SPECIFIED MAY RESULT IN REJECTION OF YOUR OFFER. If by virtue of this amendment you desire to change an offer already submitted, such change may be made by telegram or letter, provided each telegram or letter makes reference to the solicitation and this amendment, and is received prior to the opening hour and date specified.					
12. Accounting and Appropriation Data <i>(if required)</i> Contract Amount Unchanged. Available Funding Increased \$300,000					
13. THIS ITEM APPLIES ONLY TO MODIFICATIONS OF CONTRACTS/ORDERS, IT MODIFIES THE CONTRACT/ORDER NO. AS DESCRIBED IN ITEM 14.					
<input checked="" type="checkbox"/> A. THIS CHANGE ORDER IS ISSUED PURSUANT TO: (Specify authority) THE CHANGES SET FORTH IN ITEM 14 ARE MADE IN THE CONTRACT ORDER NO. IN ITEM 10A.					
<input type="checkbox"/> B. THE ABOVE NUMBERED CONTRACT/ORDER IS MODIFIED TO REFLECT THE ADMINISTRATIVE CHANGES (such as changes in paying office, appropriation data, etc.) SET FORTH IN ITEM 14, PURSUANT TO THE AUTHORITY OF FAR 43.103(a).					
<input checked="" type="checkbox"/> C. THIS SUPPLEMENTAL AGREEMENT IS ENTERED INTO PURSUANT TO AUTHORITY OF: Changes Clause, FAR 52.243-4					
<input type="checkbox"/> D. OTHER (Specify type of modification and authority)					
E. IMPORTANT: Contractor <input type="checkbox"/> is not, <input checked="" type="checkbox"/> is required to sign this document and return _____ 2 _____ copies to the issuing office.					
14. DESCRIPTION OF AMENDMENT/MODIFICATION (Organized by UCF section headings, including solicitation/contract subject matter where feasible.)					
In consideration of the modification agreed to herein as complete equitable adjustments for the contractor 1 April 1998 proposal for adjustment. The contractor hereby releases the government from any and all liability under this contract. For further equitable adjustments attributable to such facts or circumstances giving rise to proposal for adjustment. Except as provided herein, all terms and conditions of the document referenced in Item 9A or 10A, as heretofore changed, remains unchanged and in full force and effect.					
15A. NAME AND TITLE OF SIGNER (Type or print)			16A. NAME AND TITLE OF CONTRACTING OFFICER (Type or print)		
			Administrative Contracting Officer		
15B. CONTRACTOR/OFFEROR		15C. DATE SIGNED	16B. UNITED STATES OF AMERICA		16C. DATE SIGNED
_____ <i>(Signature of person authorized to sign)</i>			BY _____ <i>(Signature of Contracting Officer)</i>		
NSN 7540-01-152-8070 PREVIOUS EDITION UNUSABLE		30-105		STANDARD FORM 30 (REV. 10-82) Prescribed by GSA FAR 148 CFR 53.243	

Exhibit 7-11*1. Standard Form 30

Modification No. DACA87-97-C-9999, A00002Scope of Work:

Furnish and install additional windows as approved by ECP Voucher XXXX in the north wall of the personnel and maintenance building.

CHANGES IN DRAWINGS: See attachment 1.

CHANGES IN THE SPECIFICATIONS: See attachment 2.

CHANGES IN THE PRICING SCHEDULE: (Changed Item)

<u>CLIN NO.</u>	<u>DESCRIPTION</u>	<u>QUAN</u>	<u>UNIT</u>	<u>UNIT PRICE</u>	<u>INCREASE/DECREASE</u>	<u>REVISED ESTIMATED AMOUNT</u>
0003A0	Personnel and Maintenance Building	1	Job XXXX	\$40,000.00		

CHANGE IN THE CONTRACT PRICE: \$40,000.00 increase.

CHANGE IN THE CONTRACT TIME: A separate completion date of _____ is established for this work only, and liquidated damages shall not apply thereto.

AMENDMENT OF SOLICITATION/MODIFICATION OF CONTRACT			1 CONTRACT ID CODE Construction	PAGE OF PAGES 1 4
2 CONTRACT MODIFICATION NO. A00077	3. EFFECTIVE DATE See Block 16C	4 REQUISITION/ORDER NO. 896-0018-021-CE2	5 PROJECT NO. <i>(if applicable)</i>	
6 ISSUED BY Core	M	7 ADMINISTERED BY <i>(if other than item 6)</i> ANCDF Resident Engineer Office 3530 Morrisville Road Anniston, AL 36201		
8. NAME AND ADDRESS OF CONTRACTOR: No., street, county, State and ZIP Code: Westinghouse Electric Corp. 1425 Wilmer Avenue Anniston, AL 36201			9A. AMENDMENT OF SOLICITATION NO. 9B. DATED (SEE ITEM 10)	
CODE			10A. MODIFICATION OF CONTRACT NO. DAAC09-96-C-0018 10B. DATED (SEE ITEM 13) 96 Feb 29	
11. THIS ITEM ONLY APPLIES TO AMENDMENTS OF SOLICITATIONS				
<input type="checkbox"/> The above numbered solicitation is amended as set forth in item 14. The hour and date specified for receipt of Offers <input type="checkbox"/> is extended. <input type="checkbox"/> is not extended. Offers must acknowledge receipt of this amendment prior to the hour and date specified in the solicitation or as amended, by one of the following methods: (a) By completing items 8 and 15, and returning _____ copies of the amendment; (b) By acknowledging receipt of this amendment on each copy of the offer submitted; or (c) By separate letter or telegram which includes a reference to the solicitations and amendment numbers. FAILURE OF YOUR ACKNOWLEDGMENT TO BE RECEIVED AT THE PLACE DESIGNATED FOR THE RECEIPT OF OFFERS PRIOR TO THE HOUR AND DATE SPECIFIED MAY RESULT IN REJECTION OF YOUR OFFER. If by virtue of this amendment you desire to change an offer already submitted, such change may be made by telegram or letter, provided each telegram or letter makes reference to the solicitation and this amendment, and is received prior to the opening hour and date specified.				
12. ACCOUNTING AND APPROPRIATION DATA <i>(if required)</i> FY97 PROC- 001X4T Contract Amount Increased \$517,500.00. Available Funding Increased \$1,035,000.00.				
13. THIS ITEM APPLIES ONLY TO MODIFICATIONS OF CONTRACTS ORDERS . IT MODIFIES THE CONTRACT/ORDER NO. AS DESCRIBED IN ITEM 14.				
A. THIS CHANGE ORDER IS ISSUED PURSUANT TO <i>(Specify authority)</i> THE CHANGES SET FORTH IN ITEM 14 ARE MADE IN THE CONTRACT ORDER NO. IN ITEM 10A. <input checked="" type="checkbox"/> 57-243-0004 - CHANGES B. THE ABOVE NUMBERED CONTRACT/ORDER IS MODIFIED TO REFLECT THE ADMINISTRATIVE CHANGES <i>(such as changes in paying office, appropriation, doc, etc.)</i> SET FORTH IN ITEM 14. PURSUANT TO THE AUTHORITY OF FAR 43.103(b). C. THIS SUPPLEMENTAL AGREEMENT IS ENTERED INTO PURSUANT TO AUTHORITY OF. D. OTHER <i>(Specify type of modification and authority)</i>				

E. IMPORTANT: Contractor is not. is required to sign this document and return original and _____ copies to the issuing office.

14. DESCRIPTION OF ~~CONTRACT~~ MODIFICATION *(Organized by DCF section headings, including initiation/contract subject matter where feasible.)*
 Contract for ANNISTON CHEMICAL DISPOSAL FACILITY at Anniston, Alabama 36201
 AN023ICMTP FOR STRUCTURAL STEEL, EXCEPT PFS
 AN052ICMTP FOR PFS STRUCTURAL STEEL REVISIONS
 See Page 2.

ORIGINAL

Except as provided herein, all terms and conditions of the document referenced in item 9A or 10A, as heretofore changed, remains unchanged and in full force and effect.

15A. NAME AND TITLE OF SIGNER <i>(Type or print)</i>	16A. NAME AND TITLE OF CONTRACTING OFFICER <i>(Type or print)</i> HOUSTON TOWNSEND Administrative Contracting Officer
15B. CONTRACTOR ORDER <i>(Signature of person authorized to sign)</i>	15C. DATE SIGNED 15D. DATE SIGNED BY <i>(Signature of Contracting Officer)</i>

NSN 7540-01-152-8070
PREVIOUS EDITION UNUSABLE

30-105-2

STANDARD FORM 30 (REV. 10-60)
Prescribed by GSA
FAR (48 CFR) 53.243

Exhibit 7-11*2. Standard Form 30, page 1

MODIFICATION OF CONTRACT		DATE SIGNED	PAGE OF PAGES	
		See Block 16C	2	4
Contract No.	DAAA09-96-C-0018			
Modification No.	A00077			
Contractor:	Westinghouse Electric Corp.			
Contract Title:	ANNISTON CHEMICAL DISPOSAL FACILITY			
Location:	Anniston, Alabama 36201			

14. DESCRIPTION OF MODIFICATION (CONTINUED)

A. SCOPE OF WORK

ANO23lcNTP FOR STRUCTURAL STEEL, EXCEPT PFS

1. You are directed through issuance of Modification A00077 to proceed with fabrication, delivery, and installation of the affected structural steel revisions outside the limits of the PFS Structure itself as affected by Change Case AN-6-018-0023; PFS Revisions and Acid Wash Deletion. This Notice to Proceed does not include any structural steel within the new PFS structure itself.

1a. You are also directed to proceed with the relocation and installation of all security lighting foundations resulting from Change Case AN-6-018-0023, as shown on Drawing AN-16-E-17.

1b. Issuance of this modification also increases the total Not To Exceed Obligation to the Government as noted below.

2. Contract Modification A00057 authorized the contractor to proceed with the work outlined in ECPs ANAC491DFS and ANAP494PAS. Said modification established a Not to Exceed obligation and Interim Payment Amount of \$75,000.

3. Contract Modification A00064 authorized the contractor to proceed with engineering and shop drawing preparation for two MCC units identified as SPS-MCC-111 and SPS-MCC-112. Said modification established a Not to Exceed Obligation of \$10,000 and provided an interim payment amount of \$7,500.

4. With issuance of this modification, i.e., A00077, the Total Obligation to the Government for Change Case AN-6-018-0023 shall not exceed \$385,000 (\$75,000 [A00057]; \$10,000 [A00064]; \$300,000[A00077]).

AN52lcNTP FOR PAS STRUCTURAL STEEL REVISIONS

1. You are directed to proceed with all work identified as Change Case AN-6-018-0052, PAS Structural Steel Revisions.

1a. Issuance of this modification also increases the total Not to Exceed obligation to the Government as noted below.

2. Contract Modification A00028, suspended fabrication of the structural steel in the PAS area and established a Not To Exceed obligation of \$60,000.

2a. Issuance of Modification A00077 hereby lifts the suspension associated with modification A00028. As stated in modification A00028, all costs associated with the suspension and any additional rework will be settled as part of Change Case AN-6-018-0052.

3. Contract Modification A00039 authorized the contractor to proceed with structural steel engineering and shop drawing preparation, incorporating the applicable design revisions identified as Change Case AN-6-018-0052. Said modification established a Not To Exceed obligation and Interim Payment amount of \$200,000.

4. Contract Modification A00062 authorized the contractor to proceed with fabrication of the revised steel for column Lint A to C in Area 5, and Column Line C to F in Area 3.

STANDARD FORM (REV. 10-83)

Exhibit 7-11*2. Standard Form 30, page 2

MODIFICATION OF CONTRACT		DATE SIGNED	PAGE OF PAGES	
		See Block 16C	3	4
Contract No.	DAAA09-96-C-0018			
Modification No.	A00077			
Contractor:	Westinghouse Electric Corp.			
Contract Title:	ANNISTON CHEMICAL DISPOSAL FACILITY			
Location:	Anniston, Alabama 36201			

14. DESCRIPTION OF MODIFICATION (CONTINUED)

4a. Said modification increased the Not To Exceed obligation by \$90,000 for engineering and shop drawing preparation and established \$375,000 for fabrication, resulting in a net increase of \$465,000.

5. With issuance of this modification, the Total Obligation to the Government for Change Case AN-6-08-0052 shall not exceed \$1,460,000 (\$60,000 [A00028], \$200,000 [A00039], \$465,000 [A00062], \$735,000 [A00077]).

B. CHANGE IN CONTRACT SPECIFICATIONS

No Change.

C. CHANGE IN CONTRACT DRAWINGS

1. The attached list of contract drawings for Change Case Numbers AN-6-018-23 and AN-6-018-52 are hereby incorporated into the contract.

1a. Drawing numbers associated with Change Case AN-6-018-23 will only be used as they relate to structural steel revisions outside the limits of the PFS Structure itself.

1b. In those situations where identical drawing numbers have been issued, the most up date drawing shall be used.

2. Drawing # AN-16-E-17 is also incorporated into this contract as it relates to the relocation and installation of all security lighting foundations associated with CC AN-6-018-23.

D. CHANGE IN CONTRACT PRICE

Total contract price is increased by \$517,500.00.

1. AN0231c -- Contract Modifications A00057 and A00064 established interim payment amounts of \$75,000 and \$7,500 respectively. Contract Modification A00077 increases the interim payment amount by \$150,000; thereby providing a total allowable payment amount of \$232,500, pending definitization of Change Case AN0-6-018-23.

2. AN0521c -- Contract Modifications A00039 and A00062 established interim payment amounts of \$200,000 and \$299,250 respectively. Contract Modification A00077 increases the interim payment amount by \$367,500; thereby providing a total allowable payment amount of \$866,750, pending definitization of Change Case AN0-6-018-0052.

3. Price adjustments for Change Case Numbers AN-6-018-0023 and AN-6-018-0052 will be definitized in separate, subsequent modifications. See Section E (Closing Statement) for respective definitization schedules.

STANDARD FORM (REV. 10-83)

Exhibit 7-11*2. Standard Form 30 - Page 3

MODIFICATION OF CONTRACT	DATE SIGNED	PAGE OF PAGES	
	See Block 16C	4	4
Contract No. DAAA09-96-C-0018 Modification No. A00077 Contractor: Westinghouse Electric Corp. Contract Title: ANNISTON CHEMICAL DISPOSAL FACILITY Location: Anniston, Alabama 36201			

14. DESCRIPTION OF MODIFICATION (CONTINUED)

The following revision shall be made to the pricing schedule.

NEW/ REVISED	ITEM NO.	DESCRIPTION	QUANTITY	UNIT PRICE	CHANGE AMOUNT
Revised	0004AA	Pollution Abatement System (PAS)	1.00 LS	---	\$517,500.00
				Total	\$517,500.00

E. CHANGE IN CONTRACT TIME

The contract completion date shall remain unchanged by reason of this modification.

The Contractor shall develop a Network Analysis System (NAS) fragnet incorporating the changes identified herein into the construction schedule. Said fragnet shall be prepared in accordance with the terms of the contract and shall be submitted to the Government for review and approval within 10 calendar days from the date of receipt of this modification.

F. CLOSING STATEMENT

1. AN0231c -- You are directed to notify the Contracting Officer at least fifteen days prior to the date you anticipate the obligation to the Government for Change Case AN-6-018-023 will exceed \$385,000. Further direction on how to proceed will be provided to you prior to the anticipated date. Funds may not be available for any work performed which results in costs exceeding the above stated amount.

2. AN0521c -- You are directed to notify the Contracting Officer at least fifteen days prior to the date you anticipate the obligation to the Government for Change Case AN-6-018-0052 will exceed \$1,460,000. Further direction on how to proceed will be provided to you prior to the anticipated date. Funds may not be available for any work performed which results in costs exceeding the above stated amount.

3. AN0231c and AN0521c

3a. The total Not To Exceed amounts stated in this modification, i.e., A00077 for Change Case Numbers AN-6-018-23 and AN-6-018-52, respectively do not necessarily represent the Government's estimate of the cost of the work to be performed. They are merely amounts administratively obligated so that work may proceed. The final negotiated settlement for each change case may be less than the Not To Exceed obligated amounts.

3b. Upon mutual agreement thereto, adjustments to the contract amount and contract duration; if applicable and adequately justified, will be addressed in separate, supplemental agreements.

3c. The following definitization schedules have been established for Change Case Numbers AN-6-018-23 and AN-6-018-52:

	CC 23	CC 52
Issue Request for Proposal	Completed	Completed
Receive Contractor's Proposal	15 Jul 98	20 Jul 98
Prepare Technical/Cost Analysis	17 Aug 98	30 Jul 98
Prepare POM	20 Aug 98	17 Aug 98
Conduct Negotiations	31 Aug 98	25 Aug 98
Prepare DMM	15 Sep 98	04 Sep 98

CHAPTER 7. CONTRACT ADMINISTRATION

SECTION 12. GUIDELINES FOR A MEMORANDUM OF FACTS

7.12.1 General. A Memorandum of Facts (MOF) is supporting data to the Standard Form 30 for undefinitized contract modifications. An MOF may be used in lieu of a standard Price Negotiation Memorandum format. An MOF should also be used for time extensions under the *Default Clause* when the delay in completing the work arises from unforeseeable causes beyond the control and without the fault or negligence of the contractor. Examples include acts of God or of the public enemy; acts of the Government in its sovereign or contractual capacity; acts by another contractor while performing a contract with the Government; fires; floods; epidemics; quarantine restrictions; strikes, freight embargoes; unusually severe weather; or delays of subcontractors or suppliers at any tier arising from unforeseeable causes beyond the control and without the fault or negligence of both the contractor and subcontractors and suppliers.

7.12.2 Claims. As an option, personnel may use the MOF in processing the settlement of claims. Although a price negotiation memorandum is preferred, at times it is not feasible.

7.12.3 Guidelines. When the MOF supports a contract price adjustment, the Resident Office will prepare it following these guidelines:

a. Necessity for the modification. In addition to a clear, concise description of the work to be performed or deleted, give the reason for the change. Examples of reasons or conditions which may result in a contract modification under the *Default Clause* may include, but are not limited to the following:

- (1) Design deficiencies, which if not corrected will result in unsafe conditions, inoperable facilities, etc.;
- (2) Incorrect or untimely receipt of Government-furnished items;
- (3) Additions or improvements requested by the Using Agency or others;
- (4) Revised criteria;
- (5) Field conditions;
- (6) Substitutions; and
- (7) Delays not the contractor's responsibility.

Include a reference to the letter or other document or event that began the change. If a modification became necessary as a result of a claim, it should so state.

b. Reason for omission from original plans and specifications. If there was no omission, say so, as in the case of a time extension for unusually severe weather. If something was left out, which is usually the case, tell why it was left out and include the appropriate cause code, e.g., A1; D/7; B/A; I/V. Some typical "reasons" are:

- (1) Design deficiency; investigation underway. (Cause Code A/I.)
- (2) Differing site condition. (Cause Code D/7.)
- (3) User or owner requested change. (Change Code B/A.)
- (4) Value engineering change. (Change Code V/8.)
- (5) Variations not readily identifiable during design. (Code I/V.)

c. Justification of price. When the MOF is supporting data for a claims settlement modification, or in place of the standard PNM format, state the following, where applicable, in the price justification:

- (1) Amount and date of contractor proposals, identifying if Cost or Pricing Data is required;
- (2) For changes requiring audits, identify audit number and date, addressing any questioned or unsupported costs and how resolved. If not resolved, or the contractor's data accepted, explain.
- (3) Original Government Estimate amount, if any revised amounts, and reasons therefor.
- (4) Details of negotiations in price. If you prepare a separate Resume of Negotiations, refer to that MFR for details.
- (5) Date of Certificate of Current Cost or Pricing Data.
- (6) Settlement price and date agreed.

d. Availability of Funds. Show the accounting or appropriation data.

e. Justification of Time. State amount of time requested by contractor; the amount and basis of time allowed by the Government Estimate; basis for time granted. If time is not requested or required, state the reason it is not required or included in the modification, e.g., change performed concurrently with other modifications, etc. Refer to the Resume of Negotiations and detailed discussions if the modification is for a claim settlement. If the modification is for time only, include details of negotiations and agreements, similar to the above guidelines for price justification.

f. State contract clause under which the modification is issued. Furnish sufficient details and documentation with the record file to permit a full understanding of the change.

7.12.4 UCM. See section 6 of this chapter for samples of an MOF for undefinitized contract modifications.

7.12.5 Narrative Format. An example of an MOF prepared in a narrative format is Exhibit 7-15***2**, in section 15 of this chapter.

CHAPTER 7. CONTRACT ADMINISTRATION

SECTION 13. PERFORMANCE AND PAYMENT BONDS AND CONSENT OF SURETY

7.13.1 General.

a. The Miller Act requires the contractor to furnish both performance and payment bonds for any construction contract exceeding \$100,000. As awarded, each Systems Contract requires the furnishing of performance and payment bonds in the amounts stated therein.

b. Definitions:

A *performance bond* secures performance and fulfillment of all contractual requirements by the contractor; whereas a *payment bond* assures he makes payments, as required by law to all persons who supply labor and/or materials during execution of the contract.

Consents of Surety advise the surety when changes to the contract are made. Additionally, their use ensures the surety's consent to extend the bond coverage accordingly. In other words, a *Consent of Surety* obtains the surety's acknowledgment that a bond given in connection with the original contract or subsequent modification continues in effect even after the change(s) are made.

7.13.2 Amount Required.

a. *Performance Bonds*. In most contracts, including each Systems Contract, the penal amount of each performance bond will equal 100 percent of the contract price at time of award, unless the Contracting Officer decides that a lesser amount would be adequate for the Government's protection. As awarded, the Contracting Officer chose to require performance bonds totaling 100 percent of the contract price.

When the contract value/price increases, the Government may require additional/increased bond protection. Generally, the amount of increased bond protection will equal 100 percent of the contract price increase and may be obtained by either directing the contractor to increase the penal amount of the existing bond(s) or to obtain an additional bond(s). See paragraph 7.13.3 for a discussion regarding Huntsville Center's policy for additional bond coverage requirements.

b. *Payment Bonds*. Payment bonds are necessary whenever performance bonds are required, i.e., and those contracts greater than \$100,000. Contractual penal amounts follow:

(1) 100% of the contract amount unless the contracting officer finds that such a bond is unavailable.

As is the case with Performance Bonds, the Government may secure additional bond protection when the contract price is increased. See paragraph 7.13.3 for a discussion regarding Huntsville Center's policy for additional bond coverage requirements.

7.13.3 Additional Bond Coverage .

a. *Policy.* Huntsville Center's policy on Phases II, III, and IV of the contract is to require additional bond protection for any modification increasing the basic contract price by \$100,000. Increased bond coverage will also be required when an out of scope supplemental agreement of \$100,000 or more is processed.

The requirement for additional bond protection may be accomplished by directing the contractor to either increase the penal sum of the existing bond or to obtain an additional bond. Finally, additional bond protection may be obtained from either the **Original Surety/Sureties** or it may be obtained from a **New Surety/Sureties**.

Regardless of how the contractor chooses to obtain the additional coverage; the aggregate of all modifications each less than \$100,000, must be reflected in the increased bond protection when the next modification greater than \$100,000 is processed. See the exhibits at the end of this section for copies of SF-25, SF-25-A, SF-1414, SF-1415, Checklist for Consent of Surety, Checklist for Performance and Payment Bonds, and a fully executed Consent package.

b. *Use of the SF-1415 and the SF-25-A.*

When additional bond coverage is required and is secured in whole or in part by the **Original Surety or Sureties**, the Contracting Officer shall use Standard Form (SF) 1415, Consent of Surety and Increase of Penalty.

When additional bond coverage is required and is secured in whole or in part by a **New Surety or Sureties**, the SF-25-A - Performance Bond shall be used.

c. *Use of the SF-1414.*

When the contract is modified, the Contracting Officer shall obtain a straight Consent of Surety from the contractor by using an SF-1414 if:

- (1) An additional bond is obtained from other than the original surety;
- (2) No additional bond is required and,
 - (I) The modification is for new work beyond the scope of the original contract or;
 - (ii) The modification does not change the contract scope but changes the contract price (upward or downward) by more than 25 % or \$50,000 or
- (3) A Novation Agreement is executed.

7.13.4 Procedures for Consent of Surety and Consent of Surety/Increase of Penalty.

a. For modifications between \$50,000 and \$100,000; the REO will prepare the SF-1414 – Consent of Surety together with all supporting documentation (see below) and forward to the contractor for execution. When a modification is forwarded to HNC for signature, CT-D/CD-CA will prepare the SF-1414 together with all supporting documentation and forward to the contractor.

b. For modifications greater than \$100,000, CD-CA/CT-D will prepare SF-1415 together with all necessary supporting documentation and forward to the contractor for execution.

c. *Documentation.* Whenever possible all documentation to include the corresponding modification(s), the SF-1414/SF-1415, and any instructions thereto will be forwarded to the contractor for concurrent execution. In those cases when it is not possible to forward all documentation to the contractor concurrently, every effort will be made to furnish him the necessary bond documentation within seven working days after execution of the modification.

d. The contractor or his authorized representative will execute the Consents of Surety (SF-1414 and/or SF-1415) concurrently with the modification(s) again, when possible and return to the Resident Office within the time periods stated in the instruction letter.

If the individual signing the Consent form does so in a representative capacity, e.g., attorney in fact, but is not a member of the firm, partnership, or joint venture, or an officer of the corporation involved; then an original Power of Attorney or Certificate of Corporate Principal must be submitted with the executed consent form. [See fine print on the SF-1415.]

e. An original Power of Attorney is also required for the surety representative(s) executing each consent.

f. The RE Office/CD-CA/CT-D will review the executed Consents according to the Checklist for Consent of Surety, Exhibit 7-13*5, paying particular attention to the dates and seals as noted on the checklist. The execution dates on the Consent must be the same or later than the effective date of the modification.

g. All supporting documentation accompanying the Bonds and Consents will become part of the original contract modification file and shall be maintained at the REO. As stated in Section 11, Chapter 7, a convenience file will be maintained by the Huntsville Center.

7.13.5 Liability Limit. Surety companies are limited by Treasury Department regulations in that the liability limit they can assume on any one risk. If the surety company reaches the liability limit, the contractor must arrange for a co-surety to assume the penalty increase. Also, the new surety may be required to furnish a performance bond, executed on a SF-25, to accompany the particular modification and consent form when the new surety begins participation as a Co-Surety. The penal sum for the second bond must cover the new insurer's share of liability in support of the modification attached to the first bond. For subsequent

modifications, the new surety company may increase the penal sum of its performance bond in the same manner as the other co-sureties by executing a Consent of Surety and Increase of Penalty. After a company has exhausted its underwriting capability, it must continue to execute consents on future modifications in a zero capacity (or none) so that it will not be released from its previous obligations. Increases in payment bonds will be accomplished in the same manner.

7.13.5 Exhibits .

Exhibit 7-13*1	SF-25. Performance Bond.
Exhibit 7-13*2	SF-25-A. Payment Bond.
Exhibit 7-13*3	SF-1414. Consent of Surety.
Exhibit 7-13*4	SF-1415. Consent of Surety and Increase of Penalty.
Exhibit 7-13*5	Checklist for Consent of Surety.
Exhibit 7-13*6	Checklist Performance and Payment Bonds.
Exhibit 7-13*7	Example of a Fully Executed Consent Package.

Bond No. 81443850

PERFORMANCE BOND (See instructions on reverse)		DATE BOND EXECUTED (Must be same or later than date of contract) March 5, 1996		FORM APPROVED GSA FPMR 5010-0045	
Public reporting burden for this collection of information is estimated to average 25 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comment regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the FAR Secretariat (VRS), Office of Federal Acquisition Policy, GSA, Washington, D.C. 20403 and to the Office of Management and Budget, Paperwork Reduction Project (9000-0045), Washington, D.C. 20503.					
PRINCIPAL (Legal name and business address) Westinghouse Electric Corporation 11 Stanwix Street Pittsburgh, PA 15222-1384			TYPE OF ORGANIZATION (Check one) <input type="checkbox"/> INDIVIDUAL <input type="checkbox"/> PARTNERSHIP <input type="checkbox"/> JOINT VENTURE <input checked="" type="checkbox"/> CORPORATION		
SURETY(IES) (Name(s) and business address(es)) Federal Insurance Company 15 Mountain View Road Warren, NJ 07059			STATE OF INCORPORATION Pennsylvania		
			PENAL SUM OF BOND		
MILLION(S)		THOUSAND(S)		HUNDRED(S)	
14		591		043	
				CENTS 00	
CONTRACT DATE			CONTRACT NO.		
02/29/96			DAAA09-96-C-001B		

OBLIGATION:

We, the Principal and Surety(ies), are firmly bound to the United States of America (hereinafter called the Government) in the above penal sum. For payment of the penal sum, we bind ourselves, our heirs, executors, administrators, and successors, jointly and severally. However, where the Sureties are corporations acting as co-sureties, we, the Sureties, bind ourselves in such sum "jointly and severally" as well as "severally" only for the purpose of allowing a joint action or actions against any or all of us. For all other purposes, each Surety binds itself, jointly and severally with the Principal, for the payment of the sum shown opposite the name of the Surety. If no limit of liability is indicated, the limit of liability is the full amount of the penal sum.

CONDITIONS:

The principal has entered into the contract identified above

HEREFORE

The above obligation is void if the Principal —

(a)(1) Performs and fulfills all the undertakings, covenants, terms, conditions, and agreements of the contract during the original term of the contract and any extensions thereof that are granted by the Government, with or without notice to the Surety(ies), and during the life of any guaranty required under the contract, and (2) performs and fulfills all the undertakings, covenants, terms, conditions, and agreements of any and all duly authorized modifications of the contract that hereafter are made. Notice of those modifications to the Surety(ies) are waived.

(b) Pays to the Government the full amount of the taxes imposed by the Government, if the said contract is subject to the Miller Act, (40 U.S.C. 270a-270e), which are collected, deducted, or withheld from wages paid by the Principal in carrying out the construction contract with respect to which this bond is furnished.

WITNESS

The Principal and Surety(ies) executed this performance bond and affixed their seals on the above date.

Westinghouse Electric Corporation		PRINCIPAL	
SIGNATURE(S)	<i>James S. Moore</i>	(Seal)	Corporate
NAME(S) & TITLE(S) (Typed)	James S. Moore President, GESCO	(Seal)	Seal
INDIVIDUAL SURETY(IES)			
SIGNATURE(S)		(Seal)	Seal
NAME(S) (Typed)			
CORPORATE SURETY(IES)			
NAME & ADDRESS	Federal Insurance Company 15 Mountain View Road, Warren, NJ 07059	STATE OF INC	LIABILITY LIMIT
		Indiana	\$
SIGNATURE(S)	<i>Christine A. Hartung</i>	(Seal)	Corporate
NAME(S) & TITLE(S) (Typed)	Christine A. Hartung Attorney-in-Fact	(Seal)	Seal
SN 7540 01 152-9090 REPLACES FORM SF-25		EXPIRATION DATE 12-31-92	25-107
		STANDARD FORM 25 Prescribed by GSA -- FAR (48 CFR) 53.201-7	

Exhibit 7-13*1. SF-25 – Performance Bond

**POWER OF ATTORNEY
 FEDERAL INSURANCE COMPANY
 ATTN: SURETY DEPARTMENT
 15 Mountain View Road, Warren, NJ 07059
 Telephone: (908) 903-2000
 Fax No.: (908) 903-3658**

Know all Men by these Presents, That FEDERAL INSURANCE COMPANY, an Indiana Corporation, has constituted and appointed, and does hereby constitute and appoint Leslie L. Rudat, Pamela L. Nunez and Christine A. Hartung of Pittsburgh, Pennsylvania _____

each its true and lawful Attorney-in-Fact to execute under such designation in its name and to affix its corporate seal to and deliver for and on its behalf as surety thereon or otherwise, bonds or obligations (other than Bail Bonds) given or executed in the course of its business, and any instruments amending or altering the same, and consents to the modification or alteration of any instruments referred to in said bonds or obligations.

In Witness Whereof, the said FEDERAL INSURANCE COMPANY has, pursuant to its By-Laws, caused these presents to be signed by its Vice President and Assistant Secretary and its corporate seal to be hereto affixed this 24th day of February 19 95

Corporate Seal


 Kenneth C. Wendel
 Assistant Secretary

FEDERAL INSURANCE COMPANY
 BY

 Gerardo G. Mauriz
 Vice President

STATE OF NEW JERSEY } ss.
 County of Somerset

On this 24th day of February 19 95, before me personally came Kenneth C. Wendel to me known and by me known to be Assistant Secretary of FEDERAL INSURANCE COMPANY, the corporation described in and which executed the foregoing Power of Attorney, and the said Kenneth C. Wendel being by me duly sworn, did depose and say that he is Assistant Secretary of FEDERAL INSURANCE COMPANY and knows the corporate seal thereof; that the seal affixed to the foregoing Power of Attorney is such corporate seal and was thereto affixed by authority of the By-Laws of said Company, and that he signed said Power of Attorney as Assistant Secretary of said Company by like authority; and that he is acquainted with Gerardo G. Mauriz and knows him to be the Vice President of said Company, and that the signature of said Gerardo G. Mauriz subscribed to said Power of Attorney is in the genuine handwriting of said Gerardo G. Mauriz and was thereto subscribed by authority of said By-Laws and in deponent's presence.

Notarial Seal



Acknowledged and Sworn to before me on the date above written.

_____ Notary Public

IN THE EVENT YOU WISH TO NOTIFY US OF A CLAIM, VERIFY THE AUTHENTICITY OF THIS BOND OR NOTIFY US OF ANY OTHER MATTER, PLEASE WRITE TO US AT THE ADDRESS LISTED ABOVE.

Form 15-10-0136 (Rev. 5-84) CONSENT

JANET A. SCAVONE
 Notary Public, State of New Jersey
 No. 2006520
 Commission Expires January 6, 2001

Bond No. B1443850

PAYMENT BOND (See instructions on reverse)		DATE BOND EXECUTED (Must be same or later than date of contract) March 5, 1996	FORM APPROVED OMB NO. 1000-0045
Public reporting burden for this collection of information is estimated to average 25 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to the FAR Support Unit (RSU), Office of Federal Acquisition Policy, GSA, Washington, D.C. 20405, and to the Office of Management and Budget, Paperwork Reduction Project (1000-0045), Washington, D.C. 20503.			
PRINCIPAL (Legal name and business address) Westinghouse Electric Corporation 11 Stanwix Street Pittsburgh, PA 15222-1384		TYPE OF ORGANIZATION (X one) <input type="checkbox"/> INDIVIDUAL <input type="checkbox"/> PARTNERSHIP <input type="checkbox"/> JOINT VENTURE <input checked="" type="checkbox"/> CORPORATION	
SURETY(IES) (Name(s) and business address(es)) Federal Insurance Company 15 Mountain View Road Warren, NJ 07059		STATE OF INCORPORATION Pennsylvania	
		PENAL SUM OF BOND	
		MILLION(S): 3	THOUSAND(S): 500
		HUNDRED(S): 00	CENTS: 00
		CONTRACT DATE 02/29/96	CONTRACT NO. DAAA09-96-C-0018

OBLIGATION.

We, the Principal and Surety(ies), are firmly bound to the United States of America (hereinafter called the Government) in the above penal sum. For payment of the penal sum, we bind ourselves, our heirs, executors, administrators, and successors, jointly and severally. However, where the Sureties are corporations acting as co-sureties, we, the Sureties, bind ourselves in such sum "jointly and severally" as well as "severally" only for the purpose of allowing a joint action or actions against any or all of us. For all other purposes, each Surety binds itself, jointly and severally with the Principal, for the payment of the sum shown, opposite the name of the Surety. If no limit of liability is indicated, the limit of liability is the full amount of the penal sum.

CONDITIONS

The above obligation is void if the Principal promptly makes payment to all persons having a direct relationship with the Principal or a subcontractor of the Principal for furnishing labor, material or both in the prosecution of the work provided for in the contract identified above, and any authorized modifications of the contract that subsequently are made. Notice of those modifications to the Surety(ies) are waived.

WITNESS:

The principal and Surety(ies), executed this payment bond and affixed their seals on the above date.

Westinghouse Electric Corporation		PRINCIPAL	
SIGNATURE(S) <i>James S. Moore</i>	(Seal)	(Seal)	(Seal)
NAME(S) & TITLE(S) (Typed) James S. Moore President, GESCO	2.	3.	Corporate Seal
INDIVIDUAL SURETY(IES)			
SIGNATURE(S)	(Seal)	(Seal)	(Seal)
NAME(S) (Typed)	2.	3.	
CORPORATE SURETY(IES)			
NAME & ADDRESS Federal Insurance Company 15 Mountain View Road, Warren, NJ 07059	STATE OF INC. Indiana	LIABILITY LIMIT \$	Corporate
SIGNATURE(S) <i>Christine A. Hartung</i>	(Seal)	(Seal)	(Seal)
NAME(S) & TITLE(S) (Typed) Christine A. Hartung Attorney-in-Fact	2.	3.	Corporate Seal
UN 7540-01-000-0001 REVISED 08/11/97	EXPIRATION DATE 12/31/97	15-005	STANDARD FORM 25-A Procurement Contract Form 10/1/97

Exhibit 7-13*2. SF-25-A, Payment Bond

**POWER OF ATTORNEY
 FEDERAL INSURANCE COMPANY
 ATTN: SURETY DEPARTMENT
 15 Mountain View Road, Warren, NJ 07059
 Telephone: (908) 903-2000
 Fax No.: (908) 903-3658**

Know all Men by these Presents, That **FEDERAL INSURANCE COMPANY**, an Indiana Corporation, has constituted and appointed, and does hereby constitute and appoint **Leslie L. Rudat, Pamela L. Nunez and Christine A. Hartung of Pittsburgh, Pennsylvania** _____

each its true and lawful Attorney-in-Fact to execute under such designation in its name and to affix its corporate seal to and deliver for and on its behalf as surety thereon or otherwise, bonds or obligations (other than Bail Bonds) given or executed in the course of its business, and any instruments amending or altering the same, and consents to the modification or alteration of any instruments referred to in said bonds or obligations.

In Witness Whereof, the said **FEDERAL INSURANCE COMPANY** has, pursuant to its By-Laws, caused these presents to be signed by its Vice President and Assistant Secretary and its corporate seal to be hereto affixed this 24th day of February 19 95



 Kenneth C. Wendel
 Assistant Secretary

FEDERAL INSURANCE COMPANY
 BY

 Gerardo G. Mauriz
 Vice President

STATE OF NEW JERSEY } ss.
 County of Somerset

On this 24th day of February 19 95, before me personally came Kenneth C. Wendel to me known and by me known to be Assistant Secretary of **FEDERAL INSURANCE COMPANY**, the corporation described in and which executed the foregoing Power of Attorney, and the said Kenneth C. Wendel being by me duly sworn, did depose and say that he is Assistant Secretary of **FEDERAL INSURANCE COMPANY** and knows the corporate seal thereof; that the seal affixed to the foregoing Power of Attorney is such corporate seal and was thereto affixed by authority of the By-Laws of said Company, and that he signed said Power of Attorney as Assistant Secretary of said Company by like authority; and that he is acquainted with Gerardo G. Mauriz and knows him to be the Vice President of said Company, and that the signature of said Gerardo G. Mauriz subscribed to said Power of Attorney is in the genuine handwriting of said Gerardo G. Mauriz and was thereto subscribed by authority of said By-Laws and in deponent's presence.

Notarial Seal


Acknowledged and Sworn to before me
 on the date above written.

 Notary Public

IN THE EVENT YOU WISH TO NOTIFY US OF A CLAIM, VERIFY THE AUTHENTICITY OF THIS BOND OR NOTIFY US OF ANY OTHER MATTER, PLEASE WRITE TO US AT THE ADDRESS LISTED ABOVE.

Form 15-10-0126 (Rev. 5-84) CONSENT

JANET A. SCAVONE
 Notary Public, State of New Jersey
 No. 2066520
 Commission Expires January 6, 2000

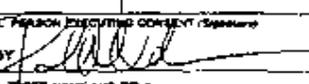
CONSENT OF SURETY		1. CONTRACT NUMBER DACAD1-95-C-0081	2. MODIFICATION NUMBER P00029	3. DATED April 2, 1997
The Surety (Co-Sureties) consents (consent) to the foregoing contract modification and agrees (agree) that its (their) terms or bonds shall apply and extend to the contract as modified or amended.				
4. INDIVIDUAL PRINCIPAL	A. BUSINESS ADDRESS		B. SIGNATURE	(After Seal)
			C. TYPED NAME AND TITLE	
			D. DATE THIS CONSENT EXECUTED	
1. CORPORATE PRINCIPAL	A. CORPORATE NAME AND BUSINESS ADDRESS		B. PERSON EXECUTING CONSENT (Signature)	(After Seal)
	Head, Inc. 6200 Hurdley Road Columbus, Ohio 43229		BY 	
			C. TYPED NAME AND TITLE PAUL A. ONDERA, VICE PRES.	
			D. DATE THIS CONSENT EXECUTED 4/2/97	
3. CORPORATE/INDIVIDUAL SURETY (CO-SURETIES)				
The Principal or authorized representative shall execute this Consent of Surety with the modification to which it pertains. If the representative (e.g., attorney-in-fact) that signs the consent is not a member of the partnership, or joining venture, or an officer of the corporation involved, a Power-of-Attorney or a Certificate of Corporate Principal must accompany the consent.				
A	A. CORPORATE/INDIVIDUAL SURETY'S NAME AND ADDRESS		B. PERSON EXECUTING CONSENT (Signature)	(After Seal)
	Firemen's Insurance Company of Newark New Jersey 180 Maiden Lane New York, New York 10038		BY 	
			C. TYPED NAME AND TITLE Laura Hall, Attorney-in-Fact	
			D. DATE THIS CONSENT EXECUTED April 2, 1997	
B	A. CORPORATE/INDIVIDUAL SURETY'S NAME AND ADDRESS		B. PERSON EXECUTING CONSENT (Signature)	(After Seal)
			BY	
			C. TYPED NAME AND TITLE	
			D. DATE THIS CONSENT EXECUTED	
C	A. CORPORATE/INDIVIDUAL SURETY'S NAME AND ADDRESS		B. PERSON EXECUTING CONSENT (Signature)	(After Seal)
			BY	
			C. TYPED NAME AND TITLE	
			D. DATE THIS CONSENT EXECUTED	
D	A. CORPORATE/INDIVIDUAL SURETY'S NAME AND ADDRESS		B. PERSON EXECUTING CONSENT (Signature)	(After Seal)
			BY	
			C. TYPED NAME AND TITLE	
			D. DATE THIS CONSENT EXECUTED	
<small>(Add similar signature blocks at the back of this form if necessary for additional co-sureties)</small>				
Authorized by Laser Reproduction (Previous edition not usable)			STANDARD FORM 1414 (Rev. 10-93) Prescribed by GSA, FPMR (48 CFR) 33.226(c)	

Exhibit 7-13*3. SF-1414-Consent of Surety

CONSENT OF SURETY AND INCREASE OF PENALTY		1. CONTRACT NO.	2. MODIFICATION NO.	3. DATED
		WSN96-02210-BNI-001	A00486	January 23, 1998
<p>4. The surety (or sureties) consents (consent) to the foregoing contract modification and agrees (agree) that its (their) bond or bonds shall apply and extend to the contract as modified or amended. The principal and surety (or sureties) further agree that on or after the execution of this consent, the penalty of the performance bond or bonds is increased by <u>TWO MILLION</u> dollars (\$ <u>2,000,000.00</u>) and the penalty of the payment bond or bonds is increased by <u>0</u> dollars (\$ <u>0</u>). However, the increase of the liability of each co-surety resulting from this consent shall not exceed the sum shown below:</p> <p>**ONE HUNDRED FORTY NINE THOUSAND NINE HUNDRED SIX AND NO/100ths</p>				
5. NAME OF SURETY(IES)		6. INCREASE IN LIABILITY LIMIT UNDER PERFORMANCE BOND	7. INCREASE IN LIABILITY LIMIT UNDER PAYMENT BOND	
a. American Home Assurance Company		939,508.92	0	
b. National Union Fire Insurance Company of Pittsburgh, Pa.		1,210,397.08	0	
6. INDIVIDUAL PERSONAL				
a. BUSINESS ADDRESS		b. DATE THIS CONSENT EXECUTED		(Seal)
		January 23, 1998		
		c. SIGNATURE		
		d. TYPED NAME		
7. CORPORATE PERSONAL				
a. CORPORATE NAME AND BUSINESS ADDRESS		b. DATE THIS CONSENT EXECUTED		(Affix Corporate Seal)
Bechtel National Inc. 50 Beale Street P.O. Box 193965 San Francisco, CA 94119		January 23, 1998		
		c. PERSON EXECUTING CONSENT (Signature)		
		BY <u>S.P. Ogden</u> d. TYPED NAME AND TITLE OF ABOVE PERSON Sandra P. Ogden Vice President		
<p>The Principal or authorized representative shall execute this Consent of Surety and Increase of Penalty with the modification to which it pertains. If the representative (e.g., attorney-in-fact) that signs the consent is not a member of the firm, partnership, or joint venture, or an officer of the corporation involved, a Power of Attorney or a Certificate of Corporate Principles must accompany the consent.</p>				
10. CORPORATE SURETY(IES)				
a. CORPORATE SURETY'S NAME AND ADDRESS		b. PERSON EXECUTING CONSENT (Signature)		(Affix Corporate Seal)
A. American Home Assurance Company 2 Rincon Center 121 Spear Street San Francisco, CA 94105		BY <u>William F. Ward</u>		
		c. TYPED NAME AND TITLE OF ABOVE PERSON William F. Ward Attorney-in-Fact		
a. CORPORATE SURETY'S NAME AND ADDRESS		b. PERSON EXECUTING CONSENT (Signature)		(Affix Corporate Seal)
B. National Union Fire Insurance Company of Pittsburgh, Pa. 2 Rincon Center 121 Spear Street San Francisco, CA 94105		BY <u>William F. Ward</u>		
		c. TYPED NAME AND TITLE OF ABOVE PERSON William F. Ward Attorney-in-Fact		
a. CORPORATE SURETY'S NAME AND ADDRESS		b. PERSON EXECUTING CONSENT (Signature)		(Affix Corporate Seal)
C.		BY		
		c. TYPED NAME AND TITLE OF ABOVE PERSON		
<p>(Add similar signature blocks on the back of this form if necessary for additional co-sureties.)</p>				
AUTHORIZED FOR LOCAL REPRODUCTION			STANDARD FORM 1425 (REV. 11-87) Printed by GSA - FPMR (41 CFR) 101-11.6	

Exhibit 7-13*4. SF-1414-Consent of Surety and Increase of Penalty

CHECKLIST FOR CONSENTS OF SURETY

- YES
1. Is the consent executed on the correct form? SF1414 - (OCT 1993 REV.)? SF1415 (JUL 93 REV.)? ()
 2. Is the contract number listed in Block 1? ()
 3. Is the modification/delivery order number listed in Block 2? ()
 4. Is the modification/delivery order date listed in Block 3? ()
 5. Has the increase/decrease in penalty of performance/payment bonds been correctly inserted in Item 4? ()
 6. If penal sums have been decreased, has the work increased in Items 4,6, and 7 been changed to decreased? ()
 7. Does item 5 contain all co-sureties, and is the amount each assuming against the increase/decrease in bond penalty set out in Items 6 and 7 and does the total equal the amount in Item 4? ()
 8. If other modification/delivery orders are included in the consent; is recapitulation furnished? ()
 9. Is the principal's name and address typed in Block 9a? ()
 10. Did the principal execute the consent and is his/her name and title typed beneath the signature? ()
 11. Is the execution date in Item 9.d. the same or later than the modification/delivery order date? ()
 12. Is the corporate seal affixed on behalf of the principal and does it read the same as the name listed in item 9a? ()
 13. Is the name and address of the surety company listed in Item 10A? ()
 14. Is the name of the surety company exactly the same as it appears on the latest Treasury Department Circular ()
 15. Is the consent executed on behalf of the surety and is his/her name and title typed or printed beneath signature? ()
 16. Did the surety company date the consent in Block 10d? ()
 17. Has the corporate seal been affixed on behalf of the surety and does it read the same as the typed named in Item 10A? ()
 18. Is the original power of attorney for the surety company attached to the consent? ()
 19. If the consent was executed by a foreign surety company, is the commensurate statement included with the consent? ()
 20. Is the Attorney-in-Fact's name on the consent of surety the same as the name of the power of attorney? ()
 21. Is there a block on the power of attorney for the penal sum? If so, does it include increase in penal sum of both bonds? (The block can contain one total for both bonds or each penal sum can be listed separately) ()
 22. Does the power of attorney require an SBA Guarantee Agreement? If it does, it must be furnished with the power..... ()
 23. Has the corporate seal been affixed on the power of attorney at the signature of the certifying officer? ()
 24. Is the certification date on the power of attorney the same as or later than the date in Block 10d? ()
 25. HAVE ALL CHANGES OR CORRECTIONS ON THE CONSENT BEEN INITIALED BY THE PRINCIPAL AND THE SURETY? ()
 26. Are all the following documents being forwarded to the Bonds Team? ()
 - a. Copy of the modification or delivery order? Original signed or consents? ()
 - b. Certificate of authority for principal when executed in a representative capacity? ()
 - c. **A RETURN SELF ADDRESSED ENVELOPE?** ()
 - d. Copy of this completed form with all questions entered Y and names and telephone numbers listed below? ()

Reviewer's Name and Phone Number

Contract Specialist's Name and Phone Number

Exhibit 7-13*5. Checklist for Consent of Surety.

CHECKLIST FOR PERFORMANCE AND PAYMENT BONDS

1. Is the performance bond executed on the correct form (MAY 1996 REV.)? Payment Bond (JAN 1990 REV.)?.....()
2. Is the execution date the same as or later than the contract/award date?()
3. Is the principal's name on the bonds and contract exactly the same?()
4. If the principal is a partnership or joint venture, are all names listed in the upper corner of the principal's block?... ()
5. Is the type of organization correctly checked on behalf of the principal?()
6. Is the state of incorporation listed on behalf of the principal?()
7. Is the surety's name exactly as listed on the Treasury Department Circular and is it's business address listed?()
8. Does the penal sum on each bond comply with FAR 28.102-2()
9. Is the penal sum of the performance bond within the surety's underwriting limitation from latest TD Circular.....()
10. Is the contract date on the bonds the same as the award date in block 31C on SF1442?()
11. Is the contract number on the bonds the same as the number in block 4 on SF1442?()
12. Did the principal execute the bonds? Is the typed or printed name and title beneath the signature?()
13. Is the corporate seal affixed to the bonds on behalf of the principal and does it read the same as the name(s) in the principal's block in the upper left hand corner of the bond form? If not, citation from state law which states that a seal is not required to bind the corporation must be furnished.()
14. Is the name and address of the surety company listed?()
15. Did the surety execute the bonds? Is the name and title typed or printed beneath the signature?()
16. Is the corporate seal affixed to the bonds on behalf of the surety?()
17. If co-sureties are executing, did each surety set out exact dollar amount assumed against penal sum of bond in block marked Liability Limit opposite its name, and do these figures total the penal sum of the bond?.....()
18. If the bonds were executed by a foreign surety company, is the commensurate statement included with the bonds?.....()
19. Is the original power of attorney for the surety company attached to the bonds?.....()
20. Is there a block on the power of attorney for the penal sum of the bond? If so, does it include penal sum of each bond? (It can be one total for both bonds or each penal sum listed separately).()
21. Does the power of attorney require an SBA Guarantee Agreement? If so, it must be included with the power.....()
22. Is the Attorney-in-Fact's name on the bonds the same as on the power of attorney?()
23. Is the certification date on the power of attorney the same as or later than the bond execution date?.....()
24. Has the corporate seal been affixed on the power of attorney at the signature of the certifying officer?()
25. Are Reinsurance Agreements on the correct form (AUG 1990 REV.)?()
26. If an irrevocable letter of credit is furnished, it must comply w/FAR 28.204-3 and the determination from local legal must be furnished.()
27. **For Individual Sureties Only:** Is the individual surety's name and business address listed?()
 - a) Do bonds comply with FAR 28.203 - only authorized assets used and escrow accounts set up and attached? ... ()
 - b) If real estate is used, are all of the required forms executed properly and do they comply with FAR28.203.3?.....()
 - c) Did the individual surety execute the bond and is the name typed beneath the signature?.....()

Exhibit 7-13*6. Checklist for Performance and Payment Bonds

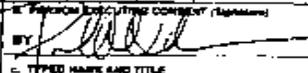
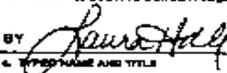
- 28. *Have all changes and corrections on the bonds been initialed by the principal and the surety?* ()
- 29. Are all of the following documents being forwarded to the U.S. Army Bonds Team?
 - a) original signed bonds? ()
 - b) certificate of authority for principal when executed in a representative capacity? ()
 - c) reproduced completed copy of the contract/award page SF1442 front and back ()
 - d) copy of contract pages which contain the following:
 - the bond requirement ()
 - the typ of contract (e.g., requirements, indefinite quantity) ()
 - e) **A Return Self Addressed Envelope?** ()
 - f) a copy of this completed form with all questions entered **Y**, the names and telephone numbers listed below? ... ()
- 30. If you cannot answer Yes, you must take the necessary steps to have the problem(s) corrected before submitting to the Bonds Team.

 Reviewer's Name and Phone No.
 JALS FORM 892 (REV. 1/97)

 Contract Specialist's Name and Phone No.

Exhibit 7-13*6. Checklist for Performance and Payment Bonds.**(Continued)**

JOEL

CONSENT OF SURETY		1. CONTRACT NUMBER DACA01-95-C-0081	2. MODIFICATION NUMBER PBB025	3. DATED April 2, 1997
The Surety (Co-Sureties) consents (consent) to the foregoing contract modification and agrees (agree) that its (their) bond or bonds shall apply; and extends to the contract as modified or amended.				
4. INDIVIDUAL PRINCIPAL	a. INDIVIDUAL ADDRESS	b. SIGNATURE		
		c. TYPED NAME AND TITLE		
		d. DATE THIS CONSENT EXECUTED		
5. CORPORATE PRINCIPAL	a. CORPORATE NAME AND BUSINESS ADDRESS Head, Inc. 8200 Munday Road Columbus, Ohio 43229	b. PERSON EXECUTING CONSENT (Signature) BY 		
		c. TYPED NAME AND TITLE PAUL A. ONDERA, VICE PRES.		
		d. DATE THIS CONSENT EXECUTED 4/2/97		
6. CORPORATE/INDIVIDUAL SURETY (CO-SURETIES)				
The Principal or authorized representative shall execute this Consent of Surety with the modification to which it pertains. If the representative (e.g., attorney-in-fact) that signs the consent is not a member of the partnership, or joining venture, or an officer of the corporation involved, a Power-of-Attorney or a Certificate of Corporate Principal must accompany the consent.				
A	a. CORPORATE/INDIVIDUAL SURETY'S NAME AND ADDRESS Firemen's Insurance Company of Newark New Jersey 180 Maiden Lane New York, New York 10038	b. PERSON EXECUTING CONSENT (Signature) BY 		
		c. TYPED NAME AND TITLE Laura Hall, Attorney-in-Fact		
		d. DATE THIS CONSENT EXECUTED April 2, 1997		
B	a. CORPORATE/INDIVIDUAL SURETY'S NAME AND ADDRESS	b. PERSON EXECUTING CONSENT (Signature)		
		BY		
		c. TYPED NAME AND TITLE		
		d. DATE THIS CONSENT EXECUTED		
C	a. CORPORATE/INDIVIDUAL SURETY'S NAME AND ADDRESS	b. PERSON EXECUTING CONSENT (Signature)		
		BY		
		c. TYPED NAME AND TITLE		
		d. DATE THIS CONSENT EXECUTED		
D	a. CORPORATE/INDIVIDUAL SURETY'S NAME AND ADDRESS	b. PERSON EXECUTING CONSENT (Signature)		
		BY		
		c. TYPED NAME AND TITLE		
		d. DATE THIS CONSENT EXECUTED		

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#1 SAMPLE - WHEN NO INCREASE NEEDED
< MOD LESS THAN \$100,000 >
SF 1414 (1)

Exhibit 7-13*7. Example of a Fully Executed Consent Package

Firemen's Insurance Company of Newark, New Jersey

GENERAL POWER OF ATTORNEY

Know all men by these Presents, That the FIREMEN'S INSURANCE COMPANY OF NEWARK, NEW JERSEY has made, constituted and appointed, and by these presents does make, constitute and appoint

Laura Bell of Columbus, Ohio

its true and lawful attorney, for it and in its name, place, and stead to execute on behalf of the said Company, its surety, bonds, undertakings and contracts of suretyship to be given to

All Obligees

provided that no bond or undertaking or contract of suretyship executed under this authority shall exceed in amount the sum of
Fifteen Million (\$15,000,000) Dollars

This Power of Attorney is granted and is signed and sealed by facsimile under and by the authority of the following Resolution adopted by the Board of Directors of the FIREMEN'S INSURANCE COMPANY OF NEWARK, NEW JERSEY as a meeting duly called and held on the 13th day of January, 1989:

"RESOLVED, that the Chairman of the Board, the Vice Chairman of the Board, the President, an Executive Vice President or a Senior Vice President or a Vice President of the Company, be, and that each of any of them heretofore is, authorized in special Power of Attorney qualifying the attorney named in the given Power of Attorney to execute in behalf of the FIREMEN'S INSURANCE COMPANY OF NEWARK, NEW JERSEY, bonds, undertakings and all contracts of suretyship; and that an Assistant Vice President, a Secretary or an Assistant Secretary be, and that each of any of them heretofore is, authorized to attest the execution of any such Power of Attorney, and to attach thereto the seal of the Company.

"FURTHER RESOLVED, that the signatures of such officers and the seal of the Company may be affixed to any such Power of Attorney or to any certificate attesting thereto by facsimile, and any such Power of Attorney or certificate bearing such facsimile signatures or facsimile seal shall be valid and binding upon the Company when so affixed and in the future with respect to any bond, undertaking or contract of suretyship to which it is attached.

In Witness Whereof, the FIREMEN'S INSURANCE COMPANY OF NEWARK, NEW JERSEY has caused its official seal to be hereunto affixed, and these presents to be signed by one of its Vice Presidents and attested by one of its Assistant Secretaries this 15 day of July, 1998.

Attest:

FIREMEN'S INSURANCE COMPANY OF NEWARK, NEW JERSEY

J. N. Turner
J. N. Turner, Vice President



By *Matthew Klimczak*
Matthew Klimczak, Vice President

STATE OF CONNECTICUT }
COUNTY OF HARTFORD }

On this 15 day of July, 1998, before me personally came MATTHEW KLIMCZAK, to me known, who being by me duly sworn, did depose and say that he is a Vice President of the FIREMEN'S INSURANCE COMPANY OF NEWARK, NEW JERSEY, the corporation described in and which executed the above instrument; that he knows the seal of the said corporation; that the seal affixed to the said instrument is such corporate seal; that it was so affixed by order of the Board of Directors of said corporation; and that he signed his name thereto by his order.



CERTIFICATE

Gloria D. Seethi
GLORIA D. SEETHI
NOTARY PUBLIC
My Commission Expires: January 31, 1998

I, the undersigned, an Assistant Secretary of the FIREMEN'S INSURANCE COMPANY OF NEWARK, NEW JERSEY, a New Jersey corporation, DO HEREBY CERTIFY that the foregoing and attached Power of Attorney remains in full force and has not been revoked; and furthermore that the Resolution of the Board of Directors, set forth in the said Power of Attorney, is now in force.

Signed and sealed at the town of Farmington, the State of Connecticut. Dated the 2nd day of April, 1997.



W. W. Corning
W. W. Corning, Assistant Secretary

Printed in U.S.A.

SURETY 501 (1-1-92)

NOTE THE DATE!
THIS IS NEEDED WITH #4-SAMPLE

(2)

CONSENT OF SURETY AND INCREASE OF PENALTY	1. CONTRACT NO.	2. MODIFICATION NO.	3. DATED
	DACAD1-85-D-0128	P00033	AUGUST 26, 1997

4. The surety (or-sureties) heretofore consented to the foregoing contract modification and agrees (agree) that its (their) bond as heretofore shall apply and remain in the amount as provided as amended. The principal and surety (or-sureties) further agree that on or after the execution of this consent, the penalty of the performance bond as heretofore is increased by \$398,094.00 dollars (i.e. 398,094.00) and the penalty of the payment bond as heretofore is increased by 00.00 dollars 00.00. However, the increase of the liability of each co-surety resulting from this consent shall not exceed the sums shown below.

5. NAME OF SURETY(IES)	6. INCREASE IN LIABILITY LIMIT UNDER PERFORMANCE BOND	7. INCREASE IN LIABILITY LIMIT UNDER PAYMENT BOND
a. Seaboard Surety Company	\$ 3189,094.65	0.00
b. National Union Fire Company	\$129,380.55	0.00
c. Federal Insurance Company	\$79,618.80	0.00

2. INDIVIDUAL PRINCIPAL	4. BUSINESS ADDRESS	a. SIGNATURE	LAW: Best
		c. TYPED NAME AND TITLE	
3. CORPORATE PRINCIPAL	5. CORPORATE NAME AND BUSINESS ADDRESS Centex Rooney Construction Co., Inc. 6300 NW 5th Way Ft Lauderdale, FL 33309	b. PERSON EXECUTING CONSENT (Signature)	LAW: Shell
		c. TYPED NAME AND TITLE Gary W. Glenewinkel Executive Vice President/COO	
		d. DATE THIS CONSENT EXECUTED 9/3/97	

* The Principal or authorized representative shall execute the Consent of Surety and Increase in Penalty with the modification to which it pertains. If the representative (e.g., attorney-in-fact) that signs the consent is not a member of the partnership, or joint venture, or an officer of the corporation involved, a Power-of-Attorney or Certificate of Corporate Principal must accompany the consent.

10. CORPORATE/INDIVIDUAL SURETY (CO-SURETIES)

A	6. CORPORATE/INDIVIDUAL SURETY'S NAME AND ADDRESS Seaboard Surety Company Bedminster, NY	b. PERSON EXECUTING CONSENT (Signature)	LAW: Shell
		c. TYPED NAME AND TITLE PAT VAN HOOK ATTORNEY-IN-FACT	
		d. DATE THIS CONSENT EXECUTED SEPTEMBER 4, 1997	
B	7. CORPORATE/INDIVIDUAL SURETY'S NAME AND ADDRESS National Union Fire Company of Pittsburgh PA New York, NY	b. PERSON EXECUTING CONSENT (Signature)	LAW: Shell
		c. TYPED NAME AND TITLE PAT VAN HOOK ATTORNEY-IN-FACT	
		d. DATE THIS CONSENT EXECUTED SEPTEMBER 4, 1997	
C	8. CORPORATE/INDIVIDUAL SURETY'S NAME AND ADDRESS Federal Insurance Company Warren, NJ	b. PERSON EXECUTING CONSENT (Signature)	
		c. TYPED NAME AND TITLE PAT VAN HOOK ATTORNEY-IN-FACT	
		d. DATE THIS CONSENT EXECUTED SEPTEMBER 4, 1997	

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FRONT PAGE OF SAMPLE #2 (3)

Exhibit 7-13*7. Example of a Fully Executed Consent Package (Cont'd).

Mod No.	Increase or		Increase in Liability Limit Under		Effective Date		
	Decrease		Performance Bond	Payment Bond			
PC0026	\$	11,299.00	\$	11,299.00	\$	0.00	26 Mar 97
PC0027		9,407.00		9,407.00		0.00	26 Mar 97
PC0028		(193.00)		(193.00)		0.00	16 Apr 97
*PC0029							
PC0030		14,363.00		14,363.00		0.00	16 Apr 97
PC0031		21,756.00		21,756.00		0.00	16 Apr 97
PC0032		14,805.00		14,805.00		0.00	14 May 97
PC0033		<u>326,657.00</u>		<u>326,657.00</u>		0.00	26 Aug 97
		\$398,094.00		\$398,094.00			

*Modification not finalized yet.

↑ No increase needed because contract is >\$5,000,000

- ON BACK OF 1415, SHOW ALL MODS BETWEEN THE LAST ESTABLISHMENT OF PENALTY AMOUNTS.
- SEE THE CONSTRUCTION CONTRACT ADMINISTRATION GUIDE CHAPTER 1, PAGES 1-43 & 1-44 FOR GUIDANCE ON AMOUNTS REQUIRED FOR PERFORMANCE & PAYMENT BONDS.
- ADDITIONAL Performance Bond Penalty required by 1415^{SF} for mods ≥ \$100,000 increase in contract price. SEE PAGE 1-44 FOR THE GUIDE ON AMOUNTS.
- IN THIS EXAMPLE, MODS PC0026 THROUGH PC0032, EACH were less than \$100,000. NO 1415 REQUIRED UNTIL MOD PC0033, WHICH EXCEEDED \$100,000. THEN, WE LIST EACH MOD IN BETWEEN THE LAST SF1415 OR ORIGINAL CONTRACT AMOUNT, AS APPROPRIATE.

Back Page of Sample #2 (A)

Exhibit 7-13*7. Example of a Fully Executed Consent Package.

American Home Assurance Company
National Union Fire Insurance Company of Pittsburgh, Pa.
Principal Bond Office: 70 Pine Street, New York, N.Y. 10270

POWER OF ATTORNEY

No. 09-B-10675

KNOW ALL MEN BY THESE PRESENTS:

That American Home Assurance Company, a New York corporation, and National Union Fire Insurance Company of Pittsburgh, Pa., a Pennsylvania corporation, does each hereby appoint
—Lawrence W. Waldie, Henry W. Burch, III, Pat Van Hook, Theresa Misner, Lisa M. Bertolasio, Alyson Dean: of Dallas, Texas—
its true and lawful Attorney(s)-in-Fact, with full authority to execute on its behalf bonds, undertakings, recognizances and other contracts of indemnity and writings obligatory in the nature thereof, issued in the course of its business, and to bind the respective company thereby

IN WITNESS WHEREOF, American Home Assurance Company and National Union Fire Insurance Company of Pittsburgh, Pa. have each executed these presents



this 4th day of June, 1996

Kristian P. Moor

Kristian P. Moor, President
National Union Fire Insurance Company of Pittsburgh, PA.
Executive Vice President
American Home Assurance Company

STATE OF NEW YORK }
COUNTY OF NEW YORK } ss.

On this 4th day of June, 1996, before me came the above named officer of American Home Assurance Company and National Union Fire Insurance Company of Pittsburgh, Pa., to me personally known to be the individual and officer described herein, and acknowledged that he executed the foregoing instrument and affixed the seals of said corporations thereto by authority of his office.

Carol Ragab

CAROL RAGAB
Notary Public, State of New York
No. 01945052011
Qualified in Kings County
Commission Expires Nov. 13, 1997

CERTIFICATE

Excerpts of Resolutions adopted by the Boards of Directors of American Home Assurance Company and National Union Fire Insurance Company of Pittsburgh, Pa. on May 18, 1976

"RESOLVED, that the Chairman of the Board, the President, or any Vice President be, and hereby is, authorized to appoint Attorneys-in-Fact to represent and act for and on behalf of the Company to execute bonds, undertakings, recognizances and other contracts of indemnity and writings obligatory in the nature thereof, and to attach thereto the corporate seal of the Company, in the transaction of its surety business;

"RESOLVED, that the signatures and attestations of such officers and the seal of the Company may be affixed to any such Power of Attorney or to any certificate relating thereto by facsimile, and any such Power of Attorney or certificate bearing such facsimile signatures or facsimile seal shall be valid and binding upon the Company when so affixed with respect to any bond, undertaking, recognizance or other contract of indemnity or writing obligatory in the nature thereof.

"RESOLVED, that any such Attorney-in-Fact delivering a secretarial certification that the foregoing resolutions still be in effect may insert in such certification the date thereof, said date to be not later than the date of delivery thereof by such Attorney-in-Fact."

I, Elizabeth M. Tuck, Secretary of American Home Assurance Company and of National Union Fire Insurance Company of Pittsburgh, Pa. do hereby certify that the foregoing excerpts of Resolutions adopted by the Boards of Directors of these corporations, and the Powers of Attorney issued pursuant thereto, are true and correct, and that both the Resolutions and the Powers of Attorney are in full force and effect.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the facsimile seal of each corporation



NOTE THE DATE! Same as page 1 of 1415.

this 4TH day of SEPTEMBER, 1997

Elizabeth M. Tuck
Elizabeth M. Tuck, Secretary

1st Surety

Power of Attorney with sample # 2(5)

Exhibit 7-13*7 Example of a Fully Executed Consent Package (Cont'd.)

2U-9770

SEABOARD SURETY COMPANY
 ADMINISTRATIVE OFFICES, BEDMINSTER, NEW JERSEY

POWER OF ATTORNEY

KNOW ALL MEN BY THESE PRESENTS THAT SEABOARD SURETY COMPANY, a corporation of the State of New Jersey, has made, constituted and appointed and by these presents does make, constitute and appoint Pat Van Hook or Theresa Misner or Lawrence W. Mazza or Henry W. Burch, III or Lissa M. Bertolasio or Allyson Dean of Dallas, Texas its true and lawful Attorney-in-Fact to execute on its behalf insurance policies, surety bonds, undertakings and other instruments of similar nature.

Such insurance policies, surety bonds, undertakings and instruments for said purposes, when duly executed by the aforesaid Attorney-in-Fact shall be binding and enforceable on the said company as fully and to the same extent as if signed by the duly authorized officers of the said company.

IN WITNESS WHEREOF, I, Robertina J. Yeelee, Assistant Secretary of SEABOARD SURETY COMPANY, do hereby certify that the original Power of Attorney of which the foregoing is a full, true and correct copy, is in full force and effect on the date of this Certificate and I do further certify that the Vice-President who executed the said Power of Attorney was one of the Officers authorized by the Board of Directors to appoint an attorney-in-fact as provided in Article VII, Section 1, of the By-Laws of SEABOARD SURETY COMPANY.

This Certificate may be signed and sealed by facsimile under and by authority of the following resolution of the Executive Committee of the Board of Directors of SEABOARD SURETY COMPANY at a meeting duly called and held on the 25th day of March 1970.

RESOLVED: (2) That the use of a printed facsimile of the corporate seal of the Company and of the signature of an Assistant Secretary on any certification of the correctness of a copy of an instrument executed by the President or a Vice-President pursuant to Article VII, Section 1, of the By-Laws approving and authorizing an attorney-in-fact to sign in the name and on behalf of the Company surety bonds, underwriting undertakings or other instruments described in said Article VII, Section 1, with like effect as if such seal and such signature had been manually affixed and made, hereby is authorized and approved.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the corporate seal of the Company to these presents this 4th day of SEPTEMBER, 1997.

Robertina J. Yeelee
 Assistant Secretary
 Form 987 (Rev. 7/84)

NOTE THIS DATE!

2nd Surety

P.O.A. for Same #2 (6)

Exhibit 7-13*7. Example of a Fully Executed Consent Package (Cont'd).

**POWER OF ATTORNEY
 FEDERAL INSURANCE COMPANY
 ATTN: SURETY DEPARTMENT
 15 Mountain View Road, Warren, NJ 07059
 Telephone: (908) 903-2000
 Fax No.: (908) 903-3656**

Know all Men by these Presents, That **FEDERAL INSURANCE COMPANY**, an Indiana Corporation, has constituted and appointed, and does hereby constitute and appoint Lawrence W. Waldie, Henry W. Burch, III, Pat Van Hook, Theresa Miewer, Lisa M. Bertolasio and Allyson Dean of Dallas, Texas-----

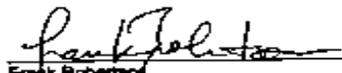
each its true and lawful Attorney-in-Fact to execute under such designation in its name and to affix its corporate seal to and deliver for and on its behalf as surety thereon or otherwise, bonds of any of the following classes, to-wit:

1. Bonds and Undertakings (other than Bail Bonds) filed in any suit, matter or proceeding in any Court, or filed with any Sheriff or Magistrate, for the doing or not doing of anything specified in such Bond or Undertaking;
2. Surety bonds to the United States of America or any agency thereof, including those required or permitted under the laws or regulations relating to Customs or Internal Revenue; License and Permit Bonds or other indemnity bonds under the laws, ordinances or regulations of any State, City, Town, Village, Board or other body or organization, public or private; bonds to Transportation Companies, Lost Instrument Bonds; Lease Bonds, Workers' Compensation Bonds, Miscellaneous Surety Bonds and bonds on behalf of Notaries Public, Sheriffs, Deputy Sheriffs and similar public officials;
3. Bonds on behalf of contractors in connection with bids, proposals or contracts.

In Witness Whereof, the said **FEDERAL INSURANCE COMPANY** has, pursuant to its By-Laws, caused these presents to be signed by its Vice President and Assistant Secretary and its corporate seal to be hereto affixed this 7th

day of June 1996

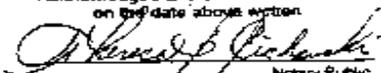

 Kenneth C. Wendel
 Assistant Secretary

FEDERAL INSURANCE COMPANY
 BY

 Frank Robertson
 Vice President

STATE OF NEW JERSEY } ss.
 County of Somerset

On this 7th day of June 1996, before me personally came Kenneth C. Wendel to me known and by me known to be Assistant Secretary of **FEDERAL INSURANCE COMPANY**, the corporation described in and which executed the foregoing Power of Attorney, and the said Kenneth C. Wendel being by me duly sworn, did depose and say that he is Assistant Secretary of **FEDERAL INSURANCE COMPANY** and knows the corporate seal thereof; that the seal affixed to the foregoing Power of Attorney is such corporate seal and was thereto affixed by authority of the By-Laws of said Company, and that he signed said Power of Attorney as Assistant Secretary of said Company by like authority; and that he is acquainted with Frank Robertson and knows him to be the Vice President of said Company, and that the signature of said Frank Robertson subscribed to said Power of Attorney is in the genuine handwriting of said Frank Robertson and was thereto subscribed by authority of said By-Laws and in deponent's presence.

Notarial Seal


Acknowledged and Sworn to before me
 on the date above written

 Theresa B. Cichowski
 Notary Public

IN THE EVENT YOU WISH TO NOTIFY US OF A CLAIM, VERIFY THE AUTHENTICITY OF THIS BOND OR NOTIFY US OF ANY OTHER MATTER, PLEASE WRITE TO US AT THE ADDRESS LISTED ABOVE.

FORM 18-104788 (Rev. 5/86) GENERAL

Theresa B. Cichowski
 Notary Public, State of New Jersey
 No. 0014101
 Commission Expires July 27, 2001

3rd Surety P.O.A. with sample #2 (7)

CERTIFICATION

STATE OF NEW JERSEY }
County of Somerset } ss.

I, the undersigned, Assistant Secretary of FEDERAL INSURANCE COMPANY, do hereby certify that the following is a true and correct copy of the By-Laws of the said Company as adopted by its Board of Directors and that this By-Law is in full force and effect.

*ARTICLE XVIII.

Section 2. All bonds, undertakings, contracts and other instruments other than as above for and on behalf of the Company which it is authorized by law or its charter to execute, may and shall be executed in the name and on behalf of the Company either by the Chairman or the Vice Chairman or the President or a Vice President, jointly with the Secretary or an Assistant Secretary, under their respective designations, except that any one or more officers or attorneys-in-fact designated in any resolution of the Board of Directors or the Executive Committee, or in any power of attorney executed as provided for in Section 3 below, may execute any such bond, undertaking or other obligation as provided in such resolution or power of attorney.

Section 3. All powers of attorney for and on behalf of the Company may and shall be executed in the name and on behalf of the Company, either by the Chairman or the Vice Chairman or the President or a Vice President or an Assistant Vice President, jointly with the Secretary or an Assistant Secretary, under their respective designations. The signature of such officers may be engraved, printed or lithographed. The signature of each of the following officers: Chairman, Vice Chairman, President, any Vice President, any Assistant Vice President, any Secretary, any Assistant Secretary and the seal of the Company may be affixed by facsimile to any power of attorney or to any certificate relating thereto appointing Assistant Secretaries or Attorneys-in-Fact for purposes only of executing and attesting bonds and undertakings and other writings obligatory in the nature thereof, and any such power of attorney or certificate bearing such facsimile signature or facsimile seal shall be valid and binding upon the Company and any such power so executed and certified by such facsimile signature and facsimile seal shall be valid and binding upon the Company with respect to any bond or undertaking to which it is attached.

I further certify that said FEDERAL INSURANCE COMPANY is duly licensed to transact fidelity and surety business in each of the States of the United States of America, District of Columbia, Puerto Rico, and each of the Provinces of Canada with the exception of Prince Edward Island; and is also duly licensed to become sole surety on bonds, undertakings, etc., permitted or required by the law.

I, the undersigned Assistant Secretary of FEDERAL INSURANCE COMPANY, do hereby certify that the foregoing Power of Attorney is in full force and effect.

Given under my hand and the seal of said Company at Warren, N.J., this 4TH day of SEPTEMBER, 19 97

Corporate Seal



Patricia A. Johnson
Assistant Secretary

*Note
the
DATE
OF THE
P.O.A.!*

Surety #3

*P.O.A. Sample #2, continued
(8)*

Exhibit 7-13*7. Example of a Fully Executed Consent Package (Cont'd).

CONSENT OF SURETY AND INCREASE OF PENALTY		1. CONTRACT NO. DAC#01-95-C-0039	2. MODIFICATION NO. P00010	3. DATED AUGUST 11, 1997
<p>surety (or-sureties) heretofore issued to the foregoing contract modification and agree (agree) that its (their) bond or bonds shall apply and extend to the work hereby so modified or amended. The principal and surety (or-sureties) further agree that on or after the execution of this consent, the penalty of the performance bonds is increased by <u>\$120,356.00</u> (dollar \$ <u>120,356.00</u>) and the penalty of the payment bond or bonds is increased by <u>48,142.40</u>. However, the liability of the facility of each co-surety resulting from this consent shall not exceed the sums shown below.</p>				
5. NAME OF SURETY(IES)		4. INCREASE IN LIABILITY LIMIT UNDER PERFORMANCE BOND	5. INCREASE IN LIABILITY LIMIT UNDER PAYMENT BOND	
American Insurance Company		\$ 120,356.00	\$ 48,142.40	
6. BUSINESS ADDRESS		7. SIGNATURE		CATH Seal
		a. TYPED NAME AND TITLE		
		b. DATE THIS CONSENT EXECUTED		
		8. PERSON EXECUTING CONSENT (Signature)		
9. CORPORATE NAME AND BUSINESS ADDRESS		BY <u>James F. Davis</u>		JAFK Seal
The Davis Group, Inc. 760 Enterprise Drive Lexington, KY 40510		c. TYPED NAME AND TITLE		
		d. DATE THIS CONSENT EXECUTED		
		17 Aug 97		
<p>Principal or authorized representative shall execute this Consent of Surety and Increase in Penalty with the modification to which it pertains. If the surety (e.g., attorney-in-fact) that signs the consent is not a member of the partnership, or joint venture, or an officer of the corporation involved, a Power-of-Attorney or Certificate of Corporate Principal must accompany this consent.</p>				
10. CORPORATE/INDIVIDUAL SURETY (CO-SURETIES)				
1. CORPORATE/INDIVIDUAL SURETY'S NAME AND ADDRESS		3. PERSON EXECUTING CONSENT (Signature)		CATH Seal
The American Insurance Company 777 San Marin Drive Novato, CA 94938		BY <u>Joshua B. Pritchard</u>		
		4. TYPED NAME AND TITLE		
		Joshua B. Pritchard Attorney-in-Fact		
5. DATE THIS CONSENT EXECUTED		AUGUST 18, 1997		
2. CORPORATE/INDIVIDUAL SURETY'S NAME AND ADDRESS		3. PERSON EXECUTING CONSENT (Signature)		JAFK Seal
		BY		
		4. TYPED NAME AND TITLE		
		5. DATE THIS CONSENT EXECUTED		
3. CORPORATE/INDIVIDUAL SURETY'S NAME AND ADDRESS		3. PERSON EXECUTING CONSENT (Signature)		
		BY		
		4. TYPED NAME AND TITLE		
		5. DATE THIS CONSENT EXECUTED		

FRONT PAGE OF SAMPLE #3
(9)

Exhibit 7-13*7. Example of a Fully Executed Consent Package (Cont'd).

Mod No.	Increase or Decrease	Increase in Liability Limit Under		Effective Date
		Performance Bond	Payment Bond	
700010	\$120,356.00	\$120,356.00	\$ 48,142.40	11 Aug 97
Total	\$120,356.00	\$120,356.00	\$48,142.40	

THIS case, contract is LESS THAN \$5,000,000 AS MODIFIED.

NOTE: Previous mods have been excluded as they are have not finalized yet.

Back of same # 3

(10)

Exhibit 7-13*7. Example of a Fully Executed Consent Package (Cont'd).

GENERAL POWER OF ATTORNEY

THE AMERICAN INSURANCE COMPANY

KNOW ALL MEN BY THESE PRESENTS: That THE AMERICAN INSURANCE COMPANY, a Corporation incorporated under the laws of the State of New Jersey on February 20, 1844, and reincorporated to the State of Nebraska on June 1, 1990, and having its principal office in the County of Marin, State of California, has made, constituted and appointed, and does by these presents make, constitute and appoint LEE E. HANNA, PATRICIA L. BERMAN, JOSIAH B. FRITCHARD, CHRIS C. CABOT, jointly or severally

CINCINNATI OHIO, its true and lawful Attorney(s)-in-Fact, with full power and authority hereby conferred in its name, place and stead, to execute, seal, acknowledge and deliver any and all bonds, undertakings, recognizances or other written obligations in the nature thereof

and to bind the Corporation thereby as fully and to the same extent as if such bonds were signed by the President, sealed with the corporate seal of the Corporation and duly attested by its Secretary, hereby ratifying and confirming all that the said Attorney(s)-in-Fact may do in the premises.

This power of attorney is granted pursuant to Article VII, Sections 45 and 46 of By-laws of THE AMERICAN INSURANCE COMPANY now in full force and effect.

"Article VII. Appointment and Authority of Resident Secretaries, Attorneys-in-Fact and Agents to accept Legal Process and Make Appearances.

Section 45. Appointment. The Chairman of the Board of Directors, the President, any Vice-President or any other person authorized by the Board of Directors, the Chairman of the Board of Directors, the President or any Vice-President may, from time to time, appoint Resident Assistant Secretaries and Attorneys-in-Fact to represent and act for and on behalf of the Corporation and Agents to accept legal process and make appearances for and on behalf of the Corporation.

Section 46. Authority. The authority of such Resident Assistant Secretaries, Attorneys-in-Fact and Agents shall be as prescribed in the instrument evidencing their appointment. Any such appointment and all authority granted thereby may be revoked at any time by the Board of Directors or by any person empowered to make such appointments."

This power of attorney is signed and sealed under and by the authority of the following Resolution adopted by the Board of Directors of THE AMERICAN INSURANCE COMPANY at a meeting duly called and held on the 31st day of July, 1984, and said Resolution has not been amended or repealed:

"RESOLVED, that the signature of any Vice-President, Assistant Secretary, and Resident Assistant Secretary of this Corporation, and the seal of this Corporation may be affixed or printed to any power of attorney, or any revocation of any power of attorney, or on any certificate relating thereto, by facsimile, and any power of attorney, any revocation of any power of attorney, or certificate bearing such facsimile signature or facsimile seal shall be valid and binding upon the Corporation."

IN WITNESS WHEREOF, THE AMERICAN INSURANCE COMPANY has caused these presents to be signed by its Vice-President, and its corporate seal to be hereunto affixed this 29th day of October 19 96



STATE OF CALIFORNIA COUNTY OF MARIN

THE AMERICAN INSURANCE COMPANY

By [Signature] Vice President

On this 29th day of October 19 96, before me personally came M. A. Mailonée to me known, who, being by me duly sworn, did depose and say: that he is Vice-President of THE AMERICAN INSURANCE COMPANY, the Corporation described in and which executed the above instrument; that he knows the seal of said Corporation; that the seal affixed to the said instrument is such corporate seal; that it was so affixed by order of the Board of Directors of said Corporation and that he signed his name thereto by like order.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal, the day and year herein first above written.



CERTIFICATE

[Signature] Notary Public

STATE OF CALIFORNIA COUNTY OF MARIN

I, the undersigned, Notary Assistant Secretary of THE AMERICAN INSURANCE COMPANY, a NEBRASKA Corporation, DO HEREBY CERTIFY that the foregoing and attached POWER OF ATTORNEY remains in full force and has not been revoked; and furthermore that Article VII, Sections 45 and 46 of the By-Laws of the Corporation, and the Resolution of the Board of Directors; set forth in the Power of Attorney, are now in force.

Signed and sealed at the County of Marin. Dated the 19 day of August 19 97



SAMPLE # 3

[Signature] Resident Assistant Secretary

SAME DATE AS EXECUTED CONSENT OF S+RTY (11)

Exhibit 7-13*7. Example of a Fully Executed Consent Package (Cont'd).

Page 1 of 2

CONSENT OF SURETY AND INCREASE OF PENALTY		1. CONTRACT NO. DACA01-95-C-0061	2. MODIFICATION NO. P00039	3. DATED September 19, 1997
--	--	-------------------------------------	-------------------------------	--------------------------------

The SURETY (co-sureties) consents (consent) to the foregoing contract modification and agrees (agree) that all other bond or bonds shall apply and adhere to the contract as modified or amended. The principal and surety (co-sureties) further agree that as of the execution of this consent, the penalty of the performance bond is increased by \$253,598.00 dollars (i.e. 253,598.00) and the penalty of the payment bond or bonds is increased by \$0.00 dollars (0.00). However, the increase of the liability of each co-surety resulting from this consent shall not exceed the amount shown below.

5. NAME OF SURETY(IES)	6. INCREASE IN LIABILITY LIMIT UNDER PERFORMANCE BOND	7. INCREASE IN LIABILITY LIMIT UNDER PAYMENT BOND
1. Firemen's Insurance Company of Newark, New Jersey	\$ 253,598.00	\$
2.		
3.		
4.		

8. INDIVIDUAL PRINCIPAL	a. BUSINESS ADDRESS	b. SIGNATURE	(Affix Seal)
		c. TYPED NAME AND TITLE	
9. CORPORATE PRINCIPAL	a. CORPORATE NAME AND BUSINESS ADDRESS Head, Inc. 6200 Muntley Road Columbus, Ohio 43229	b. PERSON EXECUTING CONSENT (Signature)	(Affix Seal)
		BY	
		c. TYPED NAME AND TITLE PAUL A. ONDERA VICE PRESIDENT	
		d. DATE THIS CONSENT EXECUTED 9/19/97	

* The Principal or authorized representative shall execute this Consent of Surety and Increase in Penalty with the modification to which it pertains. If the representative (i.e., attorney-in-fact) that signs the consent is not a member of the partnership, or joint venturers, or an officer of the corporation involved, a Power-of-Attorney or Certificate of Corporate Principal must accompany this consent.

10. CORPORATE/INDIVIDUAL SURETY (CO-SURETIES)			
A	a. CORPORATE/INDIVIDUAL SURETY'S NAME AND ADDRESS Firemen's Insurance Company of Newark, New Jersey 180 Maiden Lane New York, NY 10038	b. PERSON EXECUTING CONSENT (Signature)	(Affix Seal)
		BY	
		c. TYPED NAME AND TITLE Laura Hall, Attorney-in-Fact	
	d. DATE THIS CONSENT EXECUTED 9/19/97		
B	a. CORPORATE/INDIVIDUAL SURETY'S NAME AND ADDRESS	b. PERSON EXECUTING CONSENT (Signature)	(Affix Seal)
		BY	
		c. TYPED NAME AND TITLE	
	d. DATE THIS CONSENT EXECUTED		
C	a. CORPORATE/INDIVIDUAL SURETY'S NAME AND ADDRESS	b. PERSON EXECUTING CONSENT (Signature)	(Affix Seal)
		BY	
		c. TYPED NAME AND TITLE	
	d. DATE THIS CONSENT EXECUTED		

STANDARD FORM 14-5 (REV. 7-93) AUTHORIZED FOR LOCAL REPRODUCTION 52-23814

STANDARD FORM 14-5 (REV. 7-93) AUTHORIZED BY GSA - FPMR (41 CFR) 101-11.6

FRONT PAGE, SAMPLE # 1

(12)

Exhibit 7-13*7. Example of a Fully Executed Consent Package (Cont'd).

Mod. No.	INCREASE OR	ALLOTTOR'S ALLOWABLE CONTRACT VALUE		Effective Date
	DECREASE	Performance Bond	Payment Bond	
P00039	\$253,598.00	\$253,598.00	\$0.00	19 Sep 97
	\$253,598.00	\$253,598.00	\$0.00	

↑ Contract → \$5,000,000.
 ∴ NO INCREASE NEEDED.

SEE ATTACHED POWER OF ATTORNEY.

P.O.A. MUST BE DATED ON THE DATE THAT THE PERSON EXECUTED THE SF 1415 TO SHOW THEY WERE AUTHORIZED TO BIND THE SURETY.

BACK OF SF 1415, SAMPLE #1 (13)

Exhibit 7-13*7. Example of a Fully Executed Consent Package (Cont'd).

Firemen's Insurance Company of Newark, New Jersey

GENERAL POWER OF ATTORNEY

Know all men by these Presents, That the FIREMEN'S INSURANCE COMPANY OF NEWARK, NEW JERSEY has made, constituted and appointed, and by these presents does make, constitute and appoint

Laura Holt of Columbus, Ohio

its true and lawful attorney, for it and in its name, place, and stead to execute on behalf of the said Company, as surety, bonds, undertakings and contracts of suretyship to be given to

All Obligees

provided that no bond or undertaking or contract of suretyship executed under this authority shall exceed in amount the sum of

Fifteen Million (\$15,000,000) Dollars

This Power of Attorney is granted and is signed and sealed by facsimile under and by the authority of the following Resolution adopted by the Board of Directors of the FIREMEN'S INSURANCE COMPANY OF NEWARK, NEW JERSEY at a meeting duly called and held on the 13th day of January, 1998:

RESOLVED, that the Chairman of the Board, the Vice Chairman of the Board, the President, an Executive Vice President or a Senior Vice President or a Vice President of the Company, be, and that each of any of them hereby is, authorized to execute Powers of Attorney qualifying the attorney named in the given Power of Attorney to execute in behalf of the FIREMEN'S INSURANCE COMPANY OF NEWARK, NEW JERSEY, bonds, undertakings and all contracts of suretyship and that an Assistant Vice President, a Secretary or an Assistant Secretary be, and that each or any of them hereby is, authorized to attest the execution of any such Power of Attorney, and to attach thereto the seal of the Company

FURTHER RESOLVED, that the signatures of such officers and the seal of the Company may be affixed to any such Power of Attorney or to any certificate relating thereto by facsimile, and any such Power of Attorney or certificate bearing such facsimile signatures or facsimile seal shall be valid and binding upon the Company whenever affixed and in the future with respect to any bond, undertaking or contract of suretyship to which it is attached.

In Witness Whereof, the FIREMEN'S INSURANCE COMPANY OF NEWARK, NEW JERSEY has caused its official seal to be hereunto affixed, and these presents to be signed by one of its Vice Presidents and attested by one of its Assistant Secretaries this 15 day of July, 1998.

FIREMEN'S INSURANCE COMPANY OF NEWARK, NEW JERSEY

Attest:

[Signature] E. H. Tanner, Vice President



[Signature] Matthew Klimczak, Vice President

STATE OF CONNECTICUT }
COUNTY OF HARTFORD }

On this 15 day of July, 1998, before me personally came Matthew Klimczak, to me known, who being by me duly sworn, did depose and say that he is a Vice President of the FIREMEN'S INSURANCE COMPANY OF NEWARK, NEW JERSEY, the corporation described in and which executed the above instrument; that he knows the seal of the said corporation; that the seal affixed to the said instrument is such corporate seal; that it was so affixed by order of the Board of Directors of said corporation and that he signed his name thereto by like order.



[Signature] Georgia D. Seekins, Notary Public, my Commission Expires January 31, 1998

CERTIFICATE

I, the undersigned, an Assistant Secretary of the FIREMEN'S INSURANCE COMPANY OF NEWARK, NEW JERSEY, a New Jersey corporation, DO HEREBY CERTIFY that the foregoing and attached Power of Attorney remains in full force and has not been revoked; and furthermore that the Resolution of the Board of Directors, set forth in the said Power of Attorney, is now in force.

Signed and sealed at the town of Farmington, the State of Connecticut, this 19th day of September, 1997.



[Signature] W. W. Cowling, Assistant Secretary

W. W. Cowling, Assistant Secretary

Printed in U.S.A.

NOTE THE DATE!

SAMPLE #1

(14)

Exhibit 7-13*7. Example of Fully Executed Consent Package (Cont.)

CHAPTER 7. CONTRACT ADMINISTRATION

SECTION 14. PROCEDURES FOR ISSUING UNILATERAL MODIFICATIONS

7.14.1 Introduction. The primary purpose of the *Changes Clause* is to provide the Government with a flexible procedure by which it may respond expeditiously to changing needs. This clause entitles the Government to order changes in the manner or method of performance, and binds the contractor to perform the work as changed. Basically, contract modifications can be issued in one of two ways: (1) unilateral modifications in which the Government orders a change and agreement on price occurs at a later time; or (2) bilateral modifications in which the Contracting Officer and the contractor agree to a price and/or time adjustment before the modification is issued. In either event, both parties should exchange information to clarify the scope and to effect the contract change.

7.14.2 Preferred Method. The bilateral procedure is the normal and preferred procurement method because the Government can obtain a fixed price and time commitment for the change early in the change process. If the change order is unilateral, the price, which the Government ultimately is obligated to pay, and the period of performance remain uncertain. If negotiations on cost and time are delayed until a substantial portion of the change work is accomplished, it may be difficult to separate the costs resulting from the change directive from the costs properly attributable to ineffective actions by the contractor or his subcontractors or suppliers. FAR 43.102(b) states:

"Contract modifications, including changes that could be issued unilaterally, shall be priced before their execution if this can be done without adversely affecting the interest of the Government. If a significant cost increase could result from a contract modification and time does not permit negotiation of a price, at least a maximum price shall be negotiated unless impractical."

7.14.3 Concerns. Current procedures and contract provisions require the contractor to make a detailed estimate of the cost impact of the change (both monetary and time). Generally, this data provides the necessary basis for negotiating the costs to be incurred. However, two major concerns often arise using this procedure. First, both Government and the contractor may not know the point of application of the change. They may need to perform additional investigations, such as manufacturing and testing, to determine the specific nature of the change; thus, the time required for this work may be an indeterminate length. Similarly, the change may require the contractor to perform detailed design work for the changes, making the full cost impact of the work difficult to predict at the beginning. In either case, the Contracting Officer might be able to issue a bilateral modification for the initial phases of the effort and follow up with a subsequent modification when the details are known. In many cases, particularly on construction projects, there is a very short time period available for the Government to issue the change. In other words, in construction the need for a change is frequently recognized shortly before the contractor arrives at the point in the work where the change is required. If a change order is not issued quickly, part or perhaps all of the work will stop. Since it is highly undesirable to stop work, the parties may attempt to negotiate a bilateral modification. But they may resort to a unilateral change action if it becomes apparent that there is a significant disagreement on the price. In this case, the undefinitized contract modification (UCM) keeps the work moving. A subsequent modification can be issued to define the UCM and establish an equitable adjustment as quickly as possible.

7.14.4 Objective. Previous experience indicates the need for a uniform procedure and understanding when circumstances require issuing a unilateral order. Accordingly, this guidance's purpose is to emphasize the appropriate steps necessary to first obtain a bilateral agreement and, alternatively, to achieve a unilateral modification. The bilateral agreement can be met only if the parties have a mutually accepted understanding of the desired changes. Therefore, the initial written change request becomes the starting point in reaching an understanding that will lead to an equitable adjustment. The change request should clearly outline the changed requirements and the desires of the Government. In turn, the contractor is required by contract provisions to provide a detailed proposal to the satisfaction of the Contracting Officer. If the proposal is not in sufficient detail or in the necessary format, the RE/ACO should advise the contractor. Unless the effect of the change on the project schedule and the unchanged work is stated, the contractor's proposal is not complete and it should not be accepted. At this point, the primary responsibility is to reach an agreement that is in the best interest of the Government, price and all other factors considered. To carry out this responsibility, various other facets must be compatible. A basic element is the independently prepared Government Estimate. This pricing objective should be a price that is the lowest reasonable under the circumstances of the change. This objective recognizes that the goal is an equitable adjustment as required by the *Changes Clause*. The most fitting purpose of the equitable adjustment theory has been described as one that leaves the parties in the same position cost-wise and profit-wise as they would have occupied had there been no change, preserving as nearly as possible the advantages and disadvantages of each party's bargain. Negotiations should continue until all reasonable efforts to reach an agreement have been exhausted.

7.14.5 Bilateral Settlement Not Achieved.

a. If it is not possible to reach a reasonable final agreement with the contractor, a unilateral modification may be justified. If a unilateral modification becomes necessary, base it on the Government's estimate of cost and time for the work. The contractor, after review, may sign the modification, but if he fails to sign or submits a non-acceptance letter, issue a Contracting Officer's Decision (COD). The COD places the burden on the contractor to either accept or appeal his decision, but he must proceed with the work covered by the modification.

b. Since the contractor has the right of appeal on the dollar amount and the time stated in a unilateral order, the Government's estimate must be complete and accurate in every detail, including time to accomplish the work. If a bilateral agreement is not effected, the unilateral modification accomplishes the following desirable results:

- (1) It places the risk on the contractor,
- (2) It permits an orderly revision of the progress schedule, and
- (3) It eliminates the possible cost-plus contractual relationship on the modification, which develops if negotiations are deferred until the changed work is nearly or completely accomplished.

7.14.6 Procedures. The procedures below should be followed before a unilateral modification is issued. It is the Resident Engineer's responsibility to assure the prompt completion of all steps in the process, up to the point of making a recommendation.

a. The Resident Engineer must re-examine the Government's Estimate. Since the major issue requiring or necessitating a unilateral modification is usually price and/or time disagreements, the Government must be able to fully justify its estimate of costs and/or time determinations with facts, judgments based on facts, best available information, logic, knowledge of the job status, knowledge of material deliveries, and availability of manpower and equipment. Accordingly, a detailed Government Estimate must be prepared, reviewed, approved, and be supported with narratives justifying quantities, labor requirements, equipment requirements and pricing data. The estimate must contain an analysis of the current job status to explain why time extensions were or were not allowed. An analysis of impact costs (indirect costs) and why these costs were considered or not allowed is also required.

b. The Resident Engineer will personally participate in the negotiations with the contractor in order to attempt a bilateral settlement when it appears an impasse is developing.

c. The modification file should be documented with letters, memos, diaries, notes, etc., which show the Government's attempts to obtain the proposal and efforts to negotiate a settlement. Document areas of disagreements and agreements. The record should also contain a time and impact analysis.

d. The Resident Engineer will prepare and sign the Price Negotiation Memorandum. Provide data and information in the PNM that gives complete identification of the quantum and entitlement of issues involved attempts at bilateral settlement, and the justification to support a recommendation by the Resident Engineer that a unilateral modification should be issued.

e. When failure to reach a mutual agreement on an equitable adjustment occurs (due to an impasse), prepare a modification on Standard Form 30 along with a letter of transmittal. Prepare the modification in such a manner that it appears to be bilateral. Forward the modification, transmittal letter, and complete record file to CD-CA for processing. The Office of Counsel will review the proposed unilateral modification for adequacy of detail and accuracy. The review is essential to insure that adequate documentation is in the hands of the appropriate offices should the contractor file a claim for time and/or money with regard to the matters identified in the proposed unilateral modification. The CD-CA will forward the *certified* transmittal letter, unilateral modification, signed by the appropriate authority, and a copy of the resume of negotiations or MOF, explaining the Government's position to the contractor; this gives the contractor an opportunity for further review and possible acceptance of the modification.

f. When failure to reach mutual agreement on an equitable adjustment is due the contractor not providing adequate proposals, or a modification must be issued quickly, field personnel will prepare a contract modification on Standard Form 30 and a letter of transmittal to the contractor. These, along with the record file, will be forwarded to CD-CA personnel for processing through Office of Counsel, to the Contracting Officer, and then to the contractor for possible acceptance.

g. In either of the above two cases, if the contractor accepts the modification without reservation, the modification will follow normal processing procedures. If the contractor does not accept the modification, change the SF 30 to show that the modification is issued unilaterally. If agreement cannot be reached and the contractor requests a Contracting Officer's decision and provides the applicable certification in accordance with the Contract Disputes Act, the change becomes a claim under the Act. The RO will follow the guidance in section 16 of chapter 7, Contract Claims and Disputes, to handle the situation. A thorough technical and legal review of the file by Huntsville Center personnel and a meeting between the contractor and Contracting Officer will precede a final decision. If the Price Negotiation Memorandum, Government Estimate, time analysis, and impact analysis sufficiently justify and support the Government's position, further analysis will not be required.

7.14.7 Emphasis . The Government emphasizes, again, that issuing a unilateral modification is recommended only after reasonable efforts to negotiate a bilateral settlement have failed. Do not use unilateral modifications as a threat, but as a management technique for efficient and effective contract administration.

7.14.8 Sample Formats . Exhibit 7-14*1 is a sample letter transmitting a unilateral modification to the contractor. Modify the letter appropriately.

Certified No.

Subject: Contract Number DAA09-92-C-XXXX, Anniston Chemical Agent Disposal Facility, Anniston, AL.

Mr. I. M. Contractor, President
R & C Defense Company, Inc.
P.O. Box 1000
Anniston, AL 35054

Dear Mr. Contractor:

Modification Number A (Change request number AN-2-XXX-2) is enclosed for your acceptance under the subject contract. Although circumstances surrounding this change have not resulted in a Bilateral Agreement, I consider the modification fair and reasonable, reflecting an equitable adjustment. Please indicate your acceptance in Blocks 15A, 15B and 15C and return the original to this office, Attention: CEHNC-CD-CA. Retain the copy marked "Duplicate Original" for your file. The modification will be effective upon your acceptance. Please revise your progress schedule to reflect the adjustment.

If this modification is unsatisfactory, return the original, unsigned, with a letter providing full explanation and with supporting documentation of your reasons for not accepting the modification. You may then consider the modification effective upon the date of my signature in Block 16C. Then, revise your progress schedule accordingly.

After considering your reasons, a final Contracting Officer's Decision may be issued in accordance with the "Disputes" provisions of the contract. In any event, your response is requested within ten days after you receive this letter.

Enclosure

Sincerely,

/s/

T. Goodfellow
Authorized Representative
of the Contracting Officer

Exhibit 7-14*1. Sample Letter for Bilateral Agreements

CHAPTER 7. CONTRACT ADMINISTRATION

SECTION 15. SPECIAL CONSIDERATIONS

7.15.1 General. This section discusses a variety of situations, based on past experience, that are probable and possible during the life of the CDSP systems contract effort.

7.15.2 Modification Accepted with Reservation. Make every effort to resolve the substance of the contractor's reservation prior to issuing the modification. Each qualification represents a claim or potential claim and could result in an open-ended change. Such modifications are a form of unpriced contractual actions. Consult with CD-CA for advice prior to issuing a modification with a qualification.

7.15.3 Time Extensions . Resident Engineers, as Administrative Contracting Officers (ACO's), are authorized to execute contract modifications only under the designated clauses as outlined in Section I and within the delegated authorities extended by the PCO.

a. The *Changes, Differing Site Conditions, and Suspension of Work Clauses* provide for an equitable adjustment of costs. The *Changes and Differing Site Conditions* clauses provide for equitable adjustments for time. Time associated with a Government Suspension of Work is provided for under the *Defaults Clause*. The ACO's Appointment Document (SF-1402) does not restrict an equitable adjustment for time. However, Huntsville Center's policy, in keeping with the Memorandum of Agreement with the PCO (IOC), is as follows:

(1) Both the Resident Office ACO and the Huntsville Center's ACO may, on modifications within their monetary authority, consummate with full accord and satisfaction, contract time extensions with concurrence and approval by IOC and PMCD.

(2) Coordinate with CD-CA, CH, and IOC, before negotiations, any request for acceleration (buying back a time extension).

(3) Exercise sound business practice on all decisions. Document all discussions and decisions in the modification file. Fully explain the rationale, need, and coordination in the pre-0ne negotiation objectives. Document time negotiations and summarize the agreement and the basis for the time extension in the price negotiation memorandum.

(4) Coordinate all actions for proposed time extensions related to delays in completing the work arising from unforeseen causes beyond the control and without fault or negligence of the contractor, with CD-CA, OC and the HNC-ACO prior to establishing a position with the contractor. These examples are listed in subparagraph (b) 1 of the *Default Clause*. Upon validation of the allowability of the time extension, HNC and the Resident Office will coordinate concurrence or other strategy (e.g.; buy back time) with PCO and the PMCD.

b. Unreasonable delays incurred under a suspension of work may entitle the contractor to an extension of time under the *Default Clause*. The Resident Office ACO shall coordinate concurrence with the PCO and PMCD.

7.15.4 Weather - Time Extensions.

a. General. When considering time extensions for weather delays, two fundamental principles must be followed: (1) The contractor must have been actually hampered in a manner that would delay final completion of the job, and (2) the weather conditions must have been different from those anticipated when bidding the job based on weather data included in the applicable contract special clause and anticipated in the approved schedule. Also, the contractor must not have willfully or negligently caused the delay.

b. Legal Basis. The Armed Services Board of Contract Appeals has outlined a tripartite test for determining whether a contractor is entitled to a time extension based on unusually severe weather. The test requires "a delay in the completion of the work which is (1) beyond the control and occurs without the fault or negligence of the contractor and (2) the result of an unforeseeable cause, e.g., unusually severe weather." (Essential Construction Co., Inc., ASBCA 18652, 18941, 78-2 BCA 13314 (1978).) Generally, unusually severe weather is weather in excess of the norm which could not reasonably be anticipated at the time of contracting (id); see U.S. vs. Brooks-Calloway Co., 318 U.S. 120 (1942) (construing the term "flood" which is included in the listing of unforeseeable causes along with "unusually severe weather"). The Contracting Officer may determine if severe weather was foreseeable by comparing previous years' weather patterns with the weather actually occurring during the contract period. See Wallace Roofing Co., ABSCA 27896, slip op. (Sep 13, 1983) holding that comparison of five-year weather averages with weather occurring during the contract period is a "reasonable method to determine specific days of unusually severe weather . . ." "The Contracting Officer should also consider any additional circumstances affecting the foreseeability of the severe weather. (Essential Construction Co., Inc., id. (criticizing use of a formula which relied on weather averages but ignored other additional factors such as the effect of the severe weather on contract performance and actual job site conditions.) In addition to satisfying the foreseeability requirement, the unusually severe weather must actually cause the delay without the fault or negligence of the contractor.

c. Responsibility. The Contracting Officer bears the burden of extending the contract time for delays in construction completion caused by unusually severe weather. Although the contractor is required to document the occurrence and the effect of adverse weather on the work, the Government is not relieved of its responsibility to investigate and determine if an excusable delay has occurred.

d. ACO Authority. Pursuant to the Certificate of Appointment (SF 1402), and as designated by individual contract, the ACO's authority for granting allowable time extensions under the *Default Clause* is confined only to unusually severe weather.

e. Objectives. The objective of this required procedure permits Field Operating Agencies (FOA), i.e., Divisions and Districts and their elements, to accomplish the following:

(1) Establish procedures for monitoring actual weather conditions, which will provide for timely evaluation of potential delays for unusually severe weather. Such procedures will use contract data that defines the monthly-anticipated adverse weather for the contract period, based upon National Oceanic and Atmospheric Administration (NOAA), or similar data for the geographic location of the project.

(2) Insure that the contractor's daily CQC reports and Corps of Engineers daily QA reports list the weather conditions that day and describes activities affected by the weather.

- (3) Evaluate the time entitlement monthly and modify the contract quarterly for any applicable unusually severe weather.
- (4) Specifically relate weather to critical and non-critical activities to determine overall delay in contract period and other individual construction activities.
- (5) Complete evaluation and determination within a maximum of 30 days after the end of any month.
- (6) When it is determined that the contractor is entitled to a time extension, the Resident Engineer will coordinate with the PCO, PMCD, and CH. The ACO may change the final completion date of the FFP phases of the contract only with the prior concurrence of the PCO and PMCD.
- (7) After CD-CA receives and concurs with the recommendation, the Resident Engineer will advise the contractor of the determination and request his concurrence or rebuttal within 10 days.
- (8) Direct the contractor to revise progress schedules to reflect the agreed upon adjustment.

f. Special Clause (Work Days). ER 415-1-15 was revised in October 1989. The revised special clause for unusually severe weather now reflects monthly anticipated adverse weather delay based on work days. It encompasses the average number of work days lost in each month due to the effects of various weather parameters (e.g., greater than .10" precipitation, less than 32 degree F, 40 degree F, and/or 50 degree F, days of measured snowfall, and days of high wind) on the contractor's critical activities. The activities involved and applicable parameters are based on a preliminary project schedule developed before solicitation.

g. Monthly Evaluation. ER 415-1-15 requires monthly evaluation and notification of the contractor's entitlement to time extensions for weather. The regulation also requires quarterly adjustment in the contract date, as appropriate, by issuing a modification. The appropriate contract clause and a definite period the contractor was delayed by "unusually severe weather" must be cited. Do not postpone the investigation, evaluation, and extension of time for unusually severe weather until the contractor requests and justifies it, or until the end of the job. In this manner, both parties know the contract requirements, and the schedule can be updated, thus it remains useful for work management and impact analysis as the work progresses. It is equally important to notify the contractor of negative determinations on a monthly basis so that the Government's intentions are clearly understood.

h. Terminology. The following definitions are relevant to weather:

- (1) Adverse Weather: Atmospheric conditions at a definite time and place that are unfavorable to construction activities.
- (2) Unusually Severe Weather: Weather that is more severe than the adverse weather anticipated for the season or location involved.
- (3) Weather Impact: Work delay resulting from adverse weather.

i. Methodology. Use administrative procedures for adverse weather data based on five-day workweek. These procedures will be used for determining monthly-anticipated weather delays using the different aspects of weather and concurrence consideration for work days.

j. Weather Delay Schedule. Under ER 415-1-15, data for the revised special clause relative to time extensions for unusually severe weather, is based on a five-day workweek. The anticipated normal weather delay schedule was developed, by month, for each geographic location using National Oceanic and Atmospheric Administration data and other sources, analyzed for concurrence.

k. Development of Weather Days for Revised Special Clause(Work Days).

(1) Weather Parameters. The raw weather data from NOAA specific stations, necessary for technical personnel to implement ER 415-1-15, has been processed by a computer program entitled, "The Weather Averaging System." The printout provides the monthly average occurrence of unusually severe weather for each station. The data for each month separates the weather parameters into the following categories:

- Precipitation greater than .10 inches.
- Average daily temperature less than 32 degrees.
- Average daily temperature less than 40 degrees.
- Average daily temperature less than 50 degrees.
- Measured snowfall.
- High winds.

The computer program can be altered to provide other parameters, if necessary.

(2) Application of Adverse Weather Data to Estimated Contract Performance Time. In accordance with detailed instructions in ER 415-1-15, CD-CA computes the estimated total contract performance time for each proposed project. This time will also include the total time for adverse weather for the construction duration. CD-CA will coordinate the results with PM.

l. Analysis of Actual Adverse Weather During Construction.

(1) Collect and record actual weather data on a work day basis. Maintain monthly summaries, using the Adverse Weather Data sheets, to indicate actual adverse weather conditions and the impact on work activities. The scheduling of work by the contractor on a Saturday, Sunday, or holiday (normally a non-work day) will be stated in the contractor's daily report; otherwise, it will not be acceptable as a scheduled workday. The Resident Engineer will also verify these reports.

(2) Each month, compare the number of actual adverse delay days to that given in the special clause schedule. If the number of actual delay days is greater than that in the contract, the contractor has experienced unusually severe weather. However, this determination does not automatically mean that the contractor receives a time extension for the difference of days between the anticipated and actual adverse weather delay days. The adverse weather must cause a delay in the work activities critical to contract completion.

(3) Convert the actual adverse delay days above those shown in the contract schedule into calendar

days, e.g., if the contractor is working a five-day work week and lost six scheduled working days during January, the conversion to calendar days is $6(7/5)=8$ calendar days due for January. Round fractions to whole numbers.

(4) Once the original contract completion data has passed, the contractor is entitled to a day-for-day delay (suitable working days) when critical weather sensitive scheduled work is affected by adverse weather conditions, unless time extensions granted already considered normal weather delays. Where applicable, workdays must be converted to calendar days. The key is determining the contractor's *normal* scheduled workdays. This is a judgmental decision to be made by the ACO. If the contractor is on or ahead of schedule, his or her normal scheduled workdays would or could probably continue. If (s)he is behind schedule, a prudent contractor would or should schedule every day as a work day. The conversion for workday delay into calendar days is:

$$\text{days delayed} \quad \times \quad \frac{\text{days per month}}{\text{scheduled workdays}} \quad = \quad \text{calendar days}$$

If questions arise regarding this issue, contact CD-CA.

m. Inform the contractor, monthly, of any time entitlement due because of adverse weather. The contractors will concur by his signature on the Adverse Weather Data Sheet. Also inform him or her of any negative determinations and request his or her rebuttal within 10 days. In addition, notify the contractor to revise his or her progress schedule to show any applicable weather time extension.

n. SF 30 and MOF. Pursuant to the contract clause, *Default (Fixed-Price Construction)* and upon prior concurrence from the PCO, the ACO will prepare and execute modifications on a quarterly basis. The SF 30 will also cover any previous quarterly periods during which no contract time extensions were applicable. This procedure ensures that all delays resulting from adverse weather have been considered. A Memorandum of Fact, signed by the ACO, will support the modification. Attach the original adverse weather data sheets to the MOF. Upon acceptance by the contractor, file and distribute the modification in accordance with the records' management plan. If the contractor refuses to sign the modification, forward all documents to the CD-CA, with the Resident Engineer's recommendation.

7.15.5 Exhibits . Exhibit 7-15*1, Format for Adverse Weather Data (CEHND Form 967) is provided as reference and exhibit 7-15*2 is an example of a Memorandum of Facts covering time extensions.

7.15.6 Variations in Estimated Quantity of Unit Price Items (Adjustment to Unit Price).

a. General. The contract clause, "Variations in Estimate Quantity (April 1984)(VEQ)," applies only to unit-priced bid items. Use the clause in circumstances when the exact quantity of work to be performed under a bid item cannot be precisely determined. Items such as paving, riprap, crushed stone, and excavations are examples of the types of work which may use the clause.

b. The *Variations Clause* is one of the least understood and most misused clauses. It is also the most controversial clause. The proper determination of equitable adjustments for overruns under the clause has been the subject of major law suits in recent years and has left estimators divided on the proper way to perform variations' estimates.

c. As the result of a November 1993 Court of Appeals Decision (Foley Company versus United States, 26 cl. Ct 936 1992), the latest guidance for evaluating overruns reverts to what is known as the Victory Principle. Guidance as a result of what is known as the Bean Dredging Case (ENGBCA, June 1989), is no longer valid for contracts containing the April 1984 version of the VEQ clause.

d. Theoretically, a unit price should contain:

(1) Direct cost for material, supplies, labor, and equipment to perform one unit of work.

(2) A proportionate share of one-time indirect costs (e.g., mobilization, layout).

(3) A share of variable indirect costs (e.g., field office supplies, quantity surveys, etc.).

(4) A share of fixed, indirect field overhead costs (supervision, quality control, rent, etc.) which are time-related, not directly proportional to the volume of work.

(5) Proportionate shares of home office overhead, profit and bond.

Note: Indirect costs should theoretically be proportionately spread over all bid items they are associated with, not unbalanced or loaded into one or more items.

e. The Government is required to evaluate all bids or proposals by price or cost analysis to assure that there is no significant unbalancing of bid items. The result of this is that when the contract is signed, both parties legally agree that each unit price is fair and reasonable for the contracted scope of work.

f. The VEQ clause, in essence, states that the unit prices are good, *absent a change to the work*, even if the actual quantity varies within 15 percent above or below the estimated quantity. For actual work quantities outside the 15 percent band, the unit price is still binding, unless the contractor's unit cost to perform the work outside the 15 percent band is more or less than the unit cost to perform the amount of work within the 15 percent band. Unit prices for work performed within the 15 percent is never adjusted under the VEQ clause.

g. *Time extensions*. The VEQ clause also allows a time extension if the variation from 100 percent of the estimated quantity causes additional time to the critical path. The 15 percent plus or minus band does not apply to determination of time extension.

h. *Overruns*.

(1) The Victory Principle addresses adjustments in the overrun quantity exceeding 115 percent of the estimated quantity. You analyze and compare the contractor's unit cost to perform the first 115 percent. If there is a difference, more or less, you adjust the contract unit price for the overrun beyond the 115 percent by the unit cost difference. Under the Victory Principle, you do not completely re-price the overrun based on actual unit cost. The contractor retains windfall profits or bears his or her unit losses, if the original bid unit price is not realistic for the work. This is why it is so important to accurately estimate contract quantities and to analyze unit prices for errors or unbalancing prior to award.

(2) Either party can demand an adjustment. The demanding party has the burden of proof that there is a change in the unit cost for the overrun. Government personnel need to be aware of progress versus estimated quantities. When the contractor reaches the 115 percent point, you need to analyze his or her operations for possible changes in unit cost.

(3) Generally, one-time costs, such as mobilization and demobilization, are recovered at 100 percent of the estimated quantity. If the overrun does not cause a time extension, fixed (time related) indirect costs, such as equipment rental, field office rent, telephones, supervision, quality control, etc., are also recovered. Another savings could be in quantity discounts for materials. Thus, the contractor's unit cost for the overrun should be less than the unit cost for the first 115 percent, and the ACO should demand a credit for the unit costs saved, if, in the ACO's judgment, they are significant.

(4) Conversely, the overrun could cost the contractor more per unit than the first 115 percent. If it does, you should anticipate a demand for adjustment and reserve sufficient funds to cover the adjustment.

i. Under-runs.

(1) The under-run philosophy, under the current clause, allows the contractor to recover 85 percent of his or her fixed unit costs and one time cost (mobilization, demobilization, etc.), *not to exceed what (s)he would have recovered had (s)he performed 85 percent of the estimated quantity.* **Do not re-price the under-run work on actual cost.**

(2) Estimated under-runs.

(a) Under-run estimates can be somewhat more difficult to perform because under-run estimates are basically forensic estimates. The estimator has to reverse his or her estimate to see what cost is unrecovered due to the under-run. As indicated above, a theoretical unit price should contain both direct and indirect costs. The direct cost is of no concern in an under-run situation because no work is performed, none is paid for, and none should be paid for. The problem with under-runs is in the area of under-recovered indirect cost. As we covered in the section on indirects, there are several types of indirect costs: Those that are nonrecurring are one-time costs and those which vary either directly or indirectly with the amount of work placed are the variable indirects. There are also costs, which vary with time, but not necessarily with volume, such as supervision, field office rent, quality control, etc.

(b) Since the variable indirect costs vary with the amount of work performed, they are of no concern in an under-run estimate because, like direct costs, none are incurred.

(c) The one-time costs, which are allocated to the unit price, are the problem. The unit price should contain a proportionate share of the indirects necessary to do 100 percent of the bid item quantity. When the bid item quantity has been fully performed, the contractor will then fully recover the one time cost necessary to do the item. However, if there is an under-run, that cost will not be fully recovered. The contractor takes the risk of not recovering 15 percent of that cost for the under-run portion between 85 percent and 100 percent, and the Government agrees to an adjustment for the portion, which exceeds 15 percent. The question the estimator must answer is, How much of the bid item price is for one-time indirects? This is where the reverse estimating comes in. It is relatively easy to determine the direct cost for material, labor, etc., for a unit cost. To this direct cost are applied a reasonable amount home office overhead, profit and bond, and the resulting number is subtracted from the unit price. If there is nothing left, the estimator knows that the bid item was unbalanced to the low side and that no one-time indirects were allocated to the bid item, thus, no contract price adjustment is due. If there is a large amount left, the estimator knows that the bid item was unbalanced to the high side and great care must be exercised in trying to sort out which dollars are one-time and fixed indirects and which are the unbalanced dollars.

(d) Most indirects are variable or semi-variable; only a very few are fixed and one-time. Therefore, of the bid item amount left after the marked-up directs are subtracted, only a small portion should be fixed and one-time indirect dollars. However, the exact amount can only be estimated since no formula exists to make a precise determination. Items to consider are any one-time indirects specifically associated with the bid item. For instance, if the contract contains only one bid item for asphalt paving, it is safe to assume that mobilization and demobilization costs of the paving machine and pavement rollers are included in the bid item. Similarly, if a rip-rap item includes the cost slope preparation, this cost, while a direct cost to the job, becomes an indirect cost to the bid item and the unrecovered portion up to 85 percent should be included in the adjustment.

(e) Some contractors will ask to recover the profit which had been assigned to the under-run quantity saying that they bid the job to make a certain amount of profit. Paying profit on work not performed is generally disallowed, as backed up by case law.

j. The ACO can establish a separate bid item for overruns beyond 15 percent. The ACO can also pay for the overrun in the original bid item and add a bid item for the incremental adjustment for the overrun exceeding 15 percent. For under-runs, the normal practice is to add a new bid item for a lump sum adjustment for 85 percent of the unrecovered one-time and fixed costs. Do not re-price the work within 15 percent of estimated quantities.

7-15.7 Quantity Adjustment for Overruns and Under-runs from Estimated Quantities.

a. Overruns/under-runs are differences between actual quantities and bid items estimated quantities for the contractually required scope of work. Work added or deleted by a change request or differing site condition is not an overrun or under-run. Do not include an increase or decrease as an overrun or under-run for payment on a unit-priced item when it is the result of a change request. Payment for a change request can only be made after execution of the appropriate contract modification and then included for payment on ENG Form 93.

b. When there are differences in quantities on unit-priced items, the resulting monetary increase or decrease must be reflected in the finance accounts.

c. At the time a net overrun is anticipated, prepare and execute a commitment document to properly record and commit or reserve such increases. Resource Management (RM) will pay the actual quantities from the ENG Form 93 and the Overrun/Under-run Statement, as long as the total contract amount is not exceeded by the total earnings, and sufficient funds have been committed. The amount committed for a contract overrun can be increased or decreased, based on the anticipated maximum liability, using the commitment document.

d. When total earnings exceed the total contract amount, because of net overruns, you must prepare an administrative modification to adjust the bid item quantities and increase the contract amount. You cannot pay a contractor more than the obligated contract amount. Base the administrative modification on the best estimate of anticipated actual quantities, if funds allow, or the actual amount exceeded.

e. Once the administrative modification adjusts the quantities, only use an Overrun/Under-run Statement with the payment estimate to vary from those adjusted quantities.

f. Before final payment, a closeout modification is necessary where there are still overruns, under-runs, and/or unit price adjustments due to variation in estimated quantity (outside the 15 percent band). The total contract amount must equal the actual placement.

g. For the closeout modification, if all unit-priced quantities actually placed are within 15 percent of the original estimated quantities, as modified by changes, the field will prepare a unilateral closeout administrative modification. It should state that the modification provides for adjustment of unit-priced bid items to reflect actual quantities performed.

h. When any of the final quantities are less than 85 percent or more than 115 percent of the original estimated quantities, as modified by changes, determine any unit price adjustments necessary, settle with the contractor, and reflect this agreement in a bilateral modification written under the *Variations in Estimated Quantities Clause* (in case this has not already been done). Prepare the modification for either the signature of the ACO or the CO, depending on the amount. If there is no re-negotiation of quantities, the modification will state that the parties have agreed. There is no unit price adjustment for actual quantities less than 85 percent or more than 115 percent of the estimated quantities. Include quantity adjustments to items within 15 percent in the same modification.

ADVERSE WEATHER DATA				DATE
CONTRACT NUMBER:		LOCATION:		
DESCRIPTION:				
MO/DA/YR	SCHED WK YES/NO	ACTUAL DELAY	TYPE ADVERSE WEATHER	WEATHER SENSITIVE WORK AND/OR REMARKS
/1/				
/2/				
/3/				
/4/				
/5/				
/6/				
/7/				
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/30/				
/31/				
ANTICIPATED DELAY _____ ACTUAL DELAY AFTER ANTICIPATED DELAY _____ CONV. CALENDAR DAYS _____				
_____		_____		
(CONTRACTOR SIGNATURE)		(GOVERNMENT SIGNATURE)		

CEHND FORM 967
1 NOV 94

Exhibit 7-15*1. Adverse Weather Data Sheet Example

**DEPARTMENT OF THE ARMY
MEMORANDUM OF FACTS
IN SUPPORT OF A MODIFICATION**

On 12 September 1993, the United States of American entered into Contract DACA01-86-C-0149 with Dicey Mechanical Contractors, Inc., Kingsport, Tennessee, for Construction of Lacquer Preparation Facility, at Holston AAP, Tennessee.

Daily quality control data was analyzed for the period 24 October 1993 through 31 January 1994 to determine the contractor's entitlement to a time extension for other than normal weather. Monthly evaluations of the Adverse Weather Data Sheets reveal an actual delay attributable to adverse weather after the anticipated calendar-day delay. A summary of the enclosed data stipulating the applicable time extension converted to calendar days is as follows:

Month	Work Days	Scheduled Delay	Unanticipated (x) Factor	Conversion (=) Calendar Days	Time Extension
24 Oct 93		6	2	8/06	3
24 Nov 93		18	3	30/18	5
24 Dec 93		18	7	31/18	12
31 Jan 94		31	8	31/31	<u>8</u>
				TOTAL	28 days

A review of daily records verified that adverse weather conditions during the described period delayed the contractor's progress by hampering his ability to perform critical items of work, i.e., clearing and grubbing, mechanical and electrical rough-in, and forming and concrete foundation placement. The contractor will concur with the 28 calendar-day delay by signing the data sheets.

Based on the recorded facts, the Contracting Officer determines that the contractor was delayed in performing the contract for reasons beyond his control and without his fault or negligence. Therefore, a modification will be issued in accordance with the Default Clause (Fixed-Price Construction), to provide for 28-calendar days extension of contract time and to revise the completion date from 2 January 1994 to 29 January 1994.

1 Encl
Adverse Weather Data Sheets

Seymour Weathersby
Administrative Contracting Officer

Exhibit 7-15*2. Memorandum of Facts in Support of a Modification

CHAPTER 7. CONTRACT ADMINISTRATION

SECTION 16. CONTRACT CLAIMS AND DISPUTES

7.16.1 General Principles. Basic policy of the Corps of Engineers involves a duty on the part of all concerned to eliminate, without prejudicing the substantive rights of the Government, the cause of all claims and consequent appeals. However, where claims and appeals do occur, they will be handled as quickly as possible with full and impartial consideration of all factors. The competency, wisdom, and diligence of the Contracting Officer and staff, which includes the Resident Office, usually are reflected in the final record of an appeal. The initial decision in each claim must be the studied, considered judgement of the Contracting Officer based upon substantial evidence and established legal principles. For the Contracting Officer to carry out his or her responsibilities, (s)he must of necessity rely upon the Resident engineer to present all factors involved so that in the final analysis (s)he can give full and impartial consideration to the rights of the Government as well as to contractor's rights. In many cases there are facts which are adverse to the Government's case as well as supportive to it. It is imperative that all adverse points, whether or not specifically raised by the contractor, be included in the file forwarded to Huntsville Center. The successful settlement of most claims depends primarily on detailed preparation and presentation of facts, rather than on intricate questions of law. The primary concern then is to get all the facts as a basis for correct action. It is important to assure the contractor that his problem is receiving fair treatment.

7.16.2 USAESCH/ACO Authority. Delegated authority from headquarters, **OSC** Procuring Contracting Officer, is for HNC to prepare Findings of Fact and issue decisions under the *Disputes Clause* on matters in which the ACO has the authority to take definitive action, represent the Government on construction contract matters before the Armed Services Board of Contract Appeals (ASBCA), and assist the United States attorneys in defense of construction contract matters initiated or appealed to the United States Court of Federal Claims within the guidance of FAR 33.2 Disputes and Appeals and within the following parameters:

a. Claim Less Than \$50,000. If the claim is less than \$50,000 it will be processed by the Resident ACO in accordance with procedures of this plan. The Resident ACO has no authority to deny a claim. If the Resident ACO recommends merit on a claim, the HNC-ACO must issue any modification which includes payment of interest under the Contract Disputes Act. Coordinate any result impacting the overall contract with the **OSC** procurement contracting office, through USAESCH.

b. Claim Greater Than \$50,000. If the claim is greater than \$50,000, it will be processed by the USAESCH ACO in coordination with the **OSC** Office of Counsel and with the concurrence of the **OSC** procurement contracting office.

7.16.3 The Disputes Clause. The current *Disputes Clause* in fixed-price construction contracts is dictated by the Contracts Disputes Act of 1978, which became effective 1 March 1979, and amended in 1995. This clause is the contract provision, which establishes the right of a contractor to an administrative remedy for settling disputed matters. This provision binds the parties to dispose of disagreements arising within the contract. It gives the Contracting Officer authority to decide certain questions arising during performance which are not settled by agreement at the job site, while the contractor is given the privilege of appealing an adverse decision of the Contracting Officer to an impartial administrative board or a court. The process extends to all disputes, claims, or disagreements concerning questions of fact and intends that the parties attempt to resolve differences by mutual agreement.

7.16.4 Resident Engineers' Responsibility in Disputes . The Resident Engineer will try to resolve all questionable and/or disputed items as soon as they arise. There have been some questions in the past about identifying or classifying certain items as claims. For guidance, a claim is defined as ...a written demand or written assertion by one of the contracting parties seeking, as a matter of right, the payment of money in a sum certain, the adjustment or interpretation of contract terms, or other relief arising under or relating to this contract. Use this definition in administering disputes. By regulation, the Contracting Officer must become personally and thoroughly familiar with all the facts of a claim and must discuss the claim with the contractor prior to a final appealable decision. While the Resident Engineer's authority as COR is limited in that (s)he may not finalize action on a claim, his or her authority does permit him or her to settle many disagreements which may arise. The Resident Engineer will personally participate in those problems in the same manner that the Contracting Officer is required to participate. Recognizing this responsibility and taking appropriate action at the proper time can result in prompt and early settlement of disputed matters.

7.16.5 Certification of Claims . A claim may be filed under any of the various contract provisions. The *Changes Clause*, *Differing Site Conditions Clause*, and *Suspension of Work Clauses* all contain provisions for equitable adjustments under special circumstances. The *Changes Clause* expressly provides payment for changes in the method or manner of work performance, such as acceleration, changes in the work site, etc. It also provides payment to the contractor for increased costs of unchanged work or delay expense, provided they are a foreseeable result of the change. The contractor will make all claims in writing and submit them to the Contracting Officer for a decision. Any claim \$100,000 (\$50,000 at Anniston Chemical Demil Facility) or less is a formal claim. Any claim, defined above, which exceeds \$100,000, is not a formal claim until the contractor certifies such in accordance with procedures described in the *Disputes Clause*. For example, the claim is made in good faith, the supporting data are accurate and complete to the best of the contractor's knowledge and belief, and the amount requested accurately reflects the contract adjustment for which the contractor believes the Government is liable. However the *Disputes Clause* also states that: **A voucher, invoice, or other routine request for payment that is not in dispute when submitted is not a claim under the Act.** If a contractor submits a voucher, invoice, or other routine request for payment that is not in dispute and includes a certification in accordance with the *Disputes Clause* (amounts more than \$100,000), the contractor will be notified, in writing, that the matter is not in dispute and, therefore, the certification provided in accordance with the *Disputes Clause* does not apply. This also includes requests for contract adjustments (i.e., variations in estimated quantities) and proposals for changes in response to an RFP. This will help alleviate any questions and/or misunderstandings as to when interest begins, should the matter become a dispute as defined in the *Disputes Clause*. For certifiable claims, as per the *Disputes Clause*, the contractor will execute the certification if the contractor is an individual. When the contractor is not an individual, the certification will be executed by a senior company official in charge at the contractor's plant or location involved, or by an officer or general partner having overall responsibility for conducting the contractor's affairs. It is the Resident Engineer's responsibility to inform the contractor if the certification has not been provided for a claim exceeding \$100,000.

7.16.6 Prompt Resolution of Disputes . In accordance with the *Disputes Clause*, the Contracting Officer must render a decision within 60 days, if the contractor's claim is \$100,000 or less and such decision is requested. For claims more than \$100,000, the Contracting Officer must either decide the claim or advise the contractor as to when a decision will be issued. If the decision is not rendered within 60 days, or the contractor notified when the decision will

be issued, it is assumed that the claim is denied and the contractor has the option of appealing. In addition, if the claim is certified in accordance with the Act, interest on the ultimate settlement will be due. Accordingly, it is necessary to handle all claims in an expeditious manner. Since disagreements and disputes arise in many ways, it is inappropriate to delineate a firm procedure for the Resident Engineer in handling every case on a fixed basis. Each case encountered will require exercising judgement and discretion coupled with the recognition of the responsibilities required to administer the contract as an authorized representative of the Contracting Officer. The following topics establish a framework for exercising the judgement and discretion in each case encountered.

a. Receipt and Acknowledgment of Contractor's Claim. The Resident Engineer will always acknowledge letters from contractors and state in his/her reply either the disposition being made or establish a proposed schedule for disposition. Depending on the status of construction or contract performance, it is usually appropriate to meet with the contractor soon after any letter of claim or dispute is received to determine the nature of the claim and establish the basis for handling and disposition. Contractors should be requested to furnish backup data; e.g., facts, cost breakdown, contract clauses, etc. However, the absence of such data or a response from the contractor does not preclude the Contracting Officer from making a final decision within the required 60 days, nor does it stop the contractor's accrual of interest. Some claims can be resolved in a relatively short period of time; e.g., requests for time extensions, minor change order adjustments, etc. Every effort should be made to resolve these claims as soon as possible. Additionally, there are claims that may have separable parts, some of which can be resolved. Matters which can be resolved should be either separated and finalized by modification (cutting off interest) or by mutual agreement to withdraw, thus leaving only those disputed issues.

b. Control.

(1) When a claim or dispute is received, the Resident Engineer will personally review the contractor's letter or submission to determine whether the matter is a claim, as defined under the Contracts Dispute Act of 1978, or a matter of contract administration, i.e., as a directed or constructive change, etc. If considered a claim, the RE will immediately forward a copy of the contractor's submission to CD-TS-CA. Other processing procedures are discussed in section 7.16.9, Forwarding Claim to Huntsville Center.

(2) Within the RO, the claim will be assigned to the proper element for appropriate action. Procedures will permit the office engineer or assigned person to establish suspense dates and controls, which permit orderly and timely scheduling of necessary actions at the Resident Office level, or for submission to the Contracting Officer.

(3) The receipt date of a claim, certified, if applicable, will be the controlling factor. If resolution is not made at the field level, submit the claim to CD-CA as soon as possible, but not later than 30 days after a claim is received since the Contracting Officer must either render a decision within 60 days or advise the contractor when a decision will be issued.

7.16.7 Review and Analysis of Dispute. Prompt and proper resolution of any dispute is dependent upon taking timely actions. Delay in handling may prejudice the rights of both the Government and the contractor, so it is essential that immediate action be taken to obtain all pertinent and relevant facts for an objective review and analysis of the merits of the claim. If a contractor's letter of claim is not considered adequate, (s)he should be given a deadline

(approximately 10 days) to submit further information to more clearly express his basis of claim and to support his or her entitlement to relief. Refusal to submit such data may be the basis for issuing a unilateral modification, thus minimizing the accrual of interest. Analysis of a claim involves many steps to achieve resolution. No attempt is being made here to identify all steps that should be done, since each case will involve different facts and circumstances; however, significant elements are:

a. Assemble all pertinent fact.

b. Coordinate with all pertinent Resident Office elements. Every person who might have been involved in the complaint should review the claim, i.e., surveillance personnel, field engineers, project engineers, shop drawing reviewers, and any other Government representatives. Each person who may have some personal knowledge of the complaint should comment in writing on each and every allegation made by the contractor. Type all comments, check for accurate recording of facts, and sign by the writer. Encourage personnel to participate in this manner so that timely and current knowledge will be preserved. Early participation will also preclude later embarrassment in the event errors in judgement may be involved. There should be no fear of reprimand for disclosure of the true facts in the matter.

c. After all pertinent and relevant data and facts have been assembled, the Resident Engineer and his staff will objectively analyze the file to determine a course of action.

7.16.8 Action Based on Determination.

a. In some instances, reviewing a claim file may lead to the conclusion that a letter to the contractor clearly explaining a basis for agreement will suffice. Reviews may also reveal that the contractor may be entitled to complete or partial relief. The need for a conference with the contractor to attempt a disposition by agreement may be necessary. In either event, meet with the contractor for a full and frank discussion of the claim. Conferences with the contractor are absolutely essential before referring the case to the Contracting officer for resolution, unless the contractor specifically indicates or states that he does not want to meet further with the Resident Engineer.

Resolving differences by mutual agreement strengthens the Government's relations with its contractors and/or suppliers and makes them more responsive to government requirements. Although meetings or discussions are sometimes time-consuming and sometimes contribute to delay, we believe that advantages outweigh disadvantages. Conduct conferences in such a manner that encourages the contractor to settle his or her disagreements at the Resident Office level. The Resident Engineer should be courteous and show the contractor that his claim may not be valid or may lack merit, but at the same time furnish him or her the basis for the Government's position. If this is done objectively, experience indicates that the Resident Engineer will generally obtain a just and equitable determination of dispute without unnecessary delay. Every attempt should be made to reach equitable agreements by this method.

b. Since the contractor has the burden of proof, the Resident Engineer has the right to request all backup information, facts, and data, which the contractor can produce in support of his claim. Do not hesitate to reveal pertinent, relevant, and material facts in the Government's possession to the contractor. The Government's position should be presented to the contractor clearly and objectively in an attempt to obtain the contractor's agreement and resolve the dispute.

c. All correspondence with contractors concerning claims, disputes, or disagreements should be prepared according to the policies stated above. Letters should be clear and concise, and reflect that due consideration and an analysis of the matter are included. It is important that a response is made to any question, issue, or an allegation raised in the contractor's letter of claim. As in a conference, analysis or response by correspondence should be done in a courteous, convincing, and persuasive manner so that the Resident Engineer, where possible, can obtain disposition by agreement. Any letter to the contractor furnishing an opinion, denial, allowance, etc., should end with an appropriate statement requesting a reply within, as a general rule, a maximum of 10 days. From a pure documentation standpoint, it is desirable to obtain a written withdrawal or communications form from the contractor for the record. However, this is not an absolute requirement and should not be encouraged in those cases where the contractor may be offended as a matter of principle. If a withdrawal is obtained in a conference, make an appropriate notation on the letter of claim or the matter recorded in conference notes or the resume of negotiation.

7.16.9 Forwarding Claim to Huntsville Center. When the Resident Engineer is unable to dispose of a claim by agreement, (s)he will send the claim to the Contracting Officer for further review and appropriate action. Send the entire claim file through CD-TS-CA (**Chemical Demilitarization** Directorate, **Technical Support**, Contract Administration), to OC (Office of Counsel) by memorandum with an attached Facts Sheet (See exhibit 7-16*1 for a sample format.). **The important thing to remember is to give the Contracting Officer all of the facts necessary for a fair and impartial consideration.** An adequately prepared record will help to avoid costly and time-consuming duplication of efforts by the reviewers. The claim fact sheet should be a complete narrative presentation so that an independent reviewer will be able to fully understand the case. Completeness will eliminate the need to return claim files to the Resident Office for additional data or information in most cases. The fact sheet should include marked-up drawings, photographs, if applicable, copies of office records, QA/QC daily reports, claim letters and enclosures, and all pertinent correspondence. If a dispute or disagreement is known to exist, regardless of how it developed, it should be considered as a clear signal toward requiring more documentation and continued surveillance of the problem to fully record the sequence of events and happenings which may bear on the dispute or issue. Inspectors and field engineers should make a complete record in their daily reports of things said and done. The value of such timely records is extremely important if the dispute results in appeal or litigation. Photographs should be made that will logically reflect how the construction developed. If this cannot be done, it would at least be desirable to have photographs in the claim file that depicts the situation either before or after the fact, or both. Marked-up drawings made at the time an event occurs are also helpful and, if available, at least three to four copies should be submitted to the Huntsville Center. Efforts toward documentation should, of course, be balanced with other considerations such as a claim amount, costs of photographs, or other efforts. There is no excuse for inadequate documentation when it is known that a dispute is developing, and appropriate action should be taken accordingly.

7.16.10 Alternative Review Process . In view of the Government's policy to try to resolve all controversial contract issues by mutual agreement at the COR's level, the Contracting Officer will use Alternative Dispute Resolution (ADR) procedures to the maximum extent practicable in the CSDP. These ADR procedures include the PARTNERING concept and an Alternative Disputes Review Process. Sample contract requirements for these considerations are shown in exhibits 7-16*2 and 7-16*3. Implementation of the Disputes Review Board will be as specified in the contract requirements and accomplished only after coordination with the Huntsville Center and the Contracting Officer.

7.16.11 Huntsville Center Action.

a. When the original claim file is received, CD-**TS**-CA will assign an identification number that will be used in all correspondence and interoffice communications pertaining to the contract claim. The claim number will be a 6-digit alphanumeric designation, such as Claim No. 910078A. The first two digits of the number represent the year of the contract. The next three digits are the last three numbers of the actual contract number. The last digit, a letter, represents the particular claim under the contract in alphabetical sequence. CD-**TS**-CA will make three to five copies of the claim file, as necessary, and immediately send one copy to the office of counsel. If the claim comes directly to the Division Office from the contractor or his attorney, CD-**TS**-CA will provide a copy to the field. CD-**TS**-CA will begin a division analysis.

b. CD-**TS**-CA will make a detailed technical review and an analysis of the claim. Expedite the process within the Huntsville Center. At this point, it is essential that the Office of Counsel become involved. The analysis of claims or proposals is made for Counsel's benefit and at their request. The analysis becomes an ATTORNEY-WORK-PRODUCT, and establishes an Attorney Work Product Privilege. This procedure allows data to be prepared and analyzed on a protected basis. Under the Expedited Process and upon completion of the analysis, CD will make a recommendation either denying the claim or recommending merit. Forward the claim file to the Office of Counsel with a copy to ED for completion of a technical review and finalization of their recommendations. CD-**TS**-CA will coordinate a meeting of the Division Claim Determination Team (Construction, Engineering, and Counsel).

c. Claim Approved.

(1) The Huntsville Center ACO may, after coordination with the IOC PCO and after consideration of recommendations from the Division Claim Determination Team, determine that the claim has merit. If this decision is within the PCO's delegated monetary authority and the contractor is entitled to an equitable contract adjustment, CD will either negotiate a settlement of the claim, return the claim to the Resident Engineer for negotiation, or assist the Resident Engineer in negotiating a settlement.

(2) Once the Government's pricing position is developed, pre-validated or request funds based on the Government's Estimate, where applicable. When a Government Estimate is not required, necessary funds should be based on the Government's cost analysis or a detailed review of the contractor's proposal.

(3) Any time a settlement contains monies for interest, the modification must also be written under the *Disputes Clause*. Therefore, the Contracting Officer must execute the modification. It is important to remember that interest starts on the date the contractor submits his claim, in writing, to the Contracting Officer for a written decision, certified, if applicable. The modification will be supported with documentation as required for a normal modification. The documentation requirements are included in section 7.1.3.1.

(4) Where interest is applicable, add a separate computation to the Government's Estimate or cost analysis after settlement of the claim. Also, include separate bid items involving interest on the SF 30 and, if applicable, the Government Estimate Cover Sheet. (Data is being developed for examples of an estimate containing interest calculations and separate bid items for interest rates provided by PL 92-41 and also format for computing interest.)

d. Claim Denied.

(1) The Huntsville Center ACO may, after coordination with the OSC PCO and OSC Office of Counsel and review, deny the claim based on available information. CD-CA will prepare an indicated decision letter, signed by the Director, Directorate of Chemical Demilitarization Construction, advising the contractor that the claim appears to be without merit and request the contractor to withdraw the claim. Also, the letter will offer the contractor the opportunity to meet with the ACO to discuss the issues.

(2) The purpose of the contractor/ACO meeting is to ensure that the ACO understands the issues and to provide the contractor an opportunity to respond to the indicated Government position. The parties may voluntarily elect to participate in the Alternative Dispute Resolution procedures.

7.16.12 Contracting Officer's Decision (COD).

a. Regulations prescribe the basic requirements for a final decision as follows:

(1) The contractor will be informed of the facts and reasons upon which the decision is based.

(2) It must appear from the express language, or by necessary implication, that the writing constitutes the final decision of the Contracting Officer. The written decision, if appealed, is the basis for an administrative hearing before the Armed Services Board of Contract Appeals, or the Court of Claims. Therefore, the decision form and substance are very important.

(3) As soon as practicable after conclusion of the Contracting Officer/Contractor meeting or in instances where the contractor declines a meeting or does not agree to implement the ADR Process, the Contracting Officer must make a decision. If the Contracting Officer decides to deny the claim, the CO will advise Office of Counsel of the decision and the Counsel Office will prepare a Contracting Officer's decision.

b. The Office of Counsel is responsible for putting in proper form all final decisions of the Contracting Officer. However, the decision must reflect that the determination is the personal decision of the Contracting Officer. The Resident Engineer and CD-**TS**-CA may be required to furnish technical advice to the Office of Counsel when necessary. The CD-**TS**-CA will provide a copy of all final decisions to the Resident Engineer for information.

CESAM-FC-RA

5 March 1998

MEMORANDUM FOR CEHNC-CD-CA

SUBJECT: Request for Contracting Officer's Decision, Contract DACA01-97-C-0201, Electrical Maintenance and Repair, Phase III, Redstone

1. Enclosure 1 is a letter from Short Circuit Electrical Company, Inc., dated 29 January 1998, requesting a Contracting Officer's decision.
2. It is the opinion of this office that the claim has no merit. Enclosure 2 is the Fact Sheet for this claim, summarizing our analysis, findings, and recommendation.

I. M. Fair
Resident Engineer

Exhibit 7-16*1. Memorandum to Forward Claim

FACT SHEET ANALYSIS

SUBJECT: Contract No. DACA01-96-C-0201, Electrical Maintenance and Repair, Phase III, Redstone Arsenal, Alabama, Claim No. 91201A, Costs to Furnish Temporary Power Hookup

CONTRACT DATA:

Contractor: Short Circuit Electrical Company, Inc.

Date of Award: 30 Sep 96

Notice to Proceed: 4 Nov 96

Original Contract Amount: \$2,780,000.00

Contract Modifications to Date: 3

Revised Contract Amount: \$2,787,600.00

Original Completion Date: 28 Dec 98

Modified Completion Date: 20 Jan 99

Liquidated Damages: N/A

SUMMARY OF CLAIM:

The dispute concerns whether the contract required the contractor to extend temporary primary power lines to furnish temporary power to the job site. The contractor disagreed with the Area Office's oral interpretation that it does.

BACKGROUND:

The contractor submitted a claim for \$2,497.00 increase and a 4-calendar-day time extension by letter dated 29 January 1998, received by the Redstone Arsenal Area Office on 30 January 1998 (Exhibit 1). The claim proposal represents costs; the work was performed between 20-22 January 1998 according to daily Quality Control and Quality Assurance Reports (Exhibit 5).

CONTRACTOR'S POSITION:

The contractor claimed he did not anticipate additional work to run primary power lines to furnish temporary power to the job site. In his 29 January 1998 claim, he asserted that SC-31, **AVAILABILITY AND USE OF UTILITY SERVICES** (Apr 1984) FAR 52.236-14, states The Government will make.... utilities available. He went on to say, There is no indication on the plans that the contractor would furnish primary power. The undersigned called Mr. Steve Brooks of Short Circuit Electrical Company, Inc. On 22 February 1998 to discuss the claim.

Mr. Brooks explained that the claim is for extending primary power from a 4160-volt distribution line approximately 1000' to the project site. Mr. Brooks explained that at bid time, they had contemplated only making a secondary connection (240 volts) at the site; approximately \$500 had been budgeted for that work. The claim does not include any costs for the secondary connections. Mr. Brooks explained that Short Circuit Electrical Company, Inc. has had contracts at Redstone Arsenal for several years. He asserted that the base always provided primary power to their job sites, extending lines if necessary.

GOVERNMENT POSITION:

The Government's position is that the claim is without merit.

Contract Clause 68 (Exhibit 2) requires all bidders to familiarize themselves with site conditions, including temporary power requirement; and Special Contract Requirement Clause (Exhibit 3) requires the contractor to provide any distribution lines necessary for temporary power. Short Circuit Electrical Company, Inc. could have determined from a pre-job site investigation where the nearest electrical source was located. Notwithstanding possible past practice by the base on their contracts, nothing in this contract with the Corps of Engineers suggests or requires that the Government will extend primary power to the job site.

Discussion and Analysis:

The project primarily involved electrical work. Short Circuit Electrical Company, Inc. is an electrical contractor.

Contract Clause 68, **SITE INVESTIGATION AND CONDITIONS AFFECTING THE WORK** (Exhibit 2), requires that the contractor investigate and familiarize itself with the nature and location of the work and conditions which can affect the cost of the work, including the availability of power. A site visit and examination of the plans by a qualified electrical firm would have revealed that there is no primary power source immediately available at the project site for temporary power. There are several high-voltage power lines shown on the drawings. However, according to Redstone Area Office personnel, an electrical firm would realize that those sources weren't available for step-down secondary service. Mr. Brooks confirmed this in the above-mentioned 22 February 1998 telephone conversation.

Special Contract Requirement 31, **AVAILABILITY AND USE OF UTILITY SERVICES** (Exhibit 3), states that the Government will make utilities available to the contractor from existing supplies and outlets. It further states that The Contractor, at its expense...shall install and maintain all necessary temporary connections and distribution lines... and shall remove all temporary connections, distributions lines... at the end of the job. Thus, the contract language is explicit and unambiguous that the Government will only make electricity available from existing sources, and the contractor must extend distribution lines, if necessary, for temporary power.

In the 22 February 1998 telephone conversation, Mr. Brooks agreed that there wasn't any alternative source available closer than the location they actually tied into. Mr. Brooks explained that when they made the arrangements with the base, after award, for temporary power connections, they learned that they would be responsible for extending the primary high-voltage line to the site a distance of 1000' feet. The base loaned the contractor a step-down transformer to install at the project site. Short Circuit Electrical Company, Inc. had not anticipated extending primary power, according to Mr. Brooks, because the base had previously provided or extended primary power to their job sites. Therefore, their claim is based on prior dealings with the base. The undersigned contacted Redstone Area Office personnel who stated they had no knowledge of this past practice; apparently, it involved base contracts. They were aware that the base loaned step-down transformers to contractors. This is beyond the Government's obligation, as stated in SCR 31. Normal practice on Corps of Engineers contracts is for contractors to make their own arrangements for the installation of temporary power using whatever means is necessary to connect to existing high-voltage or low-voltage sources.

There is no prior course of dealing between Short Circuit Electrical Company, Inc. and the Corps of Engineers to demonstrate conduct constituting a waiver of the contract requirements. Short Circuit Electrical Company, Inc. assumed that the base would extend primary power to this project site based on their experience with the base, without checking during the bid period, according to Mr. Brooks on 22 February 1998.

RECOMMENDATION:

The claim is without merit and should be denied.

I.M. FAIR
Resident Engineer

EXHIBITS:

1. Contractor's 29 January 1998 claim letter, stating their position and requesting a Contracting Officer's Decision
2. Contract clause 68, **SITE INVESTIGATION & CONDITIONS AFFECTING THE WORK.**
3. Special Contract Requirement 31, **AVAILABILITY AND USE OF UTILITY SERVICES.**
4. Daily Quality Control and Quality Assurance Reports, 20-22 January 1998.

Exhibit 7-16*1 Attachment. Fact Sheet Analysis (cont'd)

PARTNERING

In an effort to most effectively accomplish this contract, the Government proposes to participate in a concept called Partnering with the contractor and his subcontract. This cooperative would strive to draw on the strengths of each organization in an effort to achieve a quality project the first time, within budget and on schedule. This effort would be bilateral in make-up and participation will be totally voluntary. Any costs associated with effectuating this partnering effort will be agreed to by the parties and will be shared equally with no change in contract price. Accordingly, the contractor shall not include costs associated with this partnering effort as part of this contract, nor will such costs be allowable under the contract.

It is noted that this partnering effort conveys no legally enforceable rights or duties. Any changes to the contract must be made by the Contracting Officer under the terms of the written contract. Rather, the Partnering concept is a team relationship that promotes the achievement of mutually beneficial goals. This Partnering effort will be governed by the principles and procedures set forth in IWR Pamphlet-91-ADR-P-4.

Exhibit 7-16*2. Partnering Concept Procedures

ALTERNATIVE DISPUTES REVIEW PROCESS

(SEE SPECIFIC CONTRACT REQUIREMENTS)

1. In order to assist in the timely resolution of disputes or claims arising out of this project, this contract clause establishes an Alternative Disputes Review process, to be brought into play by mutual agreement of the parties. When deemed mutually beneficial, a Disputes Review Board will consider disputes referred to it and will provide non-binding recommendations to assist in the resolution of the differences between the Government and Contractor. Specific procedures to be followed for disputes referred to the Disputes Review Board will be as decided upon by Government and Contractor. Nothing herein shall limit the right of the parties to agree to any or all other alternate dispute review processes. However, the procedures below are general guides for establishing such procedures.
2. Should a dispute arise between the Government and Contractor, either party may propose utilization of these procedures and, upon agreement of both parties, the matter(s) in issue will be referred to the Disputes Review Board. If such submittal to the Board is not agreed to by the parties, the matter will be pursued under the normal claims and appeal procedures in accordance with the Disputes clause of the contract.
3. The Disputes Review Board shall consist of one member selected by the Government and one member selected by the Contractor. The first two members shall be mutually acceptable to both the Government and the Contractor. The parties shall exchange lists of three individuals acceptable as a Board member. The Government and the Contractor shall each select one individual from the other's list. If no individual on the first list is acceptable to the other party, a second list with three (3) individuals will be proposed. If no one on the second list is acceptable to the other party, the selection process shall not continue and the mutual decision to submit the dispute to a Disputes Review Board shall be considered terminated.
4. The two members acceptable to the Government and the Contractor will independently select the third member from a list of 10 names developed by the Government of individuals respected in the field of engineering and construction for their ability and integrity, one of whom should be acceptable. If the two members are unable to select the third member from this list, the decision to submit the dispute to a Disputes Review Board shall be considered terminated.
5. The Contractor and the Government shall each be afforded an opportunity to be heard by the Disputes Review Board and to offer evidence. The procedures for conducting such hearings shall be as mutually agreed to by the Government and Contractor. The Disputes Review Board recommendations toward resolution of a dispute will be given in writing to both the Government and the Contractor within 30 days following conclusion of the proceedings before the Disputes Review Board. Such recommendations are advisory and non-binding upon both the Government and the Contractor.
6. Within 30 days of receiving the Disputes Review Board's recommendations, both the Government and the Contractor shall respond to the other in writing, signifying that the dispute is either resolved or remains unresolved. If the Government and the Contractor are able to resolve their dispute, the Government will expeditiously process any

Exhibit 7-16*3. Alternative Disputes Review Process

required contract modifications. Should the dispute remain unresolved after 30 days following receipt of the Board's recommendations, the procedure will terminate and the Contractor will be entitled to pursue his claim with the Review Board. Except for fee-based consulting services on other projects, no Board member shall have been employed by either party within a period of two years prior to award of the contract.

7. If at any time during the existence of the contract, the parties mutually agree that a Disputes Review Board should be established for work performed under this contract, the Government and the Contractor shall commence the selection procedures, as above, and negotiate an agreement with their member within 30 calendar days. The selection of the Disputes Review Board Alternative Disputes Review procedure for resolution of contract disputes shall be void if the two members are unable to select a third member within 30 calendar days. This Board shall serve during the existence of the contract, to attempt resolution of the other disputes which may be mutually referred to the Board.

8. In appropriate cases, the Contractor and the Government may agree that a dispute should be submitted to the Disputes Review Board, but the dispute only warrants the mediation efforts of one Board Member. In such cases, the third Board Member will mediate the dispute without participation of the other two members.

9. The Disputes Review Board will formulate its own rules of operation, and may request of the Government that they visit the site to familiarize themselves with the controversy.

10. Should the need arise to appoint a replacement Board member, the replacement member shall be appointed in the same manner as the original Board member were appointed. The selection of a replacement Board member shall begin promptly upon notification of the necessity for a replacement, and shall be completed within 30 calendar days.

11. Compensation for the Disputes Review Board members, and the expenses of operation of the Board, shall be shared by the Government and Contractor in accordance with the following:

- a. The Government will compensate directly the wages and travel expenses for its selected member.
- b. The Contractor shall compensate directly the wages and travel expense for its member.
- c. The Government and Contractor will share equally in the third member's wages and travel, and all other expenses of the Board.
- d. The Government, at its expense, will provide administrative services, such as conference facilities and secretarial services, to the Board.

12. The establishment of the Alternate Disputes Resolution Procedure under this contract may be terminated at any time by written notice on the other party. Board members may withdraw from the Board by providing notice. Board members may be terminated for cause only by their original appointer. Therefore, the Government may only terminate the Government's appointed member, the Contractor may only terminate the Contractor's appointed member, and the first two members must mutually agree to terminate the third member.

Exhibit 7-16*3. Alternative Disputes Review Process (Continued)

13. The principal objective of the Disputes Review Board is to assist in the resolution of disputes, which would otherwise likely be resolved through the traditional litigation processes. It is intended that if mutually agreed to by the parties to constitute a Disputes Review board for the purpose of attempting to resolve contract disputes, that the mere existence of the Board will encourage the Government and the Contractor to resolve potential disputes without the necessity of resorting to the formal appeal procedure under the Disputes clause of the contract.

14. Primarily, the BOARD will consider claims and disputes involving interpretation of the Plans and/or Specifications, delays, acceleration of the work, scheduling, classification of extra work, changed conditions, design changes, and the like.

15. If the Board's recommendations do not resolve the dispute all Board findings and written recommendations, including any minority reports, will be inadmissible in any subsequent litigation or hearing before the Boards of Courts contemplated by the Disputes clause procedures, involving the dispute at issue.

CHAPTER 7 – CONTRACT ADMINISTRATION
SECTION 17 – CONTRACTOR REQUEST FOR EQUITABLE ADJUSTMENT

7.17.1 Purpose: To incorporate standard operating procedures for handling a Contractor's Requests for Equitable Adjustment, hereinafter referred to as REA's, into the Contract Administration Plan, CEHNC-1180-3-1. Establishes policy, assigns responsibilities, and provides guidance relating to handling of Contractor's Request for Equitable Adjustment to meet the needs of the Chemical Demilitarization Directorate, Contract Administration Branch.

7.17.2 Applicability: Applies to all Resident Office and Huntsville Center personnel handling Contractor's REA's.

7.17.3 References:

- a. EP 415-1-260
- b. FAR 52.233-1
- c. Administration of Government Contracts, by Cibinic and Nash

7.17.4 Procedures: The responsibility to resolve areas of disagreement rest with the Resident Engineer hereinafter referred to as the RE. However, the RE office should fully coordinate contract interpretation issues or alleged design defects with the HNC Chem Demil group, as the issues may have programmatic implications. The RE must make a determination to either handle the REA with his Resident Office Staff or to request the assistance of the Contract Administration, Technical Support Team in Huntsville Center. Should the RE determined the need for assistance, he should provide a written request in the form of a Memorandum for Record to the Chief, Contract Administration Branch describing exactly the assistance being requested. If assistance is requested, by the RE, then the input of the Resident Office personnel will be necessary since they have first hand knowledge of the issues involved.

When a contractor submits a **request** it is important for the RE to properly identify the request as **an** REA, Dispute, or a Claim. The RE is responsible for properly identifying correspondence and reports according to the definition of REA, Dispute, or a Claim as noted below. Do not improperly label a "contractor request", i.e. **an** REA, as a Dispute or Claim. Each will require a different approach to handling as noted below. Once the issue has been identified as an REA, the RE must then analyze and examine the REA, meet with the Contractor as necessary to discuss merit and attempt to reach a resolution. After meeting with the contractor the RE will make a determination if the issue has merit. The RE's analysis of the REA is important since it is used to determine further action on the REA. A written analysis of the Contractor's REA must then be developed and will contain a complete systematic revisit of the issues raised by the contractor with the Government's position on the issues. The complete written analysis,

with the RE's recommendations, must be supported with copies of all documents referenced in the Contractor's REA attached to the analysis. A sample format for developing the REA Analysis is provided at Exhibit 7-16*1, Fact Sheet Analysis. Once the RE makes a determination on the merits of the REA, the RE shall submit the written analysis to the HNC Administrative Contracting Officer, through Contract Administration and Office of Counsel, for **concurrence** prior to sending to the Contractor. **Then the RE will send the written reply** to the contractor with complete justification of the RE's position based on the analysis, the contract plans and specifications, and meetings with the Contractor. The reply will provide the contractor with the RE's justification of his findings of merit or no merit. If complete merit is determined, the contractor is advised, in writing, that a modification will be processed upon successful negotiations of the issues. If partial or no merit is determined, then the contractor will either drop the issue or respond in writing that he is not in agreement with the RE's findings.

At this point the matter becomes a **dispute** since both parties have not reached an agreement. See also, Chapter 7, paragraphs 7.16.6, Prompt Resolution of Disputes, and 7.16.7, Review and Analysis of Disputes, for additional information on handling disputes. As soon as an issue becomes a dispute the RE must continue recording all facts, keep accurate records, and take photos as necessary to document the matter. Further attempts must be made to reconcile the issue by conducting meetings with the contractor. If the issue cannot be resolved through additional meetings then a letter should be provided to the contractor summarizing the basis of the RE's position, and indicate the efforts made to date at attempting to reach a resolution. The RE letter should indicate that if the Contractor still disagrees with the Government's position the Contractor may meet with the Huntsville ACO to further discuss the issues. If the contractor wishes to pursue the issue, the RE will coordinate with Huntsville Contract Administration, Office of Counsel, and the Huntsville Administration Contracting Officer to arrange a meeting and to provide a complete copy of the file to HNC. As an alternative to a meeting, the RE may request HNC review of the contractor's and the ACO's positions. If the issues cannot be resolved at the informal HNC ACO level, the HNC ACO will decide to either directly write the contractor or to have the RE send a letter to the contractor with the Government's position, as in the earlier letter. The contractor should then respond in writing stating his position to either drop the issue or to request a Contracting Officer Decision, hereinafter referred to as a COD.

Once the contractor responds with a request for a COD the issue then becomes a **claim**. This Claim letter is forwarded to the HNC Administrative Contracting Officer through the Chemical Demilitarization Directorate with a copy of the RE's written analysis and the RE's recommendations. Follow the procedures for forwarding Claims to the Huntsville Center as detailed in Chapter 7, paragraph 7.16.9, Forwarding Claims to Huntsville Center. The HNC Administrative Contracting Officer must then render a decision within 60 days of the date the Government receives a properly endorsed contractor's request for a COD. If the Administrative Contracting Officer determines the claim has merit, the claim is subject to negotiation and is processed as a contract

modification upon successful negotiations. If no merit is found the contractor is advised in writing and informed of his appeal rights.

7.17.5 Definitions:

a. **Contractor request, or Request for Equitable Adjustment, i.e. REA** – any written request for time, money, or other relief for which a contracting officer's decision has not been requested. An REA does not become a dispute until no merit is found and the Contractor does not agree with the Government's position on the issue. If merit is found then the issue becomes subject to negotiations as a modification.

b. **Dispute** - a disagreement between the Contractor and the Contracting Officer, or his Authorized Representative, or a finding of no merit on an REA where the Contractor disagrees with the RE's findings. A dispute does not become a claim unless the Contractor requests a contracting officer's decision.

c. **Claim** – a written demand by one of the contracting parties for the payment of money or other relief that meets the requirements of the Contract Disputes Act of 1978. The claim can be the result of an REA that has progressed through the stages noted above, or a claim could be submitted initially. Either must be submitted in writing to the Contracting Officer for a Contracting Officer's Decision, COD. The CO must document the contract file with evidence of the date of receipt of any submission deemed to be a claim. However, a written demand or written assertion by the contractor seeking the payment of money exceeding \$100,000 is not claim under the Contracts Disputes Act of 1978 until certified as required by the "Disputes" clause of the contract, (FAR 52.233-1, Disputes). A voucher, invoice, or other routine request for payment that is not in dispute when submitted is not a claim under the Act.

7.17.6 Review and Analysis of REA – prompt review by the Resident Engineer and taking timely action is required by obtaining all pertinent and relevant facts for an objective review and analysis of the merits of the REA. A determination must be made on the adequacy of the information submitted by the contractor. If additional information is needed the contractor should be given a deadline in writing of approximately 10 days to submit further information as requested by the Resident Engineer. Coordinate with all Resident Office personnel who might have been involved with the REA issues. Also, the Resident Office should review and collect all relevant shop drawings and letters associated or referenced in the REA. Once all the pertinent and relevant data and facts have been assembled, the Resident Engineer and his staff can objectively analyze the issues, develop the written analysis, and determine a course of action. The course of action will either be to recognize merit or a finding of no merit after meetings with the Contractor to discuss the merits of the issues. If merit is found then the contractor is informed a modification will be issued subject to successful negotiations. If no merit is found then the contractor is informed in writing and the issue becomes a dispute as noted above. If the contractor requests a COD then follow the procedures already identified in

Chapter 7, Section 16.9 of the Contract Administration Plan entitled Forwarding Claims to Huntsville Center.

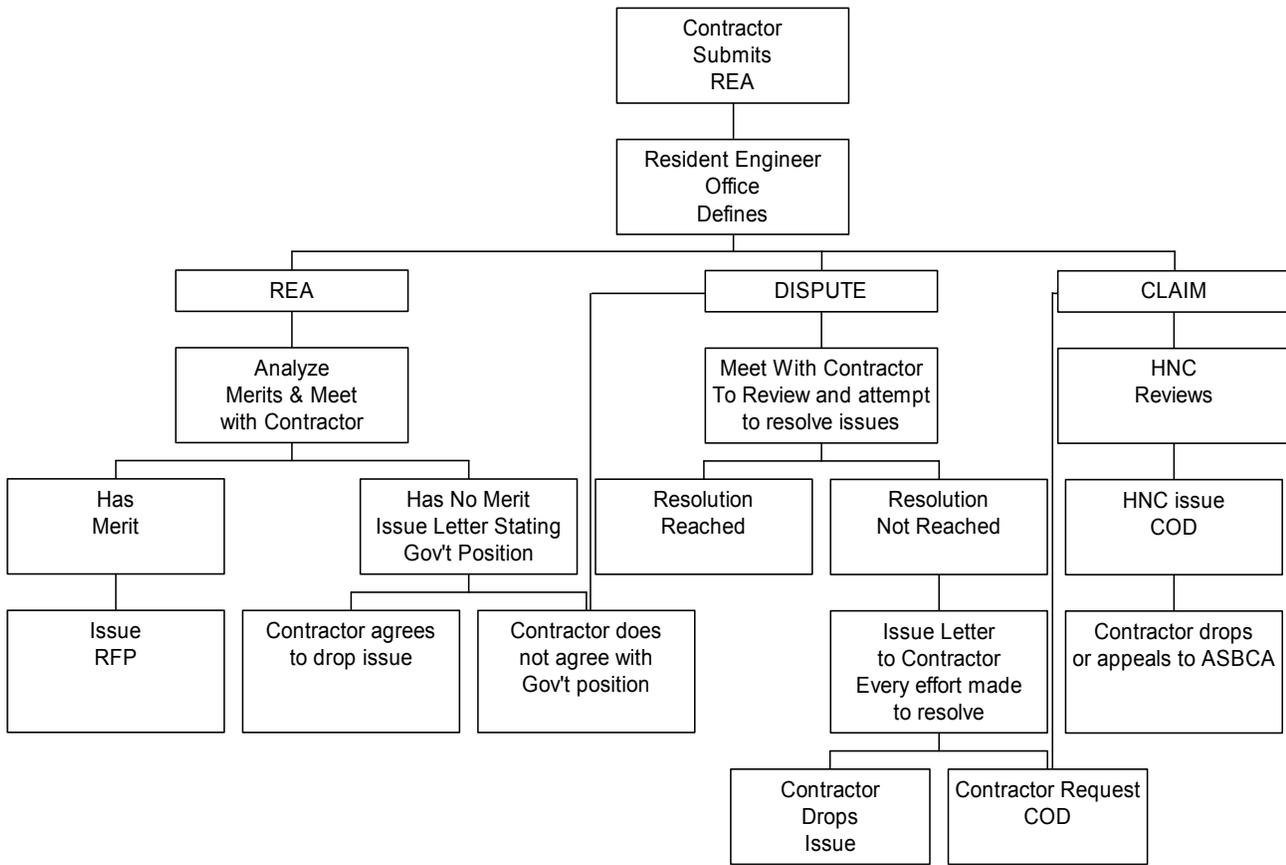


Exhibit 7-17*1 REA Flow Chart

CHAPTER 8. CONTRACTOR PROGRESS PAYMENT VOUCHERS

8.1 Introduction

a. Instructions in this chapter are intended to familiarize personnel with the Prompt Payment Act Amendments of 1988 and guide government personnel in processing the contractor's payment vouchers and supporting fiscal matters for fixed-price construction contracts. Phases II (CLIN 0002), III (CLIN 0003), and IV (CLIN 0004) of the Systems Contract are firm fixed-price. USAESCH, following the Memorandum of Agreement with IOC, has authority to administer construction covered by CLIN's 0002, 0003, and 0004. This relationship may change from site to site in the future. However, the construction administration of each project will generally follow this organizational arrangement.

b. Based on the contract type, prime contractor payments must follow certain procedures for cost-type contracts. Although Phases II, III, and IV are fixed price, the prime contractor can only be paid (reimbursed) for incurred costs as allowed by the PCO or the delegated COR. The prime contractor must have paid subcontractor costs in order to be paid for the recorded or incurred costs.

c. Payment processing is shown on the flow diagram in Exhibit 8*1. This diagram follows the contract requirements for the FFP and the CPFF phases. It is intended that the construction phases follow normal, routine Corps of Engineers procedures for fixed-price construction contracts. Huntsville's authority does not include any reporting requirements on daily observation of the progress of construction work. It is limited to the actual payment estimate preparation and matters pertaining thereto. The PCO/IOC is responsible for all other contract payments.

8.2 References .

- a. FAR Subpart 32.9, Prompt Payment.
- b. Public Law 100-496, Prompt Payment Act Amendments of 1988.
- c. OMB Circular No. A-125, revision dated 21 December 1989.

8.3 Prompt Payment Act Amendments of 1988 . The Prompt Payment Act (PPA) Amendments of 1988 significantly changed the bill paying practices of the Federal Government for contracts awarded, renewed, and options exercised after 31 March 1989. The Act established standards for invoice payments; clarified the definitions of invoice receipt dates and dates of government acceptance of goods or services; eliminated grace periods for late government payments; made interest penalties automatically payable; provided an additional penalty for interest owed but not paid; and extended PPA requirements to partial payments, construction progress payments and release of retained percentage, and construction subcontracts. The PPA Amendments of 1988 do not apply to contracts awarded before 1 April 1989.

8.4 PPA Procedures for Construction Contracts. The following operating procedures will insure that

contractor payments are promptly paid by the Government. For complete guidance on the Prompt Payment Act Amendments of 1988, see contract clauses, *Payments Under Fixed-Price Construction Contracts* (APR 1989), FAR 52.232-5, and *Prompt Payment for Construction Contracts* (AUG 1993) FAR 52.232-27, attached as Exhibits 8*2 and 8*3.

a. Preliminary Review of Invoice. Before a proper invoice is submitted, a preliminary review of the NAS schedule, or an alternate schedule, by government and contractor personnel will insure:

- that each payment item is related to the various elements of work required by the contract;
- that the work requested was performed (refer to work sheets, cross sections, etc.);
- how the percentage or amount paid was determined;
- why retainage was held or not held;
- why liquidated damages were assessed or not assessed;
- that an agreement between both parties.

The RE should substantiate the preliminary review, in writing, and place the documentation in the applicable file retained in the field office.

b. Proper Invoice. An invoice is the contractor's bill or written request for payment for work performed under the contract. In accordance with the PPA, a 'proper' invoice must include:

(1) Name and address of the contractor.

(2) Invoice date.

(3) Contract number or other authorization (including order number and contract line item number).

(4) Description of work or services performed.

(5) Delivery and payment terms (e.g., prompt payment discount terms).

(6) Name and address of contractor official, or as otherwise directed by the contractor, in writing, to whom payment is to be sent (must be the same as that in the contract or in a proper notice of assignment).

(7) Name (where practicable), title, and telephone number of person to be notified in event of a defective invoice.

(8) Substantiation of the amounts requested (determined under preliminary review) and certification in accordance with the requirements of the *Payments Under Fixed-Price Construction Contracts Clause*.

(9) Total dollar amount reflected in each agreement between the contractor and subcontractor; amount included in current payment for each subcontractor; and total payments already made to each subcontractor (per revised OMB Circular No. A-125).

(10) Any other information or documentation required by the contract.

c. Designated Billing Office (DBO). This is the office designated to first receive the invoice. In most cases, this is the Resident Office administering the construction phases of the contract. There may be other contracts where the Resident Office will not be the DBO. These contracts will follow other instructions. An example may be Title II A-E or support contracts. The payment "clock" starts to run on the date that the proper invoice **is received** at the designated billing office. The proper invoice *must include the contractor's prompt payment certification*. The DBO office will take the following action to process the payment:

(1) Date stamp the face of the invoice and the CEHND Form 947, Prompt Payment Certification and Supporting Data for Contractor Payment Invoice, immediately upon receipt. Otherwise, the "clock" starts on the date of the invoice and the CEHND Form 947 (see Exhibit 8*4).

(2) Immediately review to determine if a 'proper' invoice has been submitted. If the invoice is 'proper', affix the date interest will start to accrue just below the date stamp on CEHND Form 947.

(3) All payment requests (estimates) must be signed in CEFMS no later than two working days prior to the payment due date. The payment due date is 14 days after the payment request is received by the DBO. However, the payment may have to be made earlier because the USACE Finance Center does not make payments on the first and last two days of the month and the first week in October. When the payment due date falls within these time periods, sign the payment estimate in CEFMS no later than two days before the early payment date.

d. Designated Payment Office (DPO). The DPO is the USACE Finance Center located in Millington, TN 38504-8001. The DPO is responsible for processing and certifying the receipt voucher and printing the check. This effort requires two working days.

e. Improper Invoice. An improper invoice is one that does not meet the conditions established by the PPA contract clause. Take special notice in the clause of the requirement for the prompt payment certification, where the contractor attests to the amounts requested for performance, makes timely payments to subcontractors and suppliers, and does not withhold or retain any amounts from a subcontractor or supplier in accordance with the terms and conditions of the subcontract. If the Prompt Payment certification (CEHND Form 947), Form 93 and 93a, Contractor Invoice, summary Tables or Supporting Data is not submitted, reject the invoice. An invoice is also improper when it incorporates a modification to the contract that has not been finalized or includes the Consent of Surety, when applicable. Do not finalize any modification for payment until the Government receives the executed Consent of Surety. Do not transmit an improper invoice for payment. When an invoice is found by the Resident Engineer to be improper or defective, the following actions must occur:

(1) Notify the contractor of the defective invoice within seven days after the invoice is received, initially by telephone, and then confirmed, **in writing**. If it takes more than seven days to notify the

contractor, then the due date for beginning interest accrual on the corrected invoice will be adjusted by subtracting the number of days taken beyond the prescribed notification of the defective period. For example, if the contractor is notified of defective invoice 10 days after receipt, the interest accrual date will start 11 days after receipt of the corrected invoice if payment is not made. Attach the corrected notification documentation (MFR format) to the applicable payment estimate.

(2) The designated government representative will cross out the date stamp on the invoice and certificate, initial, and date the same date of notification to the contractor of improper or defective invoice. The "clock" is effectively stopped upon notification.

(3) The whole process starts over with the resubmission of the corrected invoice and certification, date stamped, etc.

(4) Disagreement between the Government and the contractor over the payment amount, issues of contract compliance, or retainage does not form the basis for finding the invoice defective and requiring resubmission. However, since the PPA Clause states that interest penalties are not required on payment delays due to disagreement, it is imperative that written evidence be submitted with the payment estimate. The Prompt Payment Certification and Supporting Data for the contractor payment invoice will be annotated to document the delay and to alert the designated payment office not to pay interest during the delay period. The ideal position is to avoid this situation by substantiating and documenting agreements prior to the contractor submitting the invoice, as indicated in paragraph 8.4.

f. Interest (Contractor).

(1) The due date for interest on progress payments will be 14 days after receipt (beginning on the 15th day) of the **proper** invoice by the DBO. The interest due date on final payments will be either the 30th day after receipt (31st day) by DBO of a proper invoice, subject to contract settlement actions (e.g., release of claims), or the 30th day after government acceptance of the work completed by the contractor, whichever is later. Interest is due on retained percentage if the Government fails to release retained amounts in accordance with the terms of the contract, or if not specified in the contract, within 30 days after approval for release to the contractor by the Contracting Officer.

(2) If the contractor meets conditions and payment is not made by the due date, interest will automatically be paid by DPO without request from the contractor.

(3) The interest will be at the rate established by the Secretary of the Treasury that is in effect on the day after the due date of the payment.

(4) If a discount for prompt payment is taken improperly, interest will automatically be paid by DPO, without request from the contractor.

(5) Current DA policy mandates the payment of all interest penalties from operating funds of the agency. HQUSACE has defined these funds as Operation and Maintenance, Army, General Expense.

(6) Interest that may be payable relative to claims involving disputes will be resolved in accordance with the *Disputes Clause*, not the Prompt Payment Act. Claim payments, including interest, should be submitted on a separate payment estimate. Payments for adjudicated claims under the Contract Disputes Act are not reported as interest penalties under the Prompt Payment Act.

(7) For further reference on interest and details for calculations, see paragraphs A(3) and (4) of the PPA Clause, Exhibit 8*3.

g. Interest (Government). Under the law, the contractor will notify the Government when (s)he discovers that a portion or all of a current payment request covers work that does not conform to the contract. To the extent that payment has already been paid to the contractor, the Government is entitled to interest on "unearned" payments. See paragraph (e) of the PPA Contract Clause for specifics.

h. Penalty. In contracts awarded after 1 October 1989, a penalty amount, in addition to the interest amount, will be paid if the contractor is owed interest and is not paid the interest within 10 days after invoice payment, and if the contractor makes a written demand, not later than 40 days after payment of the invoice, that the agency pay such a penalty.

i. Subcontractors/Suppliers.

(1) The contractor, in accordance with the PPA, will include a payment clause and interest penalty clause in each subcontract, and a clause requiring each subcontractor to include the same clauses in each of its subcontracts.

(2) PPA Amendments obligates the contractor to pay subcontractor(s) for satisfactory performance under its subcontract not later than seven days after payment of such amounts is received by the contractor under the contract, or interest will be paid at the same rate the Government pays interest for late payment. Prime contractors must follow the "pay-when-paid" principle in dealing with subcontractors.

(3) As required by revision to Office of Management and Budget Circular No. A-125, the prime contractor's progress payment request must list the total amount reflected in each agreement between the contractor and subcontractor; the amount included in the current payment for each subcontractor; and total payments already made to each subcontractor. The contractor will submit this information, among other data needed for a proper invoice on CEHND Form 947. Do not process payment estimates if the certification is not included.

(4) Contractors may withhold or retain all or part of payments due subcontractors for good cause, including work that is in dispute, third-party claims, or alleged damages. The contractor may also retain a specified percentage of subcontract payments pending final completion of subcontract work, if allowed in his or her subcontract agreement, or withhold payment for Miller Act violations. If the contractor elects to deduct subcontractor earnings, follow the indicated procedures:

(a) The contractor will report full progress and earnings, including subcontractor work, in NAS or

by alternate means.

(b) The contractor will request deductions for subcontractor work by using CEHND Form 947.

(c) The RE will back out the "Subcontractor Deductions by Prime Contractor" in an added item to ENG Form 93.

(d) "Total Earnings to Date" on ENG Form 93 will only reflect earnings for which the contractor wishes payment, less normal retainages and deductions.

8.5 Payment for Preparatory Work and Mobilization. Contract Clause, *Payments Under Fixed-Price Construction Contracts (Apr 1989)*, states, in part: "In the preparation of estimates the Contracting Officer may authorize . . . preparatory work done to be taken into consideration." Preparatory work includes such items as cost of erection of batch plants, construction of haul roads, erecting fences, shops, etc. (less acquisition costs of equipment and materials not to be incorporated into the work, or mobilization costs.

8.6 Payment for Materials Delivered at Work Site . The same clause also permits payment to contractors for material delivered at the site, but not yet incorporated in the work. The clause gives the Contracting Officer wide latitude in determining whether or not to pay for material stored on the site and to determine what supporting documentation will be required. These determinations should be based on contract specific considerations such as job-site security conditions, the contractor's past record of paying subcontractors and suppliers, the value of the material and storage. The requirement for the contractor to acquire title is not mandatory, however, it may be appropriate to require the contractor to furnish a paid invoice as evidence of title. If conditions warrant payment for materials stored on site and adequate documentation to protect the Government's interest is otherwise furnished, then prepaid invoices should not be required. In each case, the duty to protect the Government's interest must be balanced against the obligation to provide the contractor with timely payment. The sums so included in payment estimates will be subject to withholding of appropriate percentage, if applicable.

8.7 Payment for Materials Delivered Offsite. The contract provides that materials delivered to the contractor at locations other than the site of the work will be considered in making payments, if all the conditions of the *payments under Fixed-Price Construction Contracts Clause* are fulfilled. Payments for items delivered to locations other than the work site will be limited to those materials which have been fabricated to the point where they are identifiable to an item of work required under the contract. Make such payment only after the contractor furnishes satisfactory evidence that he has acquired title to such material and that the material will be used to perform the specific contract. Satisfactory evidence should be in the form of receipts of paid invoices with canceled check.

8.8 Performance and Payment Bond.

a. Subparagraph (g) of the current *Payments Under Fixed-Price Construction Contracts Clause* in construction contracts provides as follows:

"(g) In making these progress payments, the Government shall, upon request, reimburse the contractor for the amount of premiums paid for performance and payment bonds (including coinsurance and reinsurance agreements, when applicable) after the contractor has furnished evidence of full payment to the surety. The retainage provisions in paragraph (e) of this clause shall not apply to that portion of progress payments attributable to bond premiums."

b. In implementing this clause, use the following procedures:

(1) The contractor must request in writing that he be reimbursed for bond premiums, inclosing a letter from the Surety stating the amount of the premium paid. Evidence of full payment to the Surety will also be submitted with the contractor's request, i.e., a paid invoice with canceled check, or a certified statement from the Surety. After the Resident Engineer has ascertained that the request for reimbursement of the bond premium is in order, include payment as an *added item* to ENG Form 93. Forward all original documents relative to the reimbursement with the payment estimate request. Reduce the item entry for bond premium monthly *in proportion to earnings* in the bid schedule until final payment under the contract.

(2) Reimbursement for bond premiums will be limited to those bonds of the prime contractor. Do not reimburse subcontractors or suppliers for bonds.

8.9 Liquidated Damages.

a. A flow chart for determination of the assessment of liquidated damages is shown at Exhibit 8*5.

b. When liquidated damages are determined to be assessed in accordance with the provisions of the contract, show the amount assessed on ENG Form 93 and explain the assessment on CEHND Form 973, Detailed Explanation and/or Remarks to ENG Form 93.

c. Liquidated damages are dependent upon the substantial completion date, not necessarily the acceptance date. Liquidated damages are not assessed as of the date of substantial completion.

d. If liquidated damages are not being assessed because of unresolved time extensions, punch list items, landscaping, testing, claims, etc., prepare a "Non-Assessment of Liquidated Damages" statement, CEHND Form 972.

8.10 Retained Percentage (Prime Contractor).

a. If satisfactory progress is achieved during any period for which a progress payment is to be made, payment will be made in full. If satisfactory progress is not achieved, the Contracting Officer may retain a maximum of 10 percent of the payment amount until satisfactory progress. Whenever the work is nearing

completion, the Contracting Officer may increase or decrease retainage to an amount he considers adequate for the Government's protection and will release all the remaining withheld funds. On completion and acceptance of each separate building or other division of the contract on which the price is stated separately in the contract, payment will be made for the completed work without retention of a percentage.

b. Note the following guidance in connection with retained percentage:

(1) Beginning with the first request for payment submitted by the contractor, the Contracting Officer must determine whether the contractor is making satisfactory progress. If satisfactory progress is indicated, the Contracting Officer should not require retention of any percentage of that particular progress payment. Thus, he may, for example, authorize payment of the first and second progress payment in full, retain up to the maximum percentage of the third and fourth progress payment on the basis of unsatisfactory progress and pay the fifth, sixth, and following payments in full (refunding previous deductions for retained percentage) because of resumption of satisfactory progress.

(2) For implementing this procedure, the Contracting Officer has approved a policy stating that progress will be considered satisfactory if the actual total job progress to date is not more than:

- 5 percent or 30 days behind the late finish schedule until the work is 75 percent complete;
- 2-1/2 percent or 15 days at 85 percent;
- will not be satisfactory unless progress at least meets the late finish schedule after the project is more than 85 percent complete.

c. Do not apply the retainage amount to that portion of progress payments attributable to bond premiums.

d. When release of retained percentage is determined to be appropriate, the Resident Engineer's signature on ENG Form 93 is sufficient authority for the Finance and Accounting Officer to release retained percentage to the contractor.

8.11 Payment for Accepted VECP's.

a. The Corps will not permit progress payments for the contractor's bonus share of Instant Contract Savings (ICS) in the next progress payment after definitizing the VECP and before the VE work is accomplished. This amounts to pre-financing or prepayment, which requires special authorization and special procedures for fixed-price construction contracts. No advance payment is authorized when the VECP involves modification to a system or facility, different work methods or equipment needs, or substitution of materials (e.g., the VECP replaces one contract requirement with another, less expensive equipment). No advance payment is authorized when the VECP simply deletes a contract requirement which is an integral part of other work (e.g., eliminates a step, procedure, material or equipment requirement, etc.). For any of the above situations, the contractor's bonus share of the VECP will be reflected in higher cost for the affected work activity or bid item in the contractor's schedule. The contractor earns the bonus as the affected work or bid item is *performed*, in place. As an example, the less expensive material must be installed before the contractor earns his or her ICS bonus.

b. In the rare situation, where a VECP deletes a completely separable contract bid item, leaving only the contractor's 55 percent share of ICS (no actual work to be performed), immediate payment could be appropriate and authorized. As stated, this will be rare because a VECP must provide function equivalent to the original contract requirement/design.

8.12 Procedures for Costing Inspection Services Included as Part of Construction Contracts.

a. Reference: ER 37-345-10, Military.

b. Charges processed on SF 1080, Voucher for Transfers Between Appropriation and/or Funds, from the South Atlantic Division Laboratory for the Anniston Project are costed as S&I (S&A) charges. Testing at other sites will follow similar procedures.

c. Charges for testing will be based on contract terms authorizing a fixed amount for acceptance tests. Deduct testing charges from the contractor's earnings. As work orders are issued to the Government Laboratory by the Resident Engineer, show as *deductions other than retained percentage* on ENG Form 93 and explain the deductions on CEHND Form 973.

8.13 Notice of Assignment.

a. Many contractors choose to assign the monies due under a contract to a financing institution. An assignment must meet the requirements set forth in FAR Subpart 32.8 and DFARS Subpart 232.8 in order to be approved for legal sufficiency. All assignments are processed by Office of Counsel. Suggested formats for use by contractors for a proposed assignment or release of assignment are shown at Exhibit 8*6. A contractor may use any format for the documents that meets the requirements.

b. In cases of assignment, show the contractor's name and address in Block 2 of ENG Form 93, Payment Estimate - Contract Performance and the assignee's name and address in the appropriate place on the face of ENG Form 93, as shown in Exhibit 8*7.

8.14 General Instructions for ENG Form 93. Progress payments will be made monthly as work proceeds, or at more frequent intervals as determined by the Contracting Officer. The following general instructions pertain to the preparation of ENG Form 93. See Exhibit 8*7 for a sample estimate and supporting documents, including items and formats as referenced above.

a. Show the name and mailing address of the contractor as it appears on the contract. The contractor will submit to the **Designated Payment Office**, in writing, any request to mail checks to any address other than that shown in the contract. Show the new address on all subsequent estimates. If the contractor desires payments to be expressed mailed, he must provide his or her Express Mail Account Number and a physical address and telephone number.

b. Make sure all copies are legible.

c. The signature of the contractor on the original and one (1) copy of ENG Form 93 is optional for partial estimates. Typed or stamped names, titles and dates of both contractor and Government representatives must appear on all copies of the estimate. Note that Block 12 on ENG Form 93 states, "Presented for Payment." If government personnel type the ENG Form 93 from the contractor's proper invoice, the date in Block 12 will be the *same date the proper invoice was presented for payment, i.e., the receipt date by the Government evidenced by the date stamp on the invoice and the Prompt Payment Certification and Supporting Data for Contractor Payment Invoice, CEHND Form 947*. If the Resident Engineer elects to have the contractor sign the partial estimate, the contractor will affix his or her own date. However, the Government will only recognize the date that the proper invoice was presented, i.e., the receipt date stamp affixed by the Government on the contractor's certification, CEHND 947. If the Government fails to stamp the contractor's certification, the date received will be the date affixed to the certification by the contractor. ***Again, it is very important that the Prompt Payment Certification and Supporting Data for Contractor Payment Invoice be date-stamped by government personnel upon receipt.*** The original and one signature of the contractor must appear on the final estimate. Submit delegation of authority, in writing, to the Finance and Accounting Officer and CD-CA for persons other than company officials, such as project manager or engineer, to sign ENG Form 93 and the certification. Signatures of designated Government personnel will appear on the original and one copy of ENG Form 93.

d. Period covered by the estimate, Item 9 on ENG Form 93, will show the beginning and ending dates of the periods covered and the periods will run consecutively (Ex: 1 Sep 89 - 30 Sep 89; 1 Oct 89 - 31 Oct 89; 1 Nov 89 -30 Apr 90). The ending date will be inclusive and will not exceed the required completion date of the contract unless liquidated damages are assessed as stipulated in the contract, or CEHND Form 972, Non-Assessment of Liquidated Damages, is attached to the estimate.

e. Include all valid modifications on the applicable payment estimate. Attach a copy of any field-executed modification, including the consent of surety, where applicable, when the modification has not been distributed. For Directorate executed modifications, call the CD-CA procurement assistant for the status before finalizing the estimate.

f. Submit payment estimates and supporting documents to the Huntsville Center in the quantity as stated below:

(1) Estimates: **One (1) copy of each progress payment and one (1) copy of final payment estimates.**

(2) Supporting Data:

(a) Prompt Payment Certification and Supporting Data for Contractor Payment Invoice, CEHNC Form 947: **One (1) copy.**

(b) Detailed Explanation and/or Remarks to ENG Form 93, CEHND Form 973: **One (1) copy. (Exhibit 8*8).**

(c) Non-assessment of Liquidated Damages Statement, CEHND Form 972: **One (1) copy.**
(Exhibit 8*9)

g. Indicate the quantity and amount paid on each bid item in the following manner: Type each bid item number, description, quantity, and amount in the appropriate column of the ENG Form 93/93a.

8.15 Final Estimates.

a. In view of the contract type, the normal financial closeout procedures applicable to fixed-price construction contracts are not entirely applicable. The Corps' responsibility and delegated authority are restricted to Phases II, III, and IV of the contract. However, in view of the fixed-price for these phases, the normal or standard procedures for completion of work related to these phases are necessary to document completion and transfer or transition into the systemization phase, which is administered by the PCO. However, payments for modifications, added work, or perhaps disputes can be anticipated after the substantial completion of the construction phases.

b. When all work is completed and accepted in accordance with the applicable terms and conditions of the contract, including modifications and prior to the execution of the final payment on Phases II, III and IV, the contractor will furnish a Release of Claims against the Government arising by virtue of these contract phases. If the contractor's claim to amounts payable under these phases has been assigned under the Assignment of Claims Act of 1940, as amended, (31 U.S.C. 203, 41 U.S. C. 15), a release may also be required of the assignee. The Release of Claims and assignment, if any, will be coordinated with the Contracting Officer by the Center Counsel.

c. In addition to the normal payment estimate supporting documents, attach the following data to the final payment estimate (examples are included as Exhibit 8*10):

(1) Construction Release of Claims Statement

(2) Construction Completion Statement

"Please note that the statement distinguishes between the
"Substantial Complete Date," as determined by the Resident
Engineer, and the "Acceptance Date."

d. When preparing a final estimate, check the following and insure documentation and transfer to the Contracting Officer as applicable:

(1) All payrolls and "Payroll Record Cards," ENG Form 3180, of both prime and subcontractor personnel, properly executed. Annotate the last payroll "FINAL."

- (2) All "Standard Labor Interviews," DD Form 1567, for both prime and subcontractors.
- (3) All "Statements of Acknowledgment." SF Form 1413, for prime contractors and subcontractors.
- (4) Physical completion statement.
- (5) Construction Contractor Performance Evaluation Report, SF Form 1420.
- (6) Architect-Engineer Performance Evaluation Report, DD Form 1421, if applicable.

8.16 Disclosure of Information to Third Parties.

a. After coordination with Office of Counsel, the policy regarding disclosure of Payment Bonds, Payment Estimates (ENG Form 93, 93A) and supporting data (CEHND Form 947) information to any party other than the contractor applies to **Chemical Demilitarization** Directorate and to all field offices. The rationale for this policy is based on FAR 28.106-6 and DFARS 228.106-6. Upon an official request, orally or in writing, promptly furnish any of the requested information in accordance with the following guidelines:

(1) A copy of the Payment Estimate, backup, and CEHND Form 947 may be released to the Bonding Company.

(2) General information from ENG Form 93, only, concerning the work progress, payments made to the contractor, and the estimated percent complete may be provided to "persons who have provided labor or materials and have not been paid."

(3) Specific information from the CEHND Form 947 concerning a supplier or subcontractor may be released to *that* supplier or subcontractor only if (s)he is a "person" as defined above. Release only the information concerning the person involved, not any information concerning other subcontractors or suppliers. We want to stress the confidentiality of the supporting data shown on the CEHND Form 947.

(4) Do not release or discuss dollar information concerning specific bid items with subcontractors or suppliers, such as: total dollars to date or dollars this period. There are several reasons for this. More than one subcontractor may be included in a bid item. One subcontractor may be priced under more than one bid item. The bid item price may not bear any direct relationship to the subcontract price (a loss item, unbalanced items, etc.). Discussions of dollars associated with specific bid items are matters between the prime contractor and his or her subs/suppliers, not between the Government and subcontractors or suppliers.

(5) Provide the subcontractor, supplier, or prospective subcontractor or supplier the name and address of the Surety or Sureties on the payment bond, the penal amount of the payment bond, and a copy of the payment bond.

b. Inform anyone requesting information, other than outlined above, that they may submit a "Freedom of Information Act" request to Office of Counsel.

c. This policy is not meant to supplant any other guidance regarding complaint of nonpayment, Miller Act questions, bonding questions, etc. Those complaints and questions should continue to be normally directed to Office of Counsel.

8.17 Actions to Take Upon Subcontractor/Supplier Allegations of Prime Contractor Nonpayment.

a. Defense Federal Acquisition Regulation Supplement (DFARS) 232.970 addresses actions to be taken when a subcontractor alleges nonpayment. However, DFARS is confusing as it covers all types of contracts, not just construction. It should be read in conjunction with the payment clauses included in contracts and other pertinent provisions of the FAR and DFARS, many of which are discussed below. Contact CD-CA for guidance and coordination with OC and CT.

b. Pre-award Surveys.

(1) Contracting officers are required by FAR Subpart 9.1 to make an affirmative determination of contractor responsibility prior to the award of a contract. DOD has established an extensive capability for performing pre-award surveys and determining responsibility. These determinations address matters such as the adequacy of financial resources, business ethics and integrity, and relations with vendors, trade creditors, and bankers. The responsibility for using this tool to protect the Government's interests rests upon the Contracting Officer making an award.

(2) In addition, when a Contracting Officer finds that a contractor failed to pay subcontractors properly due amounts, the cognizant pre-award survey monitor should be alerted to ensure the matter is considered in future contract award decisions.

(3) Field offices may influence the Contracting Officer on future awards by good documentation of problems and alerting the CO during pre-award activities. Field offices should accurately document the contractor evaluation (CCAS) where such practices were serious or recurring on a contract.

c. Administrative Contracting Officer Responsibility.

(1) Subcontractor/supplier complaints of nonpayment by prime contractors are not uncommon, particularly when small businesses involved in relatively large contracts begin to experience cash flow problems. However, the failure to pay may also be due to a prime/subcontractor dispute over the work accomplished, a Government delay in payment to the prime contractor which resulted in a delay in payment to the prime contractor which resulted in a delay in payment to the subcontractor, or an oversight.

(2) The ACO, or if necessary the CO, must take immediate action in response to subcontractor complaints of nonpayment. The ACO is primarily responsible for receiving subcontractor nonpayment

complaints and determining the validity of the complaint.

(3) The ACO should immediately inform the prime contractor of a subcontractor complaint of nonpayment, have the prime explain exactly what happened, determine the legitimacy of the complaint, and encourage the contractor to make timely payment. The ACO should also determine if any certifications made by the contractor were inaccurate in any material respect. See Exhibit 8*11 for a sample format letter to inform the contractor of a **subcontractor** nonpayment complaint. Also send a copy of the letter to the subcontractor.

(a) If it is determined that the reason for nonpayment is a prime/subcontractor dispute over the work accomplished, the ACO shall not become involved in the dispute because DOD does not have privity of contract with the subcontractor. However, the ACO should ensure that payments are made in accordance with payment provisions included in the prime contract. For example, the ACO should ensure the contractor didn't include the subcontractor's cost in progress payment requests if actual payment wasn't made to the subcontractor.

(b) If the contractor did include the cost in a progress payment request, but did not pay the supplier or subcontractor, the contractor should explain why not. If the contractor provides a reason why the subcontractor wasn't paid (e.g., the prime discovers he erroneously included overstated progress by the subcontractor subsequent to payment, but before disbursing the progress payment; the subcontractor needed to provide the prime some more paperwork before he could get paid, etc.), it means progress payment was not properly due at the time the prime requested it or when the Government paid it. The contractor owes the Government interest on the non-payable portion of the progress payment from the time the Government paid it until it is either repaid or deducted from the next payable invoice. The ACO should contact CD-CA for the applicable interest rate and deduct the interest amount from the next progress payment as "other than retained percentage" on the ENG 93. Explain the interest deduction in a short MFR.

(c) If the contractor has retained or withheld money due subcontractors or suppliers from the progress payments made by the Government, the ACO should, as a minimum for the first occurrence, warn the contractor of the requirements not to retain payments made by the Government. If the contractor continues to hold retainages from his subcontractors on payments made by the Government, the ACO should document the occurrences, previous discussions or explanations, then consult with CD-CA and OC about possible violations of the Prompt Payment Act, False Claims Act, False Statements Act, or could be debarred in accordance with DFARS 209.406-3.

(d) DFARS states that the ACO "should encourage the prime contractor to make timely payments." If the prime refuses to invoice the Government for progress properly due the subcontractors or suppliers, they can demand payment on the contractor's payment bond.

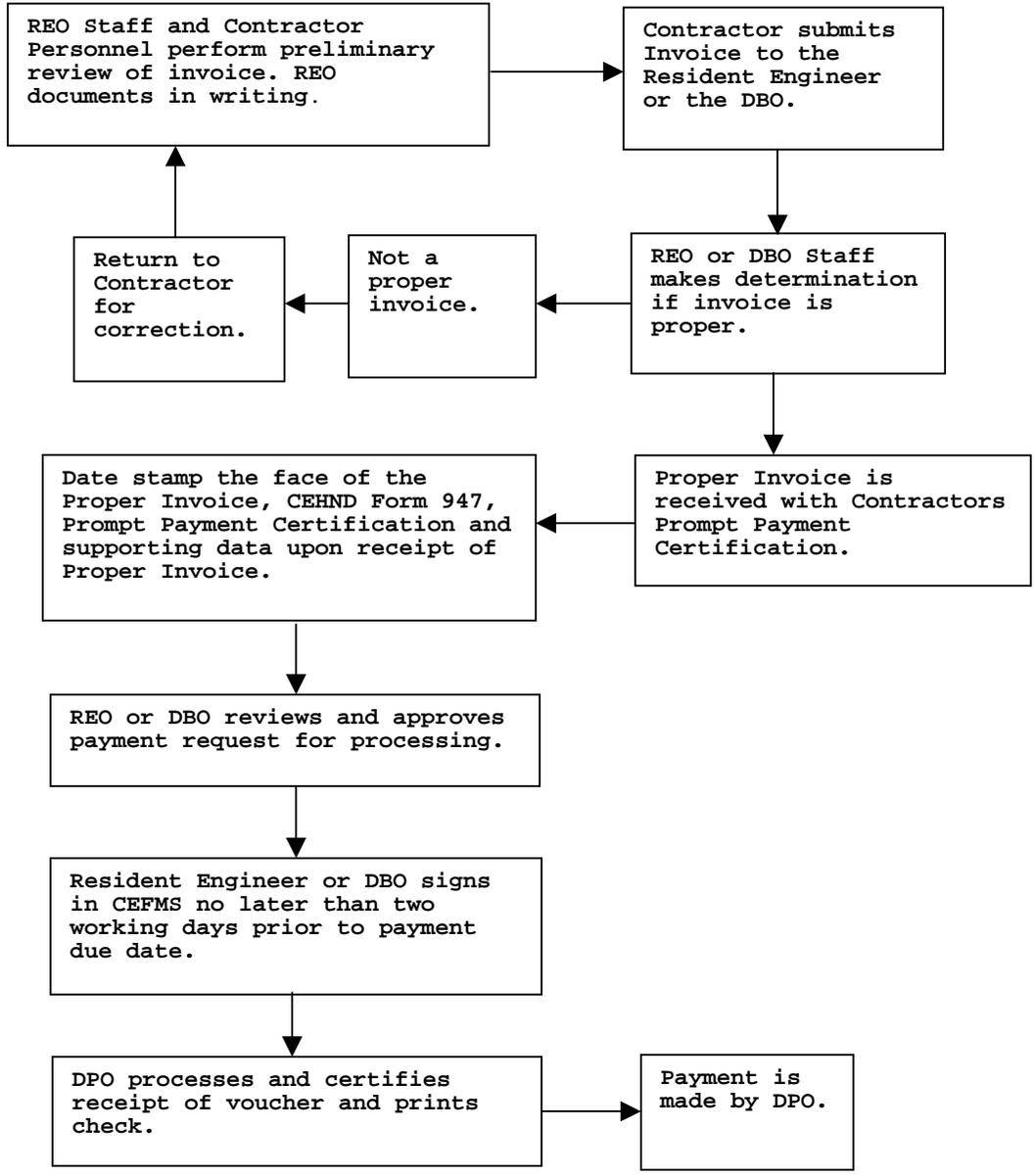
(e) When payment bonds have been required for a contract, such as a construction contract, the ACO is not authorized to withhold progress payments during contract performance because subcontractors have not been paid. However, the ACO may properly require the contractor to provide proof that his last certification was "correct" prior to the next payment, i.e., proof of payment to subcontractors and suppliers from previously paid progress payments.

- (4) The ACO should furnish those who allege nonpayment a copy of the Miller Act Statement, available from OC, and should also notify the surety of the nonpayment allegations (see FAR 28.106-6 and 28.106-7). See Exhibit 8*12 for the Miller Act Information Statement.

8.18 Exhibits.

- a. Exhibit 8*1 - Payment Processing (Flow Diagram)
- b. Exhibit 8*2 - Contract Clause (*Payments Under Fixed-Price Construction Contracts [Apr 89], FAR 52.232-5*)
- c. Exhibit 8*3 - Contract Clause (*Prompt Payment for Construction Contracts [Aug 93], FAR 52.232-27*)
- d. Exhibit 8*4 - CEHND Form 947, Prompt Payment Certification and Supporting Data for Contractor Payment Invoice
- e. Exhibit 8*5 - Determination of Assessment of Liquidated Damages (Flow Diagram)
- f. Exhibit 8*6 - Proposed Assignment or Release of Assignment (Suggested Formats for Use by Contractor)
- g. Exhibit 8*7 - ENG Form 93, Payment Estimate - Contract Performance
- h. Exhibit 8*8 - Detailed Explanation and/or Remarks to ENG Form 93, CEHND Form 973
- i. Exhibit 8*9 - Non-assessment of Liquidated Damages Statement, CEHND Form 972
- j. Exhibit 8*10 - Examples of Attachments to Final Payment Estimate (Additional Data)
- k. Exhibit 8*11 - Sample Format of Letter to Inform Contractor of **Subcontractor** Nonpayment Complaint
- l. Exhibit 8*12 - Miller Act Information Statement

PAYMENT ESTIMATE FLOW DIAGRAM



LEGEND

- 1. REO - RESIDENT ENGINEER OFFICE
- 2. DBO - DESIGNATED BILLING OFFICE
- 3. DPO - DESIGNATED PAYMENT OFFICE

Exhibit 8*1. Payment Processing (Flow Diagram)

PAYMENTS UNDER FIXED-PRICE CONSTRUCTION CONTRACTS (APR 1989) FAR 52.232-5

(a) The Government shall pay the Contractor the contract price as provided in this contract.

(b) The Government shall make progress payments monthly as the work proceeds, or at more frequent intervals as determined by the Contracting Officer, on estimates of work accomplished which meets the standards of quality established under the contract, as approved by the Contracting Officer. The Contractor shall furnish a breakdown of the total contract price showing the amount included therein for each principal category of the work, which shall substantiate the payment amount requested in order to provide a basis for determining progress payments, in such detail as requested by the Contracting Officer may authorize material delivered on the site and preparatory work done to be taken into consideration. Material delivered to the Contractor at locations other than the site may also be taken into consideration if:

(1) Consideration is specifically authorized by this contract; and

(2) The Contractor furnished satisfactory evidence that it has acquired title to such material and that the material will be used to perform this contract.

(c) Along with each request for progress payments, the contractor shall furnish the following certification, or payment shall not be made:

I hereby certify, to the best of my knowledge and belief, that:

(1) The amounts requested are only for performance in accordance with the specifications, terms, and conditions of the contract;

(2) Payments to subcontractors and suppliers have been made from previous payments received under the contract, and timely payments will be made from the proceeds of the payment covered by this certification, in accordance with subcontract agreements and the requirements of Chapter 39 of Title 31, United States Code; and

(3) This request for progress payments does not include any amounts that the prime contractor intends to withhold or retain from a subcontractor or supplier in accordance with the terms and conditions of the subcontract.

(Name)

(Title)

(Date)

Exhibit 8*2. Prompt Payment Act Amendments.

FAR 52.232-5

(d) If the Contractor, after making a certified request for progress payments, discovers that a portion or all of such request constitutes a payment for performance by the contractor that fails to conform to the specifications, terms, and conditions of this contract (hereinafter referred to as the "unearned amount"), the Contractor shall;

(1) Notify the Contracting Officer of such performance deficiency; and

(2) Be obligated to pay the Government an amount (computed by the Contracting Officer in the manner provided in 31 U.S.C. 3903 (c)(1) equal to interest in the unearned amount from the date of receipt of the unearned amount until:

(i) The date the Contractor notifies the Contracting Officer that the performance deficiency has been corrected; or

(ii) The date the Contractor reduces the amount of any subsequent certified request for progress payments by an amount equal to the unearned amount.

(e) If the Contracting Officer finds that satisfactory progress was achieved during any period for which a progress payment is to be made, the Contracting Officer shall authorize payment to be made in full. However, if satisfactory progress has not been made, the Contracting Officer may retain a maximum of 10 percent of the amount of the payment until satisfactory progress is achieved. When the work is substantially complete, the Contracting Officer may retain from previously withheld funds and future progress payments that amount the Contracting Officer considers adequate for protection of the government and shall release to the Contractor all the remaining withheld funds. Also, on completion and acceptance of each separate building, public work or other division of the contract, payment shall be made for the completed work without retention of a percentage.

(f) All material and work covered by progress payments made shall, at the time of payment, become the sole property of the Government, but this shall not construed as:

(1) Relieving the Contractor from the sole responsibility for all material and work upon which payments have been made or the restoration of any damaged work; or

(2) Waiving the right of the Government to require the fulfillment of all of the terms of the contract.

(g) In making these progress payments, the Government shall, upon request, reimburse the Contractor for the amount of premiums paid for performance and payment bonds (including coinsurance and reinsurance agreements, when applicable) after the Contractor has furnished evidence of full payment to the surety. The retainage provisions in paragraph (e) of this clause shall not apply to that portion of progress payments attributable to bond premiums.

(h) The Government shall pay the amount due the Contractor under this contract after:

(1) Completion and acceptance of all work;

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FAR 52-232-5

(2) Presentation of a properly executed voucher; and

(3) Presentation of release of all claims against the Government arising by virtue of this contract, other than claims, in stated amounts, that the Contractor has specifically excepted from the operation of the release. A release may also be required of the assignee if the Contractor's claim to amounts payable under this contract has been assigned under the Assignment of Claims Act of 1940 (31 U.S.C. 3727 and 41 U.S.C. 15).

(i) Notwithstanding any provision of this contract, progress payments shall not exceed 80 percent on work accomplished on undefinitized contract actions. A "contract action" is any action resulting in a contract, as defined in FAR Subpart 2.1, including contract modifications for additional supplies or services, but not including contract modifications that are within the scope and under the terms of the contract, such as contract modifications issued pursuant to the Changes clause, or funding and other administrative changes.
(End of Clause)

Exhibit 8*2. Prompt Payment Act Amendments (Cont'd).

PROMPT PAYMENT FOR CONSTRUCTION CONTRACTS (AUG 1993) FAR 52.232-27

Notwithstanding any other payment terms in this contract, the government will make invoice payments and contract financing payments under the terms and conditions specified in this clause. Payment shall be considered as being made on the day a check is dated or an electronic funds transfer is made. Definitions of pertinent terms are set forth in 32.902. All days referred to in this clause are calendar days, unless otherwise specified. The term "foreign vendor," means an incorporated concern not incorporated in the United States or an unincorporated concern having its principal place of business outside the United States.

(a) Invoice Payments. (1) For purpose of this clause, there are several types of invoice payments, which may occur under this contract, as follows:

(i) Progress payments, if provided for elsewhere in this contract, based on Contracting Officer approval of the estimated amount and value of work or services performed, including payments for reaching milestones in any project:

(A) The due date for making such payments shall be in 14 days after receipt of the payment requested by the designated billing office. However, if the designated billing office fails to annotate the payment request with the actual date of receipt, the payment due date shall be deemed to be the 14th day after the date the Contractor's payment request is dated, provided a proper payment request is received and there is no disagreement over quantity, quality, or Contractor compliance with contract requirements.

(B) The due date for payment of any amounts retained by the Contracting Officer in accordance with the clause at 52.232-5, Payments Under Fixed-Price Construction Contracts, shall be as specified in the contract or, if not specified, 30 days after approval for release to the contractor by the Contracting Officer.

(ii) Final payments based on completion and acceptance of all work and presentation of release of all claims against the Government arising by virtue of the contract, and payments for partial deliveries that have been accepted by the government (e.g., each separate building, public work, or other division of the contract for which the price is stated separately in the contract):

(A) The due date for making such payments shall be either the 30th day after receipt by the designated billing office of a proper invoice from the Contractor, or the 30th day after Government acceptance of the work or services completed by the Contractor, whichever is later. However, if the designated billing office fails to annotate the invoice with the date of actual receipt, the invoice payment due date shall be deemed to be the 30th day after the date the Contractor's invoice is dated, provided a proper invoice is received and there is no disagreement over quantity, quality, or Contractor compliance with contract requirements.

(B) On a final invoice where the payment amount is subject to contract settlement actions (e.g., release of claims), acceptance shall be deemed to have occurred in the effective date of the contract settlement.

Exhibit 8*3. Prompt Payment for Construction Contracts.

FAR 52.232-27

(2) An invoice is the Contractor's bill or written request for payment under the contract for work services performed to the designated billing office. A proper invoice must include the items listed in subdivisions (a)(2)(i) through (a)(2)(ix) of this clause. If the invoice does not comply with these requirements, the Contractor will be notified of the defect within 7 days after receipt of the invoice at the designated billing office. Untimely notification will be taken into account the computation of any interest penalty owed the Contractor the manner described in subparagraph (a)(4) of this clause:

- (i) Name and address of the Contractor.
- (ii) Invoice date.
- (iii) Contract number of other authorization for work or services performed (including order number and contract line item number).
- (iv) Description of work or services performed.
- (v) Delivery and payment terms (e.g., prompt payment discount terms).
- (vi) Name and address of Contractor official to whom payment is to be sent (must be the same as that in the contract or in a proper notice of assignment).
- (vii) Name (where practicable), title, phone number, and mailing address of person to be notified in event of a defective invoice.
- (viii) For payments described in subdivision (a)(1)(i) of this clause, substantiation if the amounts requested and certification in accordance with the requirements of the clause at 52.232-5, Payments Under Fixed-Price Construction Contracts.
- (ix) Any other information or documentation required by the contract.

(3) An interest penalty shall be paid automatically by the designated payment office, without request from the Contractor, if payment is not made by the due date and the conditions listed in subdivision (a)(3)(i) through (a)(3)(iii) of this clause are met, if applicable. An interest penalty shall not be paid on contracts awarded to foreign vendors outside the United States for work performed outside the United States.

- (i) A proper invoice was received by the designated billing office.
- (ii) A receiving report or other Government documentation authorizing payment was processed and there was no disagreement over quality. Contractor compliance with contract term or condition, or requested progress payment amount.

Exhibit 8*3. Prompt Payment for Construction Contracts (Cont'd).

FAR 52.232-27

(iii) In the case of a final notice for invoice for any balance of funds due the Contractor for work or services performed, the amount was not subject to further contract settlement actions between the Government and the Contractor.

(4) The interest penalty shall be at the rate established by the Secretary of the Treasury under section 12 of the Contract Disputes Act of 1978 (41 U.S.C. 611) that is in effect on the day after the due date, except where the interest penalty is prescribed by other governmental authority. This rate is referred to as the "Re-negotiation Board Interest Rate," and it is published in the Federal Register semiannually on or about January 1 and July 1. The interest penalty shall accrue daily on the invoice payment amount approved by the Government and be compounded in 30-day increments inclusive from the first day after the due date through the payment date. That is, interest accrued at the end of any 30-day period will be added to the approved invoice payment amount and be subject to interest penalties if not paid in the succeeding 30-day period. If the designated billing office failed to notify the Contractor of a defective invoice within the periods prescribed in subparagraphs (a)(2) of this clause, then the due date on the corrected invoice will be adjusted by subtracting the number of days taken beyond the prescribed notification of defects period. Any interest penalty owed the Contractor will be based on this adjusted due date. Adjustments will be made by the designated payment office for errors in calculating interest penalties, if requested by the Contractor.

(i) For the sole purpose of computing an interest penalty that might be due the Contractor for payments described in subdivision (a)(1)(ii) of this clause, Government acceptance or approval shall be deemed to have occurred constructively on the 7th day after the Contractor has completed the work or services in accordance with the terms and conditions of the contract. In the event that actual acceptance or approval occurs within the constructive acceptance or approval period, the determination of an interest penalty shall be based on the actual date of acceptance or approval. Constructive acceptance or constructive approval requirements do not apply if there is a disagreement over quantity, quality, or Contractor compliance with a contract provision. These requirements also do not compel Government officials to accept work or services, approve Contract estimates, perform contract administration functions, or make payment prior to fulfilling their responsibilities.

(ii) The following periods of time will not be included in the determination of an interest penalty:

(A) The period taken to notify the Contractor of defects in invoices submitted to the government, but this may not exceed 7 days.

(B) The period between the defects notice and resubmission of the corrected invoice by the Contractor.

(iii) Interest penalties will not continue to accrue after the filing of a claim for such penalties under the clause at 52.233-1, Disputes, or for more than 1 year. Interest penalties of less than \$1.00 need not be paid.

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Exhibit 8*3. Prompt Payment for Construction Contracts (Cont'd).

FAR 52.232-27

(iv) Interest penalties are not required on payment delays due to disagreement between the Government and Contractor over the payment amount or other issues involving contract compliance, or on amounts temporarily withheld or retained in accordance with the terms of the contract. Claims involving disputes, and any interest that may be payable, will be resolved in accordance with the clause at 52.233-, Disputes.

(5) An interest penalty shall also be paid automatically by the designated payment office, without request from the Contractor, if a discount for prompt payment is taken improperly. The interest penalty will be calculated on the amount of discount taken for the period beginning with the first day after the end of the discount period through the date when the Contractor is paid.

(6) If this contract was awarded in or after October 1, 1989, a penalty amount, calculated in accordance with regulations issued by the Office of Management and Budget, shall be paid in addition to the interest penalty amount if the Contractor--

(i) Is owed an interest penalty;

(ii) Is not paid the interest penalty within 10 days after the date the invoice amount is paid; and

(iii) Makes a written demand, not later than 40 days after the date the invoice amount is paid, that the agency pays such a penalty.

(b) Contract Financing Payments. (1) for purpose of this clause, if applicable, "contract financing payments" means a Government disbursement of monies to a Contractor under a contract clause or other authorization prior to acceptance of supplies or services by the Government, other than progress payments based on estimates of amount and value of work performed. Contract financing payments include advance payments and interim payments under cost-type contracts.

(2) If this contract provides for contract financing, requests for payment shall be submitted to the designated billing office as specified in this contract or as directed by the Contracting Officer. Contract financing payments shall be made on the 30th day after receipt of a proper contract financing request by the designated billing office. In the event that an audit or other review of a specific financing request is required to ensure compliance with the terms and conditions of the contract, the designated payment office is not compelled to make payments, loans, or other arrangements that do not involve recurrent submission of contract financing requests, payment shall be made in accordance with the corresponding contract terms or as directed by the Contracting Officer. Contract financing payments shall not be assessed an interest penalty for payment delays.

(c) The Contractor shall include in each subcontract for property or services (including a material supplier) for the purpose or services (including a material supplier) for the purpose of performing this contract, the following:

(1) A payment clause which obligates the Contractor to pay the subcontractor for satisfactory performance under its subcontract not later than 7 days from receipt of payment out of such amounts as are paid to the Contractor under the Contract.

(2) An interest penalty clause obligates the Contractor to pay to the subcontractor an interest penalty for each payment not more in accordance with the payment clause--

(i) For the period beginning on the day after the required payment date and ending on the date on which payment of the amount due is made; and

(ii) Computed at the rate of interest established by the Secretary of the treasury, and published in the federal Register, for interest payments under section 12 of the Contract Disputes Act of 1978 (41 U.S.C. 611) in effect at the time the contractor accrues the obligations to pay an interest penalty.

(3) A clause requiring each subcontractor to include a payment clause and an interest penalty clause confirming to the standards set forth in subparagraphs (c)(1) and (c)(2) of this clause in each of its subcontracts, and to require each of its subcontractors to include such clauses in their subcontracts with each lower-tier subcontractor or supplier.

(d) The clauses required by paragraph (c) of this clause shall not be constructed to impair the right of Contractor or a subcontractor at any tier to negotiate, and to include in their subcontract, provisions which--

(1) Permit the Contractor or a subcontractor to retain (without cause) a specified percentage of each progress payment otherwise due to a subcontractor for satisfactory performance under the subcontract without incurring any obligation to pay a late payment interest penalty, in accordance with terms and conditions agreed to by the parties to the subcontract, giving such recognition as the parties deem appropriate to the ability of a subcontractor to furnish a performance bond and a payment bond.

(2) Permit the Contractor or subcontractor to make determination that part or all of the subcontractor's request for payment may be withheld in accordance with the subcontract agreement; and

(3) Permit such withholding without incurring any obligation to pay a late payment penalty if--

(i) A notice conforming to the standards of paragraph (g) of this clause has been previously furnished to the subcontractor, and

(ii) A copy of any notice issued by a contractor pursuant to subdivision (d)(3)(i) of this clause has been furnished to the Contracting Officer.

(e) If a Contractor, after making a request for payment to the Government but before making a payment to a subcontractor for the subcontractor's performance covered by the payment request,

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Exhibit 8*3. Prompt Payment for Construction Contracts (Cont'd).

FAR 52.232-27

discovers that all or a portion of the payment otherwise due such subcontractor is subject to withholding from the subcontractor in accordance with the subcontract agreement, then the Contractor shall--

(1) Furnish to the subcontractor a notice conforming to the standards of paragraph (g) of this clause as soon as practicable upon ascertaining the cause giving rise to a withholding, but prior to the due date for subcontractor payment;

(2) Furnish to the Contracting Officer, as soon as practicable, a copy of the notice furnished to the subcontractor pursuant to subparagraph (e)(1) of this clause;

(3) Reduce the subcontractor's progress payment by an amount not to exceed the amount specified in the notice of withholding furnished under subparagraph (e)(1) of this clause;

(4) Pay the subcontractor as soon as practicable after the correction of the identified subcontract performance deficiency,

(i) Make such payment within--

(A) Seven days after correction of the identified subcontract performance deficiency (unless the funds therefore must be recovered from the Government because of a reduction under subdivision (e)(5)(i) of this clause; or

(B) Seven days after the Contractor recovers such funds from the Government; or

(II) Incur an obligation to pay a late payment interest penalty computed at the rate of interest established by the Secretary of Treasury, and published in the Federal Register, for interest payments under section 12 of the contracts Disputes Act of 1978 (41 U.S.C. 611) in effect at the time the Contractor accrues the obligation to pay an interest penalty;

(5) Notify the Contracting Officer upon--

(i) Reduction of the amount of any subsequent certified application for payment; or

(ii) Payment to the subcontractor of any withheld amounts of a progress payment,

(A) The amounts withheld under subparagraph (e)(1) of this clause; and

(B) The dates that such withholding began and ended; and

(6) Be obligated to pay to the Government an amount equal to interest in the withheld payments (computed in the manner provided in 31 U.S.C 3903 (c)(1), from the 8th day after receipt of the withheld amounts from the Government until--

FAR 52.232-27

(i) The day the identified subcontractor performance deficiency is corrected; or

(ii) The date that any subsequent payment is reduced under subdivision (e)(5)(i) of this clause.

(f) (1) If a Contractor, after making payment to a first-tier subcontractor, receives from a supplier or subcontractor of the first-tier subcontractor (hereafter referred to as a "second-tier subcontractor") a written notice in accordance with section 2 of the Act of August 24, 1935 (40 U.S.C. 270b, Miller Act), asserting a deficiency in such first-tier subcontractor's performance under the contract for which the Contractor may be ultimately liable, and the contractor determines that all or a portion of future payments otherwise due such first-tier subcontractor agreement, then the Contractor may, without incurring an obligation to pay an interest penalty under subparagraph (e)(6) of this clause--

(i) Furnish to the first-tier subcontractor a notice conforming to the standards of paragraph (g) of this clause as soon as practicable upon making such determination; and

(ii) Withhold from the first-tier subcontractor's next available progress payment or payments an amount not to exceed the amount specified in the notice of withholding furnished under subdivision (f)(1)(i) of this clause.

(2) As soon as practicable, but not later 7 days after receipt of satisfactory written notification that the identified subcontract performance deficiency has been corrected, the Contractor shall pay the amount withheld under subdivision (f)(1)(ii) of this clause to such first-tier subcontractor, or shall incur an obligation to pay a late payment interest penalty to such first-tier subcontractor computed at the rate of interest established by the Secretary of the Treasury, and published in the federal Register, for interest payments under section 12 of the Contracts Disputes Act of 1978 (41 U.S.C 611) in effect at the time the Contractor accrues the obligation to pay an interest penalty.

(g) A written notice of any withholding shall be issued to a subcontractor (with a copy to the Contracting Officer of any such notice issued by the Contractor), specifying--

(1) The amount to be withheld;

(2) The specific causes for withholding under the terms of the subcontract; and

(3) The remedial actions to be taken by the subcontractor in order to receive payment of the amounts withheld.

(h) The Contractor may not request payment from the Government of any amount withheld or retained in accordance with paragraph (d) of this clause until such time as the Contractor has determined and certified to the Contracting Officer that the subcontractor is entitled to the payment of such amount.

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FAR 52.232-27

(i) A dispute between the Contractor and subcontractor relating to the amount or entitlement of a subcontractor to a payment or a late payment interest penalty under a clause included in the subcontract pursuant to paragraph (c) of this clause does not constitute a dispute to which the United States is a party. The United States may not be interpleaded in any judicial or administrative proceeding involving such a dispute.

(j) Except as provided in paragraph (i) of this clause, this clause shall not limit or impair any contractual, administrative, or judicial remedies otherwise available to the Contractor or a subcontractor in the event of a dispute involving late payment or nonpayment by the Contractor or deficient subcontract performance or nonperformance by a subcontractor.

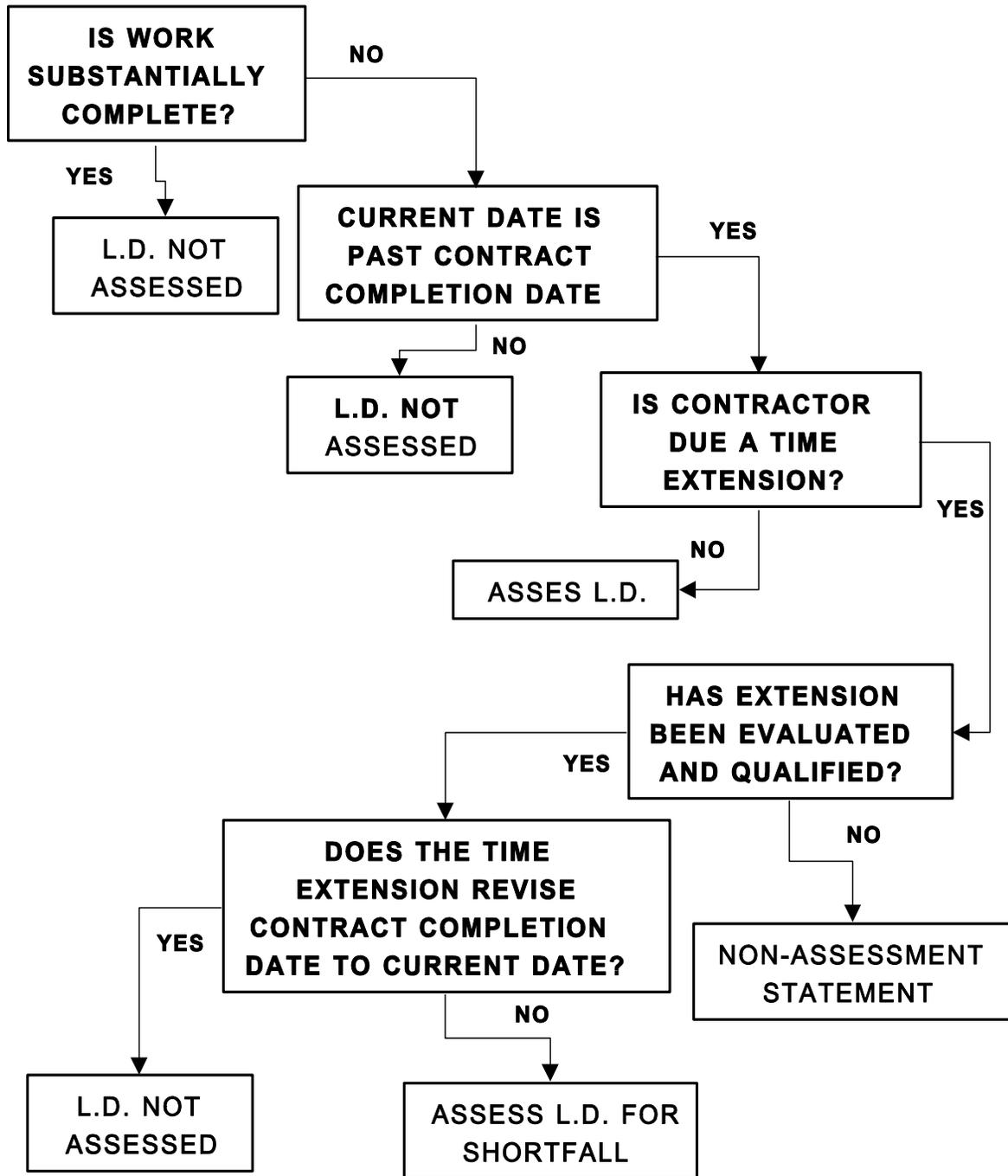
(k) The contractor's obligation to pay an interest penalty to a subcontractor pursuant to the clauses included in a subcontract under paragraph (c) of this clause shall not be construed to be an obligation of the United States for such interest penalty. A cost reimbursement claim may not include any amount for reimbursement of such interest penalty.

(End of Clause)

PROMPT PAYMENT CERTIFICATION AND SUPPORTING DATA FOR CONTRACTOR PAYMENT INVOICE				
Contractor Name and Address	Contract No.	Est. No.	Date	Discount Terms
	Designated Contractor Official and Address for Payment		Defective Invoice Notification (Name, Title, Telephone)	
Description and Location of Work				
Subcontractor Name	Total Amount Subcontracted	Subcontractor Amount Included This Payment Est.	Previous Subcontractor Payments	Subcontractor Earnings Deducted by Contractor (Total to Date)
				\$
<p>I hereby certify, to the best of my knowledge and belief, that:</p> <p><input type="checkbox"/> The amounts requested are only for performance in accordance with the specifications, terms and conditions of the contract;</p> <p><input type="checkbox"/> Payments to subcontractors and suppliers have been made from previous payments received under the contract, and timely payments will be made from the proceeds of the payment covered by this certification, in accordance with subcontract agreements and the requirements of Chapter 89 of Title 31, United States Code; and</p> <p><input type="checkbox"/> This request for progress payments does not include any amounts which the prime contractor intends to withhold or retain from a subcontractor or supplier in accordance with the terms and conditions of the subcontract.</p>				
Name and Title		Signature		Date

CEHND FORM 947
1 Nov 92

Exhibit 8*4. CEHND Form 947
(Prompt Payment Certification and Supporting Data for Contractor Payment Invoice)



**Liquidated Damages Assessment
Flow Diagram**

Exhibit 8*5. Liquidated Damages Assessment

INSTRUMENT OF ASSIGNMENT

KNOW ALL MEN BY THESE PRESENTS, that (name of contractor), of (city),
(county), for value received and in accordance with the Assignment of Claims Act of 1940, as amended,
31 U.S.C. 3727, 41 U.S.C. 15, does hereby assign, set over and transfer unto (name of bank or
institution), of (city), state or country), (address), all right, title and interest to all monies due
or to become due from Contract No. _____, for (describe nature of contract), entered
into between (contractor's name), and (name of Government Agency), dated _____.

(NAME OF CONTRACTOR)

DATE: _____ BY: _____
(Name)

[IMPRESS SIGNATURE WITH CORPORATE SEAL]

I, (name), secretary (name of contractor), do hereby affirm that (name), who signed this
instrument is (title) of (name of contractor), and is fully authorized and empowered to sign said
instrument of assignment.

DATE: _____
(Name) (Title)

PLEASE NOTE THAT IF THERE IS NO CORPORATE SEAL, THEN A CERTIFIED COPY OF THE RESOLUTION OF THE
BOARD OF DIRECTORS AUTHORIZING THE ASSIGNMENT AND SIGNATURES, MUST BE ATTACHED.

Exhibit 8*6. Proposed Assignment or Release of Assignment
(Suggested Formats for Use by Contractor).

TO :

DATE:

NOTICE OF ASSIGNMENT

PLEASE TAKE NOTICE that monies due or to become under Contract No.

_____, For (describe nature of contract) _____, has been

assigned, by _____ (contractor) _____, to the undersigned pursuant to the Assignment of

Claims Act.

A true copy of the instrument of assignment is attached.

Payment due to or become due under such contract should be made to the undersigned assignee.

(Name of Assignee Bank or Institution)

BY: _____

(Name)

(Title)

Receipt is hereby acknowledged of the above notice and a copy of the mentioned

instrument of assignment. They were received _____ (a.m. or p.m.) on

_____, 19 _____.

Exhibit 8*6. Proposed Assignment or Release of Assignment (Cont'd)
(Suggested Formats for Use by Contractor).

RELEASE OF ASSIGNMENT

WHEREAS, Contract No. _____, for the _____ (description of contract), was entered into between _____ (contractor), and the _____ (Government Agency); and,

WHEREAS, on or about _____ (date), 19_____, _____ (contractor), executed as instrument of assignment wherein all monies due or to become due under Contract No. _____ were assigned to _____ (assignee bank or institution); and,

WHEREAS, on or about _____, 19_____, _____ (contractor) and _____ (assignee bank or institution), entered into an agreement wherein _____ (contractor), was released by _____ (bank/institution) from said assignment;

NOW, THEREFORE, _____ (bank/institution) does hereby release _____ (contractor), from all obligations arising under that said assignment of _____, 19_____, and further states that all monies due as of _____, 19_____, and all monies to become due under Contract No. _____ should be paid to _____ (contractor name).

(BANK/INSTITUTION)

BY: _____
(Name)
(Title)

Sworn and subscribed before me on this _____ day of _____, 19_____.

Notary Public

My Commission Expires _____

Exhibit 8*6. Proposed Assignment or Release of Assignment (Cont'd)
(Suggested Formats for Use by Contractor).

PAYMENT ESTIMATE CONTRACT PERFORMANCE FORM 93 (Rev. 11/87)		1. DATE		SHEET 1 of 3		
2. CONTRACTOR AND ADDRESS Prime Contractors (As shown in contract) Anelona Army Depot Chemical Disposal Facility Anniston, Alabama		3. CONTRACT NO. DAAAD09-91-X-XXXX		4. DISTRICT Huntsville, AL		
5. DESCRIPTION OF WORK Anniston Army Depot Chemical Disposal Facility		6. APPROPRIATION AND PROJECT [See Attached]		7. REQUITED COMPLETION DATE		
8. LOCATION		9. PERIOD COVERED BY THIS ESTIMATE FROM 1/24/98 THRU 3/31/98		10. JOB ORDER NO.		
11. ESTIMATE NO.						
ITEM NO.	DESCRIPTION	CONTRACT QUANTITY AND UNIT	UNIT PRICE	AMOUNT	TOTAL TO DATE QUANTITY AND UNIT	AMOUNT
0041 0042 0043 0044	BASE INSTALLED ELECTR STANDARD FOR THE CONTRACTOR TO PROVIDE MATERIAL STORED ON JOB-SITE NOT INCORPORATED IN WORK FUNCTION CONTRACTOR RESISTANCE OF PRIME CONTRACTOR	1 JOB	2000	\$		
12. APPROVAL SIGNATURE		13. APPROVAL SIGNATURE		TOTAL CONTRACT AMOUNT		\$
NAME		NAME		TOTAL CONTRACT AMOUNT		\$
TITLE		TITLE		TOTAL CONTRACT AMOUNT		\$
14. CONTRACTOR'S REPRESENTATIVE		15. CONTRACTOR'S REPRESENTATIVE		TOTAL CONTRACT AMOUNT		\$
NAME		NAME		TOTAL CONTRACT AMOUNT		\$
TITLE		TITLE		TOTAL CONTRACT AMOUNT		\$
16. CONTRACTOR'S REPRESENTATIVE		17. CONTRACTOR'S REPRESENTATIVE		TOTAL CONTRACT AMOUNT		\$
NAME		NAME		TOTAL CONTRACT AMOUNT		\$
TITLE		TITLE		TOTAL CONTRACT AMOUNT		\$
18. CONTRACTOR'S REPRESENTATIVE		19. CONTRACTOR'S REPRESENTATIVE		TOTAL CONTRACT AMOUNT		\$
NAME		NAME		TOTAL CONTRACT AMOUNT		\$
TITLE		TITLE		TOTAL CONTRACT AMOUNT		\$
20. CONTRACTOR'S REPRESENTATIVE		21. CONTRACTOR'S REPRESENTATIVE		TOTAL CONTRACT AMOUNT		\$
NAME		NAME		TOTAL CONTRACT AMOUNT		\$
TITLE		TITLE		TOTAL CONTRACT AMOUNT		\$
22. CONTRACTOR'S REPRESENTATIVE		23. CONTRACTOR'S REPRESENTATIVE		TOTAL CONTRACT AMOUNT		\$
NAME		NAME		TOTAL CONTRACT AMOUNT		\$
TITLE		TITLE		TOTAL CONTRACT AMOUNT		\$
24. CONTRACTOR'S REPRESENTATIVE		25. CONTRACTOR'S REPRESENTATIVE		TOTAL CONTRACT AMOUNT		\$
NAME		NAME		TOTAL CONTRACT AMOUNT		\$
TITLE		TITLE		TOTAL CONTRACT AMOUNT		\$
26. CONTRACTOR'S REPRESENTATIVE		27. CONTRACTOR'S REPRESENTATIVE		TOTAL CONTRACT AMOUNT		\$
NAME		NAME		TOTAL CONTRACT AMOUNT		\$
TITLE		TITLE		TOTAL CONTRACT AMOUNT		\$
28. CONTRACTOR'S REPRESENTATIVE		29. CONTRACTOR'S REPRESENTATIVE		TOTAL CONTRACT AMOUNT		\$
NAME		NAME		TOTAL CONTRACT AMOUNT		\$
TITLE		TITLE		TOTAL CONTRACT AMOUNT		\$
30. CONTRACTOR'S REPRESENTATIVE		31. CONTRACTOR'S REPRESENTATIVE		TOTAL CONTRACT AMOUNT		\$
NAME		NAME		TOTAL CONTRACT AMOUNT		\$
TITLE		TITLE		TOTAL CONTRACT AMOUNT		\$
32. CONTRACTOR'S REPRESENTATIVE		33. CONTRACTOR'S REPRESENTATIVE		TOTAL CONTRACT AMOUNT		\$
NAME		NAME		TOTAL CONTRACT AMOUNT		\$
TITLE		TITLE		TOTAL CONTRACT AMOUNT		\$
34. CONTRACTOR'S REPRESENTATIVE		35. CONTRACTOR'S REPRESENTATIVE		TOTAL CONTRACT AMOUNT		\$
NAME		NAME		TOTAL CONTRACT AMOUNT		\$
TITLE		TITLE		TOTAL CONTRACT AMOUNT		\$
36. CONTRACTOR'S REPRESENTATIVE		37. CONTRACTOR'S REPRESENTATIVE		TOTAL CONTRACT AMOUNT		\$
NAME		NAME		TOTAL CONTRACT AMOUNT		\$
TITLE		TITLE		TOTAL CONTRACT AMOUNT		\$
38. CONTRACTOR'S REPRESENTATIVE		39. CONTRACTOR'S REPRESENTATIVE		TOTAL CONTRACT AMOUNT		\$
NAME		NAME		TOTAL CONTRACT AMOUNT		\$
TITLE		TITLE		TOTAL CONTRACT AMOUNT		\$
40. CONTRACTOR'S REPRESENTATIVE		41. CONTRACTOR'S REPRESENTATIVE		TOTAL CONTRACT AMOUNT		\$
NAME		NAME		TOTAL CONTRACT AMOUNT		\$
TITLE		TITLE		TOTAL CONTRACT AMOUNT		\$
42. CONTRACTOR'S REPRESENTATIVE		43. CONTRACTOR'S REPRESENTATIVE		TOTAL CONTRACT AMOUNT		\$
NAME		NAME		TOTAL CONTRACT AMOUNT		\$
TITLE		TITLE		TOTAL CONTRACT AMOUNT		\$
44. CONTRACTOR'S REPRESENTATIVE		45. CONTRACTOR'S REPRESENTATIVE		TOTAL CONTRACT AMOUNT		\$
NAME		NAME		TOTAL CONTRACT AMOUNT		\$
TITLE		TITLE		TOTAL CONTRACT AMOUNT		\$
46. CONTRACTOR'S REPRESENTATIVE		47. CONTRACTOR'S REPRESENTATIVE		TOTAL CONTRACT AMOUNT		\$
NAME		NAME		TOTAL CONTRACT AMOUNT		\$
TITLE		TITLE		TOTAL CONTRACT AMOUNT		\$
48. CONTRACTOR'S REPRESENTATIVE		49. CONTRACTOR'S REPRESENTATIVE		TOTAL CONTRACT AMOUNT		\$
NAME		NAME		TOTAL CONTRACT AMOUNT		\$
TITLE		TITLE		TOTAL CONTRACT AMOUNT		\$
50. CONTRACTOR'S REPRESENTATIVE		51. CONTRACTOR'S REPRESENTATIVE		TOTAL CONTRACT AMOUNT		\$
NAME		NAME		TOTAL CONTRACT AMOUNT		\$
TITLE		TITLE		TOTAL CONTRACT AMOUNT		\$
52. CONTRACTOR'S REPRESENTATIVE		53. CONTRACTOR'S REPRESENTATIVE		TOTAL CONTRACT AMOUNT		\$
NAME		NAME		TOTAL CONTRACT AMOUNT		\$
TITLE		TITLE		TOTAL CONTRACT AMOUNT		\$
54. CONTRACTOR'S REPRESENTATIVE		55. CONTRACTOR'S REPRESENTATIVE		TOTAL CONTRACT AMOUNT		\$
NAME		NAME		TOTAL CONTRACT AMOUNT		\$
TITLE		TITLE		TOTAL CONTRACT AMOUNT		\$
56. CONTRACTOR'S REPRESENTATIVE		57. CONTRACTOR'S REPRESENTATIVE		TOTAL CONTRACT AMOUNT		\$
NAME		NAME		TOTAL CONTRACT AMOUNT		\$
TITLE		TITLE		TOTAL CONTRACT AMOUNT		\$
58. CONTRACTOR'S REPRESENTATIVE		59. CONTRACTOR'S REPRESENTATIVE		TOTAL CONTRACT AMOUNT		\$
NAME		NAME		TOTAL CONTRACT AMOUNT		\$
TITLE		TITLE		TOTAL CONTRACT AMOUNT		\$
60. CONTRACTOR'S REPRESENTATIVE		61. CONTRACTOR'S REPRESENTATIVE		TOTAL CONTRACT AMOUNT		\$
NAME		NAME		TOTAL CONTRACT AMOUNT		\$
TITLE		TITLE		TOTAL CONTRACT AMOUNT		\$
62. CONTRACTOR'S REPRESENTATIVE		63. CONTRACTOR'S REPRESENTATIVE		TOTAL CONTRACT AMOUNT		\$
NAME		NAME		TOTAL CONTRACT AMOUNT		\$
TITLE		TITLE		TOTAL CONTRACT AMOUNT		\$
64. CONTRACTOR'S REPRESENTATIVE		65. CONTRACTOR'S REPRESENTATIVE		TOTAL CONTRACT AMOUNT		\$
NAME		NAME		TOTAL CONTRACT AMOUNT		\$
TITLE		TITLE		TOTAL CONTRACT AMOUNT		\$
66. CONTRACTOR'S REPRESENTATIVE		67. CONTRACTOR'S REPRESENTATIVE		TOTAL CONTRACT AMOUNT		\$
NAME		NAME		TOTAL CONTRACT AMOUNT		\$
TITLE		TITLE		TOTAL CONTRACT AMOUNT		\$
68. CONTRACTOR'S REPRESENTATIVE		69. CONTRACTOR'S REPRESENTATIVE		TOTAL CONTRACT AMOUNT		\$
NAME		NAME		TOTAL CONTRACT AMOUNT		\$
TITLE		TITLE		TOTAL CONTRACT AMOUNT		\$
70. CONTRACTOR'S REPRESENTATIVE		71. CONTRACTOR'S REPRESENTATIVE		TOTAL CONTRACT AMOUNT		\$
NAME		NAME		TOTAL CONTRACT AMOUNT		\$
TITLE		TITLE		TOTAL CONTRACT AMOUNT		\$
72. CONTRACTOR'S REPRESENTATIVE		73. CONTRACTOR'S REPRESENTATIVE		TOTAL CONTRACT AMOUNT		\$
NAME		NAME		TOTAL CONTRACT AMOUNT		\$
TITLE		TITLE		TOTAL CONTRACT AMOUNT		\$
74. CONTRACTOR'S REPRESENTATIVE		75. CONTRACTOR'S REPRESENTATIVE		TOTAL CONTRACT AMOUNT		\$
NAME		NAME		TOTAL CONTRACT AMOUNT		\$
TITLE		TITLE		TOTAL CONTRACT AMOUNT		\$
76. CONTRACTOR'S REPRESENTATIVE		77. CONTRACTOR'S REPRESENTATIVE		TOTAL CONTRACT AMOUNT		\$
NAME		NAME		TOTAL CONTRACT AMOUNT		\$
TITLE		TITLE		TOTAL CONTRACT AMOUNT		\$
78. CONTRACTOR'S REPRESENTATIVE		79. CONTRACTOR'S REPRESENTATIVE		TOTAL CONTRACT AMOUNT		\$
NAME		NAME		TOTAL CONTRACT AMOUNT		\$
TITLE		TITLE		TOTAL CONTRACT AMOUNT		\$
80. CONTRACTOR'S REPRESENTATIVE		81. CONTRACTOR'S REPRESENTATIVE		TOTAL CONTRACT AMOUNT		\$
NAME		NAME		TOTAL CONTRACT AMOUNT		\$
TITLE		TITLE		TOTAL CONTRACT AMOUNT		\$
82. CONTRACTOR'S REPRESENTATIVE		83. CONTRACTOR'S REPRESENTATIVE		TOTAL CONTRACT AMOUNT		\$
NAME		NAME		TOTAL CONTRACT AMOUNT		\$
TITLE		TITLE		TOTAL CONTRACT AMOUNT		\$
84. CONTRACTOR'S REPRESENTATIVE		85. CONTRACTOR'S REPRESENTATIVE		TOTAL CONTRACT AMOUNT		\$
NAME		NAME		TOTAL CONTRACT AMOUNT		\$
TITLE		TITLE		TOTAL CONTRACT AMOUNT		\$
86. CONTRACTOR'S REPRESENTATIVE		87. CONTRACTOR'S REPRESENTATIVE		TOTAL CONTRACT AMOUNT		\$
NAME		NAME		TOTAL CONTRACT AMOUNT		\$
TITLE		TITLE		TOTAL CONTRACT AMOUNT		\$
88. CONTRACTOR'S REPRESENTATIVE		89. CONTRACTOR'S REPRESENTATIVE		TOTAL CONTRACT AMOUNT		\$
NAME		NAME		TOTAL CONTRACT AMOUNT		\$
TITLE		TITLE		TOTAL CONTRACT AMOUNT		\$
90. CONTRACTOR'S REPRESENTATIVE		91. CONTRACTOR'S REPRESENTATIVE		TOTAL CONTRACT AMOUNT		\$
NAME		NAME		TOTAL CONTRACT AMOUNT		\$
TITLE		TITLE		TOTAL CONTRACT AMOUNT		\$
92. CONTRACTOR'S REPRESENTATIVE		93. CONTRACTOR'S REPRESENTATIVE		TOTAL CONTRACT AMOUNT		\$
NAME		NAME		TOTAL CONTRACT AMOUNT		\$
TITLE		TITLE		TOTAL CONTRACT AMOUNT		\$
94. CONTRACTOR'S REPRESENTATIVE		95. CONTRACTOR'S REPRESENTATIVE		TOTAL CONTRACT AMOUNT		\$
NAME		NAME		TOTAL CONTRACT AMOUNT		\$
TITLE		TITLE		TOTAL CONTRACT AMOUNT		\$
96. CONTRACTOR'S REPRESENTATIVE		97. CONTRACTOR'S REPRESENTATIVE		TOTAL CONTRACT AMOUNT		\$
NAME		NAME		TOTAL CONTRACT AMOUNT		\$
TITLE		TITLE		TOTAL CONTRACT AMOUNT		\$
98. CONTRACTOR'S REPRESENTATIVE		99. CONTRACTOR'S REPRESENTATIVE		TOTAL CONTRACT AMOUNT		\$
NAME		NAME		TOTAL CONTRACT AMOUNT		\$
TITLE		TITLE		TOTAL CONTRACT AMOUNT		\$
100. CONTRACTOR'S REPRESENTATIVE		101. CONTRACTOR'S REPRESENTATIVE		TOTAL CONTRACT AMOUNT		\$
NAME		NAME		TOTAL CONTRACT AMOUNT		\$
TITLE		TITLE		TOTAL CONTRACT AMOUNT		\$

Exhibit 8*7. ENG Form 93 - Payment Estimate, Contract Performance

PAYMENT ESTIMATE CONTRACT PERFORMANCE (Continue)		CONTRACT NO.		SHEET 8 of 3		
CONTRACTOR AND ADDRESS		PERIOD COVERED BY THE ESTIMATE				
		From:	To:			
ITEM NO.	DESCRIPTION	QUANTITY AND UNIT	CONTRACT UNIT PRICE	AMOUNT	TOTAL TO DATE QUANTITY AND UNIT	AMOUNT
a.	b.	c.	d.	e.	f.	g.
0004	CONSTRUCTION/INSTALLATION (PROC FUNDED)					
0004AA	Pollution Abatement System	1 JOB		\$		
0004AB	DUN PWS	1 JOB		\$		
0004AC	Metallic Handling Equipment	1 JOB		\$		
0004AD	Specialized Dredge Machines	1 JOB		\$		
0004AE	Electrical	1 JOB		\$		
0004AF	Bioine Reduction Area	1 JOB		\$		
0004AG	CDS/BCS	1 JOB		\$		
0004AH	Air Systems (LSS, IAS, PLA)	1 JOB		\$		
0004AJ	Cooling Water System	1 JOB		\$		
0004AK	AC/SIDS	1 JOB		\$		
0004AL	Emergency Gen With Oil Sig.	1 JOB		\$		
0004AM	LNG Storage	1 JOB		\$		
0004AN	Process Water System	1 JOB		\$		
0004AP	Exterior Pipe Supls & Tranchies	1 JOB		\$		
0004AQ	Interior Pipe Supports	1 JOB		\$		
0004AR	Furnaces	1 JOB		\$		
0004AS	Filters	1 JOB		\$		
0004AT	Instrument Control System	1 JOB		\$		
0004AU	Hydraulic Piping	1 JOB		\$		
0004AV	URA PWS	1 JOB		\$		
0004AW	Other (See Measurement and Payment)	1 JOB		\$		
	Specification 1025/Machiment 1B and Section C, Para 3.1.2)					
	SUB-TOTAL CLIN 0004			\$		
	TOTAL PRICE CLINs 0002, 0003, & 0004			\$		

Exhibit 8*7. ENG Form 93 - Payment Estimate, Contract Performance(Cont'd)

NON-ASSESSMENT OF LIQUIDATED DAMAGES

Reference is made to Estimate No. _____

Contract No. _____

covering the period _____ to _____ inclusive.

[] No liquidated damages are being assessed since request(s) for extension(s) to time have been received but not as yet resolved. If these requests are denied in whole or in part, there are sufficient monies still due the contractor under contract line items on the construction phases and/or in the retained percentage to cover assessment of liquidated damages, if any are determined to be due.

[] No liquidated damages are being assessed since acceptance of the contract work on Phases II, III, and IV (construction) on behalf of the Government was accomplished on _____. However, still pending completion, but not subject to liquidated damages are the following items:

[Examples] Testing

- Punch list items
- Submittal of payrolls
- Administrative items
- Settlement of Claims
- Finalization of Modifications

Chief, Construction Directorate

FINAL COMPLETION STATEMENT

Estimate No. _____

I certify that the date fixed for completion of work for Phases III and IV under Contract No. _____ as modified through Modification No. _____ is _____; and that this work was substantially completed on _____, 19____. I accepted the work on behalf of the Government on _____ 19_____.

The contractor has been assessed damages, as follows:

Liquidated damages from _____ through _____ being _____ days at \$ _____ per day, or \$ _____.

Those remaining items not subject to liquidated damages, _____, have been accomplished as of _____, 19_____.

All modifications have now been formalized and all administrative requirements of the work under Phases III and IV have been satisfied. It is recommended that the final estimate for this work be approved for payment.

RESIDENT ENGINEER

APPROVED:

Chief, Construction Directorate
Contracting Officer's Rep.

Date:

Exhibit 8*10. Completion Statements (Final Construction Completion Statement)

RELEASE OF CLAIMS

The undersigned contractor under Contract No. _____ dated _____, 199 ____ between the United States of America and said contractor for _____ [Describe the work] _____ at _____; in accordance with paragraph (h) (3) of contract clause, "Payments Under Fixed-Price Construction Contracts" hereby releases the United States, its officers, agents, and employees from any and all claims arising under or by virtue of Phases III and IV of said contract or any modification or change thereof.

(Date)

(Contractor's name exactly as shown on the face of the contract.)

Exhibit 8*10. Completion Statements (Release of Claims).

26 May, 1994

SUBJECT: Contractor No. XXXXXXXXXXXX, Payment of Subcontractors

Gov't Contractor, Inc.
7500 Old Georgetown Road
Bethesda, Maryland 20814-5122

Dear Mr. (Or Ms. _____):

We have received the attached letter from XXXXXXXXXXXX, stating that payment has not been made for supplies or services on your contract, Contract No. XXXXXXXXXXXX. Please review this complaint and fully explain the situation to me, in writing NLT XX XXX XXXX. I also wish to remind you of your obligations under your federal contract.

You should be aware that failure to pay for supplies or services may subject you and your bonding company to suit under the Miller Act.

You should also be aware of your obligations under several provisions of your contract. FAR 52.232-5, Payments under Fixed-Price Construction Contracts, which is part of your contract, requires that when you made a request for progress payments: (1) you certify that payments to subcontractors and suppliers have been made from the proceeds of the payment covered by this certification, in accordance with subcontract agreements and the requirements of 31 USC, chapter 39; and (2) your request for progress payments does not include any amounts which the prime contractor intends to withhold or retain from a subcontractor or supplier in accordance with the terms and conditions of the subcontract.

Please be advised that a false certification may subject you and your company to civil and criminal liability under federal law.

Furthermore, the Payments clause also provides that:

If the Contractor, after making a certified request for progress payments, discovers that a portion or all of such request constitutes a payment for performance by the Contractor that fails to conform to the specifications, terms, and conditions of this contract (hereinafter referred to as the unearned amount), the Contractor shall - (1) Notify the Contracting Officer of such performance deficiency; and (2) Be obligated to pay the Government an amount (computed by the Contracting Officer in the manner provided in 31 USC 3903 (c)(1) equal to interest on the unearned amount until - (I) The date the contractor notifies the Contracting Officer that the performance deficiency has been corrected; or (ii) The date the Contractor reduces the amount of any subsequent certified request for progress payments by an amount equal to the unearned amount.

Furthermore, a contractor fails to meet the obligations of timely payment to suppliers and subcontractors may be liable for interest to both the US and to the subcontractor or supplier in accordance with the provisions of FAR52.232.27, Prompt Payment for Construction Contracts. This clause is also part of your contract.

Also, the Prompt Payment Clause requires contractors to give notice to subcontractors and suppliers and to the Government in the event that progress payments are withheld from a subcontractor. Section (g) of the Prompt Payment clause requires the contractor to give written notice of any withholding to a subcontractor, with a copy to the Contracting Officer, specifying (1) the amount to be withheld, (2) the specific causes for the withholding under the terms of the subcontract, and (3) the remedial actions to be taken by the subcontractor in order to receive payment of the amounts withheld.

You should also note that section (f) of the Prompt Payment clause places obligations on the contractor in the event that second tier subcontractors or suppliers notify the prime contractor of payment deficiencies under the Miller Act.

Also, DOD Authorization Act of 1992, Public law 102-190, section 806 provides that when a subcontractor or supplier of a DOD prime contractor asserts that it has not been paid by the prime in accordance with the terms of its agreement with the prime, the Contracting Officer may determine (1) whether the prime has made progress payments or final payment to the subcontractor or supplier, and (2) the accuracy of any prime contractor certification of payment to the sub or supplier which accompanies the prime's own Prompt Payment request for progress payment by the Government.

Finally, if the Contracting Officer determines that the prime has not complied with such things as subcontract payment provisions, he or she may (a) encourage the prime to make timely payment to the sub, or (b) reduce or suspend progress payments owed to the prime. Also, if the Contracting Officer finds that a prime's payment certification is inaccurate in any material respect, then he or she is required to take appropriate...remedial action under implementing regulations.

This letter should not be construed as an opinion by the Government on the merits of subcontractor/ supplier claims against your company. It is merely a reminder of your obligations under your federal contract.

Sincerely,

/s/

Authorized Representative
of the Contracting Officer

Exhibit 8*11. Sample Letter to Inform Contractor of Subcontractor Nonpayment Complaint
(Cont'd)

DEPARTMENT OF THE ARMY
ENGINEERING AND SUPPORT CENTER, HUNTSVILLE
P.O. BOX 1600
HUNTSVILLE, ALABAMA 35807-4301

REPLY TO
ATTENTION OF:

This statement is issued for the information of persons interested in claims for material and labor supplied and used in the prosecution of work on United States buildings and public works under the control of U.S. Army Engineering and Support Center, Huntsville District.

MECHANICS LIEN

Federal buildings and public works are not subject to mechanics' liens. There is no United States law permitting such a lien. The lien laws of the States are not applicable.

THE MILLER ACT

A remedy for the protection of any person, company, or corporation who has furnished labor and/or materials used in the prosecution of the work provided for in any contract, exceeding \$25,000.00 in amount, for the construction, alteration, or repair of any public buildings or public work of the United States, and payment for which has not been made, is provided by the Act of August 24, 1935, 49 Stat. 793 (U.S. code, Title 40, Sections 270a, 270b, 270c, and 270d; as amended August 4, 1959 - P.L. 86-135, 73 Stat. 279, November 2, 1966, P.L. 89-719, Title 1, Section 105(b), 80 Stat. 1139, known as the Miller Act. This Act is applicable to all contracts exceeding \$25,000 in amount, awarded pursuant to any invitation for bids issued on or after October 25, 1935, and is set forth in the United States Code, as follows:

Section 270a.

(a) Before any contract, exceeding \$25,000 in amount, for the construction, alteration or repair of any public building or public work of the United States is awarded to any person, such person shall furnish to the United States the following bonds, which shall become binding upon the award of the contract to such person, who is hereinafter designated as contractor:

(1) A performance bond with a surety or sureties satisfactory to the officer awarding such contract and in such amount as he shall deem adequate, for the protection of the United States.

(2) A payment bond with a surety or sureties satisfactory to such officer for the protection of all persons supplying labor and material in the prosecution of the work provided for in said contract for the use of each such person. Whenever the total amount payable by the terms of the contract shall be not more than \$1,000,000 the said payment bond shall be in a sum of one-half the total amount payable by the terms of the contract. Whenever the total amount payable by the terms of the contract shall be more than \$1,000,000 and not more than \$5,000,000, the said payment bond shall be in a sum of forty (40) percent of the total amount payable by the terms of the contract. Whenever the total amount payable by the terms on the contract shall be more than \$5,000,000 the said payment bond shall be in the sum of \$2,500,000.

Exhibit 8*12. The Miller Act Information Sheet

(b) The contracting officer in respect of any contract is authorized to waive the requirement of a performance bond and payment bond for so much of the work under such contract as is to be performed in a foreign country if he finds that it is impracticable for the contractor to furnish such bonds.

(c) Nothing in this section shall be construed to limit the authority of any contracting officer to require a performance bond or other security in addition to require a performance bond or other security in addition to those, or in cases other than the cases specified in subsection (a) of this section.

(d) Every performance bond required under this section shall specifically provide coverage for taxes imposed by the United States which are collected, deducted, or withheld from wages paid by the contractor in carrying out the contract with respect to which such bond is furnished. However, the United States shall give the surety or sureties on such bond written notice, with respect to any such unpaid taxes attributable to any period, within ninety days after the date when such contractor files a return for such period, except that no such notice shall be given more than one hundred and eighty days from the date when a return for the period was required to be filed under Title 26. No suit on such bond for such taxes shall be commenced by the United States unless notice is given as provided in the preceding sentence, and no such suit shall be commenced after the expiration of one year after the day on which such notice is given.

Section 270b. (a) Every person who has furnished labor or material in the prosecution of the work provided for in such sections 270a to 270d of this title and who has not been paid in full therefor before the expiration of a period of ninety days after the day on which the last of the labor was done or performed by him or material was furnished or supplied by him for which such claim is made, shall have the right to sue on such payment bond for the amount, or the balance thereof, unpaid at the time of institution of such suit and to prosecute said action to final execution and judgment for the sum or sums justly due him: PROVIDED, HOWEVER, that a person having direct contractual relationship with a subcontractor, but no contractual relationship express or implied with the contractor furnishing said payment bond shall have a right of action upon the said payment bond upon giving written notice to said contractor within ninety days from the date on which such person did or performed the last of the labor or furnished or supplied the last of the material for which such claim is made, starting with substantial accuracy the amount claimed and the name of the party to whom the material was furnished or supplied or for whom the labor was done or performed. Such notice shall be served by mailing the same by registered mail, postage prepaid, in an envelope addressed to the contractor at any place he maintains an office or conducts his business, or his residence, or in any manner in which the United States marshal of the district in which the public improvement is situated is authorized by law to serve summons.

(b) Every suit instituted under this section shall be brought in the name of the United States for the use of the person suing, in the United States District Court for any district in which the contract was to be performed and executed and not elsewhere, irrespective of the amount in controversy in such suit, but no such suit shall be commenced after the expiration of one year after the day on which the last of the labor was performed or material was supplied by him. The United States shall not be liable for the payment of any costs or expenses of any such suit.

Section 270c. The department secretary or agency head of the contracting agency is authorized and directed to furnish, to any person making application therefor who submits an affidavit that he has supplied labor or materials for such work and payment therefor has not been made or that he is being sued on any such bond, a certified copy of such bond and the contract for which it was given, which copy shall be prima facie evidence of the contents, execution, and delivery of the original. Applicants shall pay for such certified copies such fees as the department secretary or agency head of the contracting agency fixes to cover the cost of preparation thereof.

Exhibit 8*12. The Miller Act Information Sheet (Cont'd).

Section 270d. The term person and the masculine pronoun as used in sections 270a and 270d of this title shall include all persons whether individuals, associations, co-partnerships, or corporations.

MINOR JOBS

It will be noted that the above law does not require performance and payment bonds where the contract price does not exceed \$25,000.00.

EXTENT TO PROTECTION

The protection of the payment bond extends not only to the immediate subcontractors for the contractor but to any person having direct contractual relationship with a subcontractor but no contractual relationship express or implied with the contractor relationship express or implied with the contractor furnishing the payment bond, provided notice is given to the contractor as required by Section 270b(a) of the Act as set forth above.

PRIVITY

The Act does not establish any privity between the United States and laborers, material men, subcontractors, etc., so as to authorize the officers of the Government to satisfy their claims from monies due to contractor; nor does the contract authorize the Government to withhold earned payments from the contractor because of his failure to pay subcontractors.

SUITS

When it becomes necessary to institute suit on a contractor's payment bond, such suit is brought in the name of the United States for the use of the person suing, in the United States District Court for the district in which the work is located. Suit may be instituted ninety days after the last of the labor was performed or material was furnished for which such claim is made, but no suit may be commenced after the expiration of one year after the work is completed or material is furnished. Such suit is an action at law.

Persons wishing to know whether any suit has been instituted upon the contractor's payment bond in a given case should inquire of the clerk of the United States District Court for the district in which the contract work is located.

CERTIFIED COPIES - AFFIDAVIT

Under the Miller Act the department secretary or agency head of the contracting agency is authorized and directed to furnish, to any person who makes application therefore, certified copies of the payment bond and the contract for which it was given, provided such person shall submit an affidavit that he has supplied labor or material for the contract work and payment therefore has not been made. Such applicants are required to pay for such certified copies such fees as fixed to cover the cost of preparation thereof. No particular form of affidavit for use in such cases has been prescribed.

LEGAL ADVICE

The Government cannot undertake to adjust differences or determine controversies between contractors or sub-contractors and persons furnishing material or labor, nor will it give advice as to the best method of securing or collecting claims. Claimants must consult their attorneys for answers to questions involving the determination of legal points or procedures.

Exhibit 8*12. The Miller Act Information Sheet (Cont'd).

CHAPTER 9. CONSTRUCTION CONTRACTOR SUBMITTALS

9.1 Purpose. The section provides guidance and identifies responsibilities of government organizations involved in the disposition and review of contractor submittals.

9.2 References.

- a. ER 415-1-10, Contractor Submittal Procedures.
- b. ER 1180-1-6, Construction Quality Management.
- c. EP 415-1-260, Resident Engineer's Management Guide.

9.3 General. Contractor submittals referred to in this plan are materials and shop drawings related to the fixed-price construction phases of the Systems Contracts, which require government approval or acceptance. As required by the contract, submittals are identified in the contractor-prepared submittal register. The contractor is responsible for maintaining and updating the register. The above references clearly define the processing of submittals. Resident Offices will follow these regulations in developing operating procedures for handling submittals. Information from the referenced ER's, EP's, and the contract clauses may be duplicated in this plan to reemphasize certain aspects of those requirements.

9.4 Contractor Responsibilities.

a. The primary responsibility for scheduling, management adequacy, accuracy, and control of submittals lies with the contractor doing the work. The contractor is responsible for incorporating all submittals for government approval into the NAS. Approved submittals become contract documents. Therefore, the contractor must understand that the handling of submittals is as important as the actual construction and installation activities. Resident Engineer's will address this requirement during the pre-construction Quality Mutual Understanding Meeting, and try to include it as part of the partnering agreement with the contractor. Quality control supervision personnel should be knowledgeable of the contract requirements for each phase of work, including approved submittal documents. The construction contractor is responsible for obtaining materials and equipment as specified in the contract. Experience indicates that a principal cause of construction progress falling behind schedule is due to delays in the delivery of materials and equipment. Approval of drawings was considered second. Also, a lack of submittal control can cause serious configuration confusion and delay.

b. Before delivering the submittal package for government review and approval, the contractor must perform a detailed review of the submittal and certify that the information meets the current contract requirements. Submittals from subcontractors must be approved by the prime contractor prior to submission to the Government.

c. After the submittal is approved and during the preparatory inspection for a new phase of work, or the initial inspection of another part of the existing work phase, quality control must verify that the work to be performed will be done with approved contract submittals. Work will not commence based on unapproved or conditionally approved documents.

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9.5 Government Responsibilities

a. The Resident Engineer has the overall responsibility for monitoring the contractor's management control and assuring that submittals are timely and appropriately certified, approved, or accepted. The Resident Engineer should assure that the contractor:

- (1) Places orders for all materials and equipment promptly, specifying delivery dates that will meet the NAS construction schedules.
- (2) Submits approved submittals as part of the progress evaluation for partial payment requests.
- (3) Expedites required shop drawings submission.
- (4) Maintains an energetic follow-up of all schedules.
- (5) Keeps the Government informed on the progress of procurement, drawings, and submittals.

b. The Technical Support Branch of the Resident Office is responsible for managing submittal reviews. This group, with the support of the A-E, Chemical Demilitarization **Directorate QA Team** (CEHNC-CD-TS-QA) and the Directorate of **Engineering**, (CEHNC-ED), will perform all reviews involving the construction phase of the contract. Other government roles are as follows:

(1) CEHNC-ED-CS-Y: The Resident Office will provide information copies of ENG Form 4025's that require offsite review to **Service Branch** (CEHNC-ED-ES-S). **The Service Branch will distribute copies of 4025's to the ED technical manager (CEHNC-ED-CS-Y).** The technical manager will track reviews made by both the A-E and CEHNC-ED. They will also have a major role in the RFI and ECP process.

(2) CEHNC-ED: Engineering Directorate will provide technical reviews as indicated on the review matrix in exhibit 9*1, Service Branch, CEHNC-ED-ES-S, will distribute submittals to the reviewers in the Huntsville Center and file a copy of all approved submittals.

(3) CEHNC-CD-TS-QA: During peak overflow periods, QA will perform technical reviews of shop drawings as requested by the Resident Office.

(4) CEHNC-CD-IN: The Project Manager plays a key role in **monitoring** funds used by CEHNC-ED to perform review of shop drawings. In addition, the **PM** will, as requested, assist **CEHNC-ED-CS-Y** in tracking and coordinating submittals within the Center.

(5) Resident Engineer: As ACO, the Resident Engineer is the primary government agent responsible for approving submittals.

9.6 Submittal/Review Procedure.

a. The contractor-prepared submittals are forwarded to the Resident Engineer for review and approval. The Resident Engineer determines the responsible reviewer. Shop drawings and submittals

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Requiring review by CEHNC will be forwarded to CEHNC-ED-ES-S via HNC-CDE TEST FORM, Draft 4, “_____ Resident Office Request for Technical Review” (Exhibit 9*2). All Resident Offices that request CEHNC-ED submittal review shall use the above form format (Modified to indicate the appropriate Resident Office). The Resident Office will indicate the appropriate funding account that is to be used to cover the labor charges for the review (when known). Should the Resident Office not know the appropriate funding account to be utilized, the Project Manager will be notified and he/she will coordinate with the ED Technical Manager to determine the appropriate funding account. The Project Manager will then notify the Resident Office of the appropriate account number to be entered on the form.

b. All submittals requiring review offsite will be forwarded to the appropriate reviewer. CEHNC-ED-SY-C will coordinate with the appropriate elements of CEHNC as necessary. Review comments will be written on ENG FORM 7 and returned to the Resident Office via CEHNC-ED-ES-S. An info copy of submittals requiring A-E review will be provided to CEHNC-ED-SY-C. In addition, the document will be checked against the NAS or other approved construction schedule. The master copy of the control document will be maintained in the Resident Office. *Control at this level is necessary to ensure effective management by the contractor and timely response by the Government.* It is essential that a complete record of all action dates be maintained and that the records reflect current information for each contract. The Resident Engineer should monitor progress at all times and take appropriate actions for any delay caused by the contractor’s negligence. Examples of appropriate actions include a letter advising of delinquency, withholding of retained percentage for unsatisfactory performance, and nonpayment for unapproved materials.

c. The specifications will direct contractor submittals. ENG FORM 4025, Transmittal of Shop Drawings, Equipment Data, Material Samples, or Manufacturer’s Certificates of Compliance, determines the review procedures. Approval actions and correspondence with the contractor will be made through the Resident Engineer Office. Government personnel will perform quality assurance reviews of “information only” submittals to assure that the contractor’s quality control program is properly handling submittals. The Contracting Officer will determine the number of reviews, however, a minimum of 10 percent of all “information only” submittals will be reviewed.

- d. To assure a smooth and efficient review process, the Resident Office will develop a submittal management plan that addresses the following:
- (1) How submittals relate to the configuration control plan.
 - (2) What does and does not require submission. Refer to the contract-provided submittal register.
 - (3) The transmittal form ENG FORM 4025. Refer to ER 415-1-10, Contractor Submittal Procedures.
 - (4) The submission process. See exhibit 9*1.
 - (5) The submittal review process. See exhibit 9*1.
 - (6) The submittal automation system.

SHOP DRAWING FLOW DIAGRAM

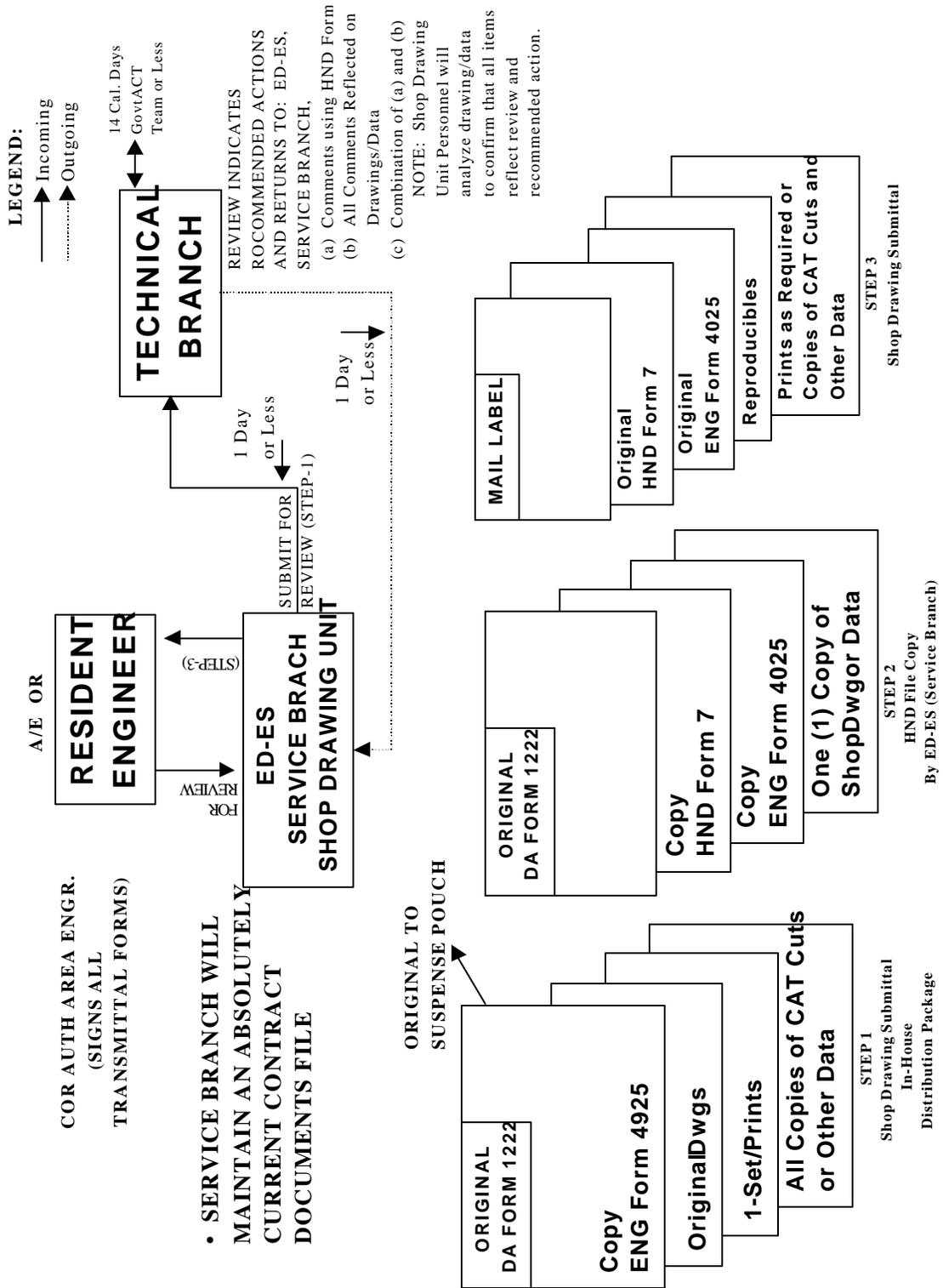


Exhibit 9*1. Technical Review Matrix.

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Resident Office Request for Technical Review

Contract No.: _____

- | | |
|--|------------------------|
| <input type="checkbox"/> Submittal Review (To ED-ES-S) | Document Number |
| <input type="checkbox"/> Request For Information (To ED-SY-C) | |
| <input type="checkbox"/> Draft Field Engineer Change Proposal (To ED-SY-C) | |

Resident Office Fax : () _____ Date Submitted to Res. Office: _____

Resident Office POC: _____, Phone () _____

Technical Review Suspense Target: _____

Reply required @ Resident Office: 3 work days for RFI & 10 work days for submittal review, plus mail time & week-end/holiday.

Authorized Fund Accounts: () MCA-EDDC _____ () MCA S&A _____ () PROC/S&A _____

Date Received by CEHNC-ED-ES-S or ED-SY-C: -----

Date Tech Assistance assigned: -----

Date Tech Review required: -----

Special Instructions for Reviewers () see attached page if checked.

REVIEW OFFICE (Check as applicable)

- | | |
|--|--|
| <input type="checkbox"/> Specifications | <input type="checkbox"/> Architectural |
| <input type="checkbox"/> Estimating | <input type="checkbox"/> Electrical/Instrumentation/Controls |
| <input type="checkbox"/> Safety: | <input type="checkbox"/> Mechanical |
| <input type="checkbox"/> Systems | <input type="checkbox"/> Manufacture Tech |
| <input type="checkbox"/> Site Development | OTHER: |
| <input type="checkbox"/> Geo-Technical | _____ |
| <input type="checkbox"/> Environmental/Utility | _____ |
| <input type="checkbox"/> Structural | _____ |

NOTE: (Indicate category below and attach this completed form to any returned comments please.)

- | | | |
|--|---|---|
| <input type="checkbox"/> Comments on RFI | <input type="checkbox"/> Comments on Form 7 | <input type="checkbox"/> Comments on Drawings |
| <input type="checkbox"/> Comments on Document page | <input type="checkbox"/> Concur with Proposed | <input type="checkbox"/> No Comment |
| <input type="checkbox"/> Other _____ | | |

Reviewer _____ Office Symbol _____ Phone: _____ Date of Review _____

Date Received by CEHNC: ED-ES-S or ED-SY-C: _____

Date CEHNC-ED Returned to Resident Office: _____

Date Received Back at Resident Office: _____

CHAPTER 10. AS-BUILT DRAWINGS

10.1 Purpose. A set of drawings, which depicts the actual as-built conditions of the completed construction, provides the user with a permanent record of each project feature. **These working as-built drawings will typically be red lined mark ups of two sets of the Construction plans, (one for use by the Contractor and one for use by the Government). The working As-built drawings must be reviewed at least monthly by the Resident Engineer in conjunction with the approval of progress payments.** The contract requires the Systems Contractor to **prepare**, maintain and deliver to the Government a set of redlined, record drawings, which show the actual as-built conditions of the construction phases. After Government review and approval, these marked-up drawings will be sent to the contractor who will produce **three copies of** a final set of as-built drawings. **One set for the Corps of Engineers, one for the User or Owner, and one for the Systems Contractor who** must also keep a permanent set of as built **drawings.**

10.2 Procedure. The as-built drawing procedure has three steps.

a. All changes, no matter how minor as well as all clarifications, are entered into a change database and recorded by the Systems Contractor on two sets of redlined or record drawings. Changes and clarifications refer to shop drawings, field ECP's, change orders, modifications, and RFI's which have been reviewed and approved by the Government.

b. Redlined drawings must be transferred to the Architect-Engineer for configuration management verification, baseline comparison, entry into the CADD system, and creation of a reproducible set of drawings labeled As-Built Drawings.

c. When as-built drawings are completed and approved by the Government, the entire set is then sent to the Systems Contractor to use during the systemization and operations phases of the contract. **OSC** policy and procedures establish storage, updating, and maintaining of as-builts in the data control center during these phases.

10.3 Systems Contractor Responsibilities.

a. The Systems Contractor will maintain a drawing card file or computer database to log changes (revisions) to the contract drawings. An RFI number, ECP number, Change Order number, letter number, and report number, etc., must be cited. The Systems Contractor will maintain, throughout the systemization phase, a separate set of redlined, full-size, marked-up drawing set that fully indicates the current status of facilities under construction. The redlined drawings depict all current variations/deviations from the contract drawings, including optional materials, and the required coordination between trades. These variations will be shown in the same general detail as that used in the initial contract drawings. These drawings will be available for Government review. At 30-day intervals, the redlined prints will be reviewed and, at the Contracting Officer's discretion, submitted for update. These redlined drawings then are used to prepare as-built drawings at the completion of each major system within the construction and installation of equipment phases. The as-built drawings are part of the permanent facility records for maintenance, operations, and modification activities, in addition to systemization and operation activities.

b. The Systems Contractor will physically update the redlined drawings to incorporate revisions and on a monthly basis submit them and the drawing card or database listing for review. Changed information on the actual redlined drawing will be as needed, but due to magnitude of changes may not be required each month. In lieu of actual redlined updates for minimal revisions, the Systems Contractor will submit, monthly, only the copy of his drawing card or database, which lists the acknowledged changes not yet, incorporated onto the redlined drawings.

c. When a drawing is updated for a given period, the Systems Contractor will submit a single full-sized sepia of the drawing to the Corps of Engineers for review as part of the monthly contract update. The Corps of Engineers will keep the redlined drawings and will be responsible for its own reproduction requirements.

d. The Corps of Engineers will notify the Systems Contractor of any errors or omissions to include on the revised redlined drawings.

e. Final As-built drawings – the contract specifications will require the Contractor’s project schedule to show separate activities with realistic payment amounts for preparation of the final as-built drawings after the completion of specific phases of work (foundations, utilities, structural steel, etc. as appropriate for the project). Compliance and delivery of the final as-built drawings will be enforced through the approval of progress payments. Also, the quality of the final as-built drawings will be reflected in the construction contractor’s performance evaluation.

f. Transfer to Customer – the completed final as-built drawings, in the required media, format and quantities, will be provided to the customer within 60 days after project transfer. (The 60-day period satisfies the requirement in Army Regulation 415-15, Army Military Construction Program Development and Execution). The 60-day period includes time for final drawings preparation by the Contractor, Government review, and correction by the Contractor.

Final delivery of the redlined drawings takes place after each major building or system is completed or installed. Approval will be on final delivery.

10.4 Configuration Management/Architect-Engineer Responsibilities. When the construction phases of the contract are finished, a complete set of marked-up and approved redlined drawings will be turned over to the Architect-Engineer. The changes will be transferred to the permanent computer-aided design and drafting (CADD) drawing file and labeled as as-built conditions.

The site plans, building plans, cross sections and elevations, schedules, and all other portions of the drawings including location of mechanical service, utility lines and outlets, will be revised to provide a clear understanding of the as-built facility. As-built drawings, together with as-built construction specifications, final shops drawings, and the design analysis will be furnished to the using activity. The Government will provide approved as-built drawings to the Systems Contractor at the beginning of the systemization phase. Drawings must be developed on a CADD system compatible with the Interactive Graphics Exchange Standards.

10.5 Systems Contractor Responsibilities During Systemization and Operations. (IGES). The Systems Contractor will develop and implement a procedure to maintain as-built drawings throughout the Systemization and Operations phases (including all implemented construction modifications). This procedure will be described in the Data Control Plan.

All changes executed during the contract systemization and/or operation phases must be coordinated through the FCCB/CCB and the Architect-Engineer for approval/concurrence and configuration management consideration. An as-built procedure for these phases is the responsibility of **OSC**.

CHAPTER 11. POST-AWARD ORIENTATION

11.1 Purpose. This chapter outlines the Resident Engineer's responsibility in conducting the post-award orientation conferences, more popularly known as the pre-construction or pre-work conferences. For the construction phase, it is the first step in a contractor/government partnership.

11.2 References.

- a. FAR 42.302 - Contract Administration Functions.
- b. FAR 42.5 - Post-award Orientation.
- c. IOC/CEHND Memorandum of Agreement, dated 28 February 1994.

11.3 Structure of Conferences. Post-award conferences usually consist of two separate conferences between government and contractor representatives. However, due to the complexity of the Chemical Demilitarization Systems contracts, three separate conferences will be conducted immediately after award and prior to starting construction. These conferences will cover the following:

- a. General Items: Chain of commands, authorities, responsibilities, points of contacts, safety, security, environmental, etc.
- b. Contract Administration Plan: Change orders, modifications and claims, etc.
- c. Contractor Quality Control/Quality Assurance (CQC/QA).

11.4 Responsibility (FAR 42.504-1).

a. *Conferences:* The Contracting Officer, or the Resident ACO, will schedule and conduct the post-award conferences during the Limited-Notice-to-Proceed period and prior to starting any construction activities.

b. *Record of Conferences (AR 42.503-3):* It is the responsibility of the conference chairperson to prepare, or direct the preparation of, detailed conference minutes and provide copies to all participants. It is vital that everything of importance be included in these minutes, since oral communications tend to be remembered differently by different individuals. If any disagreement occurs between the Government and the contractor, the minutes will prove invaluable. Meeting minutes will be signed by both the contractor and the Contracting officer, and will, after a proper signature by both parties, become a part of the official contract file.

During these conferences the Contracting Officer may make commitments or give directions within the scope of his or her authority and will put in writing and sign any commitment or direction, whether or not it changes the contract. Participants without authority to bind the Government will not take action that in any way alters the contract. The chairperson will include, in the summary report (see FAR 42.503-3), a copy of all information and guidance provided to the contractor.

11.5 Benefit. Post-award conferences are, in most instances, the very first time contractor and government representatives meet face-to-face. This conference will set the stage and tone for the contractor/government relationship for the entire contract. Therefore, contractor personnel should leave this conference with the feeling that government representatives treated them fairly, and with the knowledge that strict compliance with the contract provisions is required. Government representatives should project a combination of competency, fairness, and diplomacy. They should recognize the rights of the contractor and his personnel, and exhibit full respect for their ability and dignity.

11.6 Attendance. For each conference, the individuals attending should represent the following:

a. General Items Conference:

- (1) The contractor
- (2) Major subcontractors
- (3) The Resident ACO and staff
- (4) The Center Engineer
 - ChemDemil Construction Directorate
 - ChemDemil Project Manager
 - Safety Engineer
 - Administrative Contracting Officer
- (5) Base/Arsenal/Depot personnel
 - Directorate of Engineering and Housing
 - Security
 - Environmental
- (6) The Using Agency (PMCD)
- (7) The Architect-Engineer
- (8) Contracting Officer

b. Contract Administration Conference:

- (1) The contractor
- (2) Major subcontractors
- (3) The Resident ACO and staff
- (4) The Center Engineer
 - ChemDemil Construction Directorate
 - ChemDemil Project Manager
 - Safety Engineer
 - Administrative Contracting Officer
- (5) Base/Arsenal/Depot personnel
 - Directorate of Engineering and Housing
 - Security
 - Environmental
- (6) The Using Agency (PMCD)
- (7) The Architect-Engineer
- (8) Contracting Officer

c. *Contractor Quality Assurance Conference:*

- (1) The contractor
- (2) Major subcontractors
- (3) The Resident ACO and staff
- (4) The Center Engineer
 - ChemDemil Construction Directorate
 - ChemDemil Project Manager
 - Safety Engineer
 - Administrative Contracting Officer
- (5) The Using Agency (PMCD)
- (6) Contracting Officer

11.7 Exhibits. A typical attendee roster (a sign-in sheet) and general agendas for each of the conferences are included as exhibits 11*1 through 11*4. The agendas are not inclusive. It is the responsibility of each conference chairperson to develop his or her agenda based on the contract specific requirements and site conditions.

POST-AWARD CONFERENCES

GENERAL ITEMS CONFERENCE AGENDA

Contract No: _____

Project: _____

Contractor: _____

Time and Date: _____

Place: _____

1. Introduction and Outline of Conferences

- Introduction of attendees
- Outline of conference
- Outline of chains of command
- Office arrangement/layout

2. Safety

- EM 385-10-1, Safety and Health Requirements Manual
- Accident prevention
- Accident reporting
- Clean work area
- Activity hazard analysis

3. Security

- Record checks
- Passes and parking
- Badging
- Escorts

4. Facility Engineering

- Utility tie-ins
- Utility outages
- Road closures, etc.
- Area use

Exhibit 11*2. General Items Conference Agenda.

5. Design Briefing

- Briefing on design criteria
- Briefing on critical areas to observe during construction

6. User (PMCD) coordination

7. Labor Relations

- Davis-bacon Act
- Contract Work Hours Standards Act
- Apprentices
- Payroll and payroll records
- Compliance with Copeland Act Requirements
- Withholding of funds
- Contractor termination
- Subcontracts

8. Defense Priorities and Allocations System (DPAS)

- Priorities, allocations, and allotments
- Buy American Act
- Government-furnished property
- Salvage materials and equipment

9. Environmental Protection and acquiring permits

10. Contractor Organization

- Responsible representative at home office
- Project Manager
- Contract Administrator
- Construction Manager
- Safety Manager
- Quality Control Manager
- Property Management Specialist
- Plan of operation

Exhibit 11*2. General Items Conference Agenda **(Continued)**

11. Discussion

Critical Items
Problem Areas
Questions

Exhibit 11*2. General Items Conference Agenda (Cont'd)

POST-AWARD CONFERENCES

CONTRACT ADMINISTRATION CONFERENCE AGENDA

Contract No: _____
Project: _____
Contractor: _____
Time and Date: _____
Place: _____

1. Introduction and Outline of Conference

- Introduction of attendees
- Outline of conference
- Outline of chains of command

2. Administrative and Technical Requirements

- Contract clauses
- Special clauses
- Using service regulations
- Correspondence procedures
- Payment schedule and reporting
- Pay estimates and payments
- Insurance and bonds
- Mail handling
- Labor provision and payroll submittals
- Labor classification and wage rates
- Affirmative Action Program
- Requests for Information (RFI's)

3. Discussion

- Critical Items
- Problem Areas
- Questions

Exhibit 11*3. Contract Administration Conference Agenda.

POST-AWARD CONFERENCES

**QUALITY ASSURANCE/QUALITY CONTROL CONFERENCE AGENDA
(SUGGESTED TOPICS)**

Contract No: _____
 Project: _____
 Contractor: _____
 Time and Date: _____
 Place: _____

- | | |
|---|---|
| <p>1. Introduction and Outline of Conference</p> <p style="padding-left: 40px;">Introduction of attendees
 Outline of conference
 Outline of chains of command</p> <p>2. Safety (Reiterated)</p> <p style="padding-left: 40px;">EM385-1-1, Safety and Health
 Requirements Manual
 Accident prevention
 Accident reporting
 Clean Work Site
 Activity Hazard Analysis</p> <p>3. Contractor Organization</p> <p style="padding-left: 40px;">Responsible representative at home office
 Responsible representative at job site
 Quality control personnel</p> | <p>Contractor supervision of work
 Authorities of representatives
 Plan of operation
 Special inspection and testing requirements</p> <p>4. Labor Relations</p> <p>5. Capturing Lessons Learned</p> <p>6. Contractor Performance Appraisals</p> <p style="padding-left: 40px;">Interim appraisals
 Final appraisals</p> <p>7. Submittals and Shop Drawings</p> <p>8. Discussion</p> <p style="padding-left: 40px;">Four Phase Inspection System
 Critical Items
 Problem Areas
 Questions</p> |
|---|---|

Exhibit 11*4. QA/QC Conference Agenda.

CHAPTER 12. QUALITY ASSURANCE MANAGEMENT PLAN

12.1 Policy. Huntsville Center's policy and procedures for Construction Quality Management are established in this chapter, and apply to all personnel and organizational elements of the Huntsville Center having responsibility for awarding and supervising construction contracts. The intent of the policy is to provide customers with a quality product on a timely basis at a reasonable cost. The key to achieving a quality product is to develop and implement a comprehensive and effective Construction Quality Management program at each field office activity. Obtaining quality construction is also the joint responsibility of the construction contractor and the Government. Their mutual goal must be a quality product conforming to the contract requirements. A cooperative and professional working relationship is necessary to realize this common goal.

12.2 References.

- a. ER 1180-1-6, Construction Quality Management.
- b. ER 415-1-10, Contractor Submittal Procedures.

12.3 Definitions.

- a. *Quality* - conformance to properly developed requirements. In construction contracts, the contract specifications and drawings establish these requirements.
- b. *Quality Management (QM)* - all control and assurance activities instituted to achieve the quality established by the contract requirements.
- c. *Contractor Quality Control (CQC)* - the construction contractor's system to manage, control, and document their own, their supplier's, and their subcontractor's activities to comply with contract requirements.
- d. *Quality Assurance (QA)* - the Government's system to make certain the CQC is functioning and the specified end product is realized.

12.4 Responsibilities.

a. *Contractor Responsibility.* Contractors are responsible for all activities necessary to manage, control, and document work so as to ensure compliance with the contract plans and specifications. The contractor's responsibility includes providing adequate quality control services for work accomplished on and offsite by his or her organization, suppliers, subcontractors, technical laboratories, and consultants. It is the contractor's responsibility to carefully examine the contract for CQC and provide personnel capable of complying with the CQC requirements stated in the contract clauses and technical provisions. The CQC staff must be large enough and have the necessary qualifications for all work performed by the prime contractor or by subcontractors or vendors. The CQC system manager will be an employee of the prime contractor and must report directly to the project superintendent or someone higher in the contractor's organization. Since the size and composition of the CQC organization may vary as the job progresses, the CQC staff, at all times, should be compatible with the level of effort and capability required by the contract and construction schedule.

b. Government Responsibility. Quality assurance is the process by which the Government assures end-product quality. The process starts well before construction and includes reviews of the plans and specifications for biddability, constructability, operability, and environmental responsibility. It also includes plan-in-hand site reviews, coordination with using agencies or local interests, and establishment of performance periods and quality control requirements. Field office planning, preparation of QA plans, reviews of quality control plans, enforcement of contract clauses, maintenance of quality assurance and quality control inspection and work records, and acceptance of completed construction are included in the Federal QA program.

c. Perform the following activities prior to construction:

(1) Prepare a written quality assurance organizational operating plan at the Directorate level with input from the Resident Engineer. The plan must address the overall QA operations of the Center and field offices. The plan provides a road map for the QA operations for the coming year. Develop supplements incorporating project specific requirements for all contracts managed by the Resident Office.

(2) Pre-award activities.

(3) Site plan-in-hand reviews. This is the field office's responsibility.

(4) Review field office workloads and staffing needs.

(5) Assure that office and field personnel have a clear understanding of QA/CQC responsibilities. Identify training needs and access training through the appropriate combination of in-house and PROSPECT courses.

(6) Review the contractor's CQC plan and assure affirmative answers to the following questions as a minimum:

(a) Does the plan adequately cover all features of the contract?

(b) Is the CQC staff adequately sized to maintain quality and accomplish the tests required?

(c) Have all people responsible for each definable feature of work, all tests, and submittal control and review been identified?

(d) Do the qualifications of the staff appear adequate for the control and test requirements?

(e) Is the delegation of responsibility and authority to the CQC staff manager clear? Does this person report directly to the highest ranking contractor personnel onsite (one with responsibility for the overall management of the project including quality and production)?

(f) Are the CQC organizational lines of authority and responsibility clear?

(g) Are the individual control and test duties clearly assigned?

(h) Do the proposed control and test report forms include all the required features and reporting items? Are systems commissioning procedures clearly detailed?

(i) Does it comply with the specific requirements established by the contract special clause?

(j) Are definable features of the work identified? A definable feature of work is a task, which is separate and distinct from other tasks and has separate control requirements. For example, definable features for concrete would be formwork, reinforcing and imbedded items, placement including mix design, finish, etc.

(7) Accept the CQC plan subject to satisfactory performance and reserve the right to require revisions to correct unsatisfactory performance.

d. Implementation and Enforcement. Quality assurance personnel (QAP) will perform the following activities during construction:

(1) After the pre-construction conference, the Resident Engineer or other responsible designee will conduct coordination meeting with the contractor on the CQC/QA program. Both the contractor and the government representative will sign the minutes of the meeting.

(2) Construction will not start until after the coordination meeting and submittal and acceptance of at least the interim CQC plan, if required.

(3) Require a revised CQC plan and its execution as necessary to obtain quality.

(4) Verify adequacy and calibration of test equipment, application of specified test standards, and computation of test results.

(5) Spot check CQC approved submittals.

(6) Review the contractor's daily quality control reports (QCR) to assure that (s)he adequately documents quality control operations. If reports are not adequate, require the contractor to submit a supplementary report containing the necessary information as specified in CEGS-01440. The QAP will not alter, sign, initial, or approve the QCR.

(7) Hold periodic job site assurance conferences on CQC/QA interrelationships of activity and effectiveness.

(8) Participate in the four-phase control process as necessary to assure that the contractor is adequately conducting the required control processes. Attend a majority of the preparatory and initial-phase meetings including mechanical, electrical, and critical features (i.e., roofing and waterproofing). The government participant will be totally familiar with contract requirements. Ensure that the contractor prepares minutes of each preparatory and initial meeting and includes highlights of each control phase on the daily CQC report. These reports must be readily accessible for quick reference throughout the life of the project.

(9) Conduct government QA tests at the job site to assure acceptability of the completed work. Schedule a sufficient number of tests, but not less than 5 percent of the frequency of the CQC tests, to verify CQC test procedures and results. For test procedures in which duplicate sampling is appropriate, the contractor will furnish duplicate samples for possible QA testing of a minimum of 20 percent of the CQC test specimens. As a minimum, one-fourth of these duplicate samples should be tested, and the results compared to the CQC test results to verify test procedures and results. The contractor should not know in advance which duplicate samples will be tested, so that the CQC staff will not know which of the CQC test results are subject to verification. QA test results performed on duplicate samples should be made available to and discussed with the contractor to reconcile any discrepancies. Obtaining and testing duplicate samples is part of and is not in addition to the requirement to perform QA tests at a minimum frequency of 5 percent of the CQC test. QA testing and inspection should be conducted at unannounced intervals. The COR should verify the accuracy and calibration of equipment, assure correct application of specified test standards, and verify the coverage and accuracy of required CQC tests by observing approximately 10 percent of the CQC tests. The exact number of tests observed will be commensurate with the confidence level in the contractor's CQC system and consistency in government and contractor test results. Test reports, which should be attachments to the contractor's CQC reports, should be reviewed by government engineering or laboratory personnel and/or by QA personnel assigned to the work depending upon the type of test.

(10) Monitor the contractor's procedures for tracking construction deficiencies to assure acceptable corrective action and to assure that an audit trail is maintained.

(11) Ensure that new work is not placed on unacceptable work or that progress payments do not include the value of nonconforming construction.

(12) Prepare QA reports and all other necessary QA documentation as detailed below:

(a) Quality assurance personnel will prepare a daily report for each construction or fabrication visit on each contract and project accomplished by government plant and hired labor. If for some reason QAP did not visit the site on a particular day, the reason and pertinent observations as to events occurring during period of absence will be included in the Quality Assurance Report (QAR) for the next visit day. The purpose of the QAR is to document government activities in the day-to-day administration of the contract. Use memoranda for the record (MFR), letters, and the QAR to provide a formal record of contract information. Take particular care to record and preserve all possible data and exhibits for any matter, which may become the basis for a claim.

(b) The reports will be prepared on ENG Forms 2538-1-R, Inspectors Quality Assurance Report (QAR). Electronically generated reports are authorized.

(c) Include all pertinent items of information in the QAR. Data incorporated on the contractor quality control report will not be repeated on the QAR, unless it is necessary to augment or correct erroneous entries on the QCR.

(d) The resident engineer/project engineer or their designees are responsible for assuring that the QAR contains all pertinent items of information. In order to assure the accuracy and completeness of the QAR, this individual will review initial reports by QA personnel and perform follow-up reviews as deemed necessary to confirm/maintain continued acceptability. Initial all reports reviewed.

(13) QA personnel will review the entries on the contractor's QCR. The QCR should contain information on the contractor's quality control operations. Do not burden the report with peripheral information. Attach the QCR to or file it with the QAR to form a complete quality control/quality assurance report, retained until job completion, and then forwarded to the Huntsville Center to be kept in the specific contract file.

(14) Document contractor performance throughout the contract and initiate interim and final unsatisfactory ratings where necessary.

d. Performing Acceptance Inspections. The Government is responsible for acceptance inspections of completed construction, subsequent to CQC completion inspections.

12.5 Procedures.

a. The RO will develop a QA plan for the construction and installation of the equipment of the Chemical Disposal Facility, which addresses inspection and testing efforts. Forward these QA plans to CEHNC-CD-QA for review. Guidelines for preparing a QA plan, as deemed necessary by the Resident Engineer, are provided in Exhibit 12*1. These guidelines are suggested for adaptation in formulating the general quality assurance plan.

b. The CQC plans for the systems contract must specifically address the fixed-price phase of the contract. In Exhibit 12*2 are guidelines for preparing a CQC plan.

c. Each RO will implement an informal training program to improve individual inspector knowledge of contract technical provisions and proper construction techniques. Training should focus on strengthening individual weaknesses, as well as preparing for upcoming critical construction activities. Forward resident office training schedules to the Construction Directorate, ATTN: CEHNC-CD-QA. Use the format shown in Exhibit 12*3 for submitting a training schedule.

d. Resident offices will use Blanket Purchase Agreements (BPA's) or other contractual means, unless in-house capability exists, to perform independent QA testing.

e. Huntsville Center quality assurance management will conduct assistance visits (biannually) at each resident office. These visits will assist RE's in their respective quality assurance programs and provide a transfer of key information learned Center-wide to resident offices. The visit will focus on RO management of quality assurance activities rather than technical evaluations of specific problems. However, the QA management assistance visits will include members from the QA branch technical staff as necessary to review the technical adequacy of ongoing construction. Inspection procedures for the Huntsville Center QA visits are outlined in Exhibit 12*4.

f. The QA Branch is available for special architectural, civil, structural, electrical, and mechanical inspection assistance to field offices as requested.

g. Each Resident Office will develop a procedure for managing contractors' Requests for Information (RFI's) based on the guidance in Exhibit 12*5. Exhibit 12*5 also has a section on contract interpretation to aid in RFI processing and management.

12.6 CEHNC Responsibilities.

a. Chief of Construction Directorate.

(1) Establishes overall policies, goals, and objectives for conducting the quality assurance effort. The Chief will personally review and approve each Construction Directorate policy.

(2) Allocates and distributes Huntsville Center resources for sufficient QA staffing to accomplish quality construction.

(3) Provides overall staff administrative management of the Center QA Program.

(4) Ensures coordination with engineering elements involved in the overall QA effort.

b. Resident Engineer

(1) Manages and directs field QA activities to ensure that both the contractor and the Corps have a common goal of timely completion and quality construction.

(2) Supervises reviewing and approval of CQC plans for contract compliance.

(3) Supervises developing the QA plan and makes final approval. Ensures QA plans reflect optimization of resources with priority given to preparatory and initial inspection phases.

(4) Ensures effective and efficient performance of quality assurance by ensuring that:

(a) QA personnel receive specific assignment of responsibilities and authorities.

(b) QA personnel have QA Inspection and Reporting as critical elements in their performance standards and that standards established will result in successful QA performance.

(5) Reviews QC/QA daily reports, from a management perspective, as required to ensure that:

(a) QA and CQC plans are implemented.

(b) QA supervisory personnel assign technically qualified personnel to all inspection phases.

(c) Contractors do not construct or conceal any work containing defects.

(d) Independent testing by the Government at unannounced intervals IAW QA plan is performed to ensure an acceptable product and verify CQC testing procedures and results.

(6) Ensures QA supervisory personnel coordinate and conduct regularly scheduled meetings with the contractor's CQC supervisory personnel to discuss QC plans, QC/QA interface, inspection schedules, and major current and repetitive deficiencies.

(7) Identifies solutions to CEHNC-CD-QA on repetitive construction deficiencies.

(8) Requests Center help in obtaining TDY assistance for contracts that do not have sufficient resources for QA surveillance.

c. Chief, Quality Assurance.

(1) Advises the Center Commander and staff on QA matters.

(2) Coordinates, schedules, and assigns members for special field office technical assistance visits.

(3) Coordinates and develops Construction Directorate (including field offices) training schedules for all employees and makes arrangements for HQUSACE training.

(4) Ensures field offices have a blanket purchase agreement, or other contractual means, for independent testing laboratories to do QA testing.

(5) Ensures that an adequate technical library is obtained and updated. Provides copies of technical literature (TM, CEGS, Federal Specs, ASTM, etc.) to field offices upon request.

(6) Schedules biannual management assistance visits to Resident offices to assure quality assurance management activities are being performed. At exit briefings, furnishes a rough *handwritten* report of findings to the RE. Following each visit, provides a *written* report documenting findings and recommendations to the RE.

(7) Reviews QA/QC plans and furnishes comments within two (2) weeks of receipt, as appropriate, to the RE.

(8) Develops and recommends procedural guidelines for, and support of, resident office operations in QA/QC, including standardized inspection forms and checklists.

(9) Provides a point of contact for resident office verification testing by commercial laboratories and initiates action to provide resident offices with the necessary testing devices. Arranges instructional training to personnel with the necessary testing devices. Arranges instructional training to personnel on methods of conducting tests and observes both QC and QA test performance.

(10) Assists in developing and implementing a Center-wide training program in the Resident Office for QA and construction.

(11) Develops and coordinates Title II, TDY requirements for QA assistance for Center field elements and initiates requests for assistance.

(12) Identifies possible design deficiencies during routine quarterly visits and forwards the information for consideration as design feedback to the ChemDemil Design Management Integration Division.

(13) Develops a manageable repetitive construction deficiency list and circulates it to all field offices for information and use.

(14) Circulates an exchange of workable QA techniques and lessons learned in the form of HQUSACE Construction and DCAF Bulletins for information and use.

f. Chief, Contracting Directorate: Is the Contracting Officer responsible for Blanket Purchase Agreements or other contractual means for independent testing laboratories that support each resident office with QA testing services.

GUIDELINES FOR PREPARING A QA PLAN

1. Purpose: This is the Resident Office QA Supervisor's plan for monitoring the contractor's CQC System performance to ensure an acceptable quality end product by efficient utilization of available time and resources to optimize the preparatory and initial phases of the Four-Phase Inspection System. It also results in a management tool which allows the supervisor to easily redistribute work loads during absences of QA Reps and allows a new QA Supervisor either temporary (acting) or permanent to effectively assume this role.

2. Scope: See paragraph 8.3.5a of basic policy.

3. Plan Elements: In developing a QA Plan, the following are considered the essential elements of an acceptable plan:

- a.* Four-phase Inspection schedule for major elements of work.
- b.* QC Testing schedule.
- c.* Independent QA Testing schedule.
- d.* Standards for QA Reporting.
- e.* Procedures for Correcting Deficiencies (Enforcement).
- f.* Regularly Scheduled Formal Meeting with Contractor Staff.
- g.* Specialized Assistance and Training.
- h.* Responsibility of the Resident engineer, construction representative, and QA task related personnel.

4. CQC Plan: To effectively develop a good QA plan, an acceptable CQC must exist around which the QA plan is to be tailored. Following are guidelines for review of the contractors QC plan:

- a.* Is CQC staff adequate to provide complete coverage and in compliance with contract requirements?
- b.* Will other duties assigned to the individuals permit them adequate time for CQC activities?
- c.* Is each staff member adequately qualified to perform his assigned task?
- d.* Is the delegation of authority to CQC personnel clear and adequate, and can he stop the work and direct replacement if necessary?

Exhibit 12*1. Guidelines for Preparing a QA Plan.

- e.* Are organizational lines of authority and responsibility clear and logical?
- f.* Are the individual four-phase inspection steps and testing duties clearly assigned to CQC personnel by name?
- g.* Does the plan cover all the required inspections and tests included in the technical provisions and to whom have they been assigned?
- h.* If a commercial laboratory or consultant is proposed, has it been approved?
- i.* Does the proposed Daily QC Report and test report forms include all the necessary features?
- j.* Are the review procedures adequate for shop drawings, samples and submittals?
- k.* Are procedures adequate for inspection of or certification of off site fabrication?
- l.* Are all phases of inspection (preparatory, initial, follow-up and final) adequately covered?
- m.* Are responsibilities and procedures for correcting deficiencies established?
- n.* Does the CQC Chief report to an officer of the firm and not to the superintendent or on-site project manager?
- o.* If a major or critical area of work is to be subcontracted, does the plan adequately address QC procedures?
- p.* Does the plan adequately address handling and storage procedures?
- q.* Does the plan include an effective deficiency tracking system?

5. Guidelines for Preparation of QA Plans

- a.* Title Sheet: See Attachment No. 1 to this Exhibit.
- b.* Four-Phase Inspection System

(1) General - QA efforts should be concentrated on the preparatory and initial phases of inspection. This is necessary due to the fact that the Corps is dealing with contractors who have difficulties in understanding our standards of quality and in determining which construction methods are necessary to produce this quality. For these reasons we must therefore aggressively participate and concentrate our efforts in these two areas of inspection.

Exhibit 12*1. Guidelines for Preparing a QA Plan (Cont'd).

The most effective utilization of time and resources, and optimization of QA efforts are in these two phases of inspection. ENSURING THAT THE CONTRACTOR DOES IT RIGHT THE FIRST TIME.

Historically, too much of our QA effort is involved in the follow-up phase with an inadequate effort in the preparatory and initial phases. Ideally, at the completion of the initial inspection phase, the contractor is incorporating acceptable materials/equipment, using proper construction techniques, workmen are informed and producing acceptable workmanship, and most important of all, the contractor's QC, management/supervisory staff, and workmen understand what is expected as the standard of quality. Once this point is reached, the follow-up inspections are intended to assure both the contractor and Corps that the mutually agreed on quality of work continues. Deficiencies observed after the initial phase are usually generated by unauthorized substitution of materials, changes in contractor QC/management/supervisory staff, or work crews.

(2) Details - Review all Technical Provisions and Plans. Prepare a list of all major phases of work for which the Four-phase Inspection System implementation is desired. Consider the fact that some TP Sections such as Plumbing General, Interior Electrical, etc., will require several preparatory and initial inspections and some TP Sections such as Roofing Insulation, Built-Up Roofing and Sheet Metal Work would be consolidated. Some phases of work may involve one or more preparatory inspections and several initial inspections such as Plaster Work. For example, should all the materials be on-site, one preparatory inspection may be sufficient. However, a series of initial inspections for the furring and accessories installation, scratch coats, brown coats and finish coats for each of the various types of plasterwork may be required. After completing this list, confirm with and reach mutual agreement with the QC Chief on which phases of work the Four-Phase Inspection System will be implemented. These should be incorporated into the CQC Plan. On large contracts involving more than one set of specifications for the various technical requirements or contracts involving various types of facilities, it may be desirable to break down these major phases of work by facility. This breakdown by facility would facilitate in making job assignments easier. This list then becomes part of the QA Plan if not adequately incorporated in the CQC Plan. It may be desirable to make a copy of the contractors list, if acceptable, and include in the QA Plan.

c. QC Testing Schedule: Review the CQC Plan for the types and frequency of QC tests to be performed during the period of the construction contract and prepare a list of these tests. These should include both laboratory and non-laboratory testing such as mechanical, electrical, etc. If the QC Plan is not complete in this area, review the contract drawings and specifications for QC testing and develop your own list and have the contractor revise his plan accordingly. The QA supervisor must establish guidelines (standards) for QA Reps as to which test should be observed 100% of the time, 50%, etc. Where a large frequency of the same type testing is to be conducted, guidelines (goals) may consider percentages or number ranges further broken down by initial testing, subsequent testing goals and should vary depending on quality of contractor testing. At some point, either in the QC Plan, preparatory inspection or initial inspection, QC and QA must agree on the number and location of tests. For example, where a structure may consist of twenty (20) column footings, the number and location of QC tests must be decided. Again, it may be desirable to break down the QC testing by facility, which would facilitate making job assignments. The QA Plan should contain this listing of all QC testing (type and frequency), guides (goals) for QA observation of these tests and independent QA testing goals.

Exhibit 12*1. Guidelines for Preparing a QA Plan (Cont'd).

d. Independent QA Testing Schedule: Independent QA testing is essential. The number of tests will be based on QA Supervisor judgement unless further guidance is provided by higher echelon. See ER 1180-1-6 for the prescribed minimum number of tests. As part of the list developed under QC testing above, and as mentioned before, add a column for QA testing. The number of tests can vary depending on contractor testing performance and can be based on a percentage of QC testing or by time (one a week, etc.). For example, you may set a goal to perform one independent QA test on the twenty-(20) column footings mentioned before.

e. QA Reporting: QA Reps are required by ER 1180-1-6 to complete a daily report of their activities. In QA reporting, special emphasis must be placed on reporting all significant QA activities. Significant is not easily defined in this respect but it should include detailed information concerning preparatory, initial, follow-up and final inspections. This information sometimes cannot all be included on the report form, but included as a supplemental attachment, particularly when reporting results of preparatory and initial inspections. Guidance on what to report as a result of preparatory and initial inspections is at Attachments 1 and 2 to Exhibit 12*2. Also essential to good QA reporting is a thorough review and comment on the QC Report, QC testing observed, QA testing conducted, clarification and/or instructions given to contractor, details on controversial matters, information relating to unsettled changes and general information concerning contractors' methods of performance if inefficient, etc. Further instructions can be found at Attachment 2 of Exhibit 12*1.

f. Procedures for Correcting Deficiencies: The QA Plan must address the various procedures that the supervisor and QA Reps will use to enforce contractor correction of deficiencies including use of the Notice of Non-Compliance form. Numerous other tools are provided in the General and Special Clauses of the contract. The plan should address how the supervisor intends to utilize these tools. QA Reps for example need to know that they shall not recommend payment for defective work, for materials improperly stored, etc.

g. Regularly Scheduled Formal Meetings with Contractor Staff: Formal meetings with contractor QC Staff is essential for the review of CQC performance, to establish schedules for preparatory and initial inspections, review status of non-corrected contractor deficiencies, status of shop drawing/ material submittals and various other matters that may not be directly related to QA. Frequency of meetings will vary depending on the stage of construction and contractor performance. Meeting discussions must be formally documented. The plan should address the fact that regularly scheduled meetings will be held frequently and an outline of proposed topics for discussion.

h. Specialized Assistance Training: In the development of the plan the supervisor may find that he does not have the resources to adequately assure the quality in some phases of work by inspections or tests due to a lack of QA Reps in certain disciplines or lack of training. The plan should address how the supervisor intends to utilize alternate resources such as Directorate QA support, Engineering Directorate, etc., or provide the training necessary to assure qualified surveillance of CQC operations. When required QA Plans should also address QA monitoring of off-site manufacturing.

Exhibit 12*1. Guidelines for Preparing a QA Plan (Cont'd).

ATTACHMENT NO. 1 to EXHIBIT 12*1

**ANNISTON RESIDENT OFFICE
QUALITY ASSURANCE PLAN
CHEMICAL AGENT DESTRUCTION FACILITY
PHASES II, III and IV
ABC CONSTRUCTION CO., INC**

CURRENT CONTRACT AMOUNT:	\$125,000,000.
AWARD DATE:	25 JANUARY 1996
CURRENT OVERALL COMPLETION DATE:	25 DECEMBER 1998
RESIDENT ENGINEER:	Mrs. Durham-Aguilera
NOTICE TO PROCEED:	25 March 1996

DATE OF PLAN _____

PREPARED BY _____

REVISED DATE _____

Exhibit 12*1. Guidelines for Preparing a QA Plan (Cont'd).
Attachment 1. Quality Assurance Plan.

ATTACHMENT NO. 2 to EXHIBIT 12*1**SUGGESTED STANDARDS FOR EXCEPTIONAL QA REPORTING**

1. Review of the CQC Report

- a. CQC Daily Reports are complete, factual, legible and signed by the CQC Chief with the proper certification statement.
- b. No significant conflict can be noted between QC/QA Reports for which the records do not show that some attempt to resolve the conflict was made.
- c. CQC testing is properly recorded on acceptable forms with complete information as to test location, testing procedure, test data/calculations, and test results.
- d. Retests can be easily reconciled to the original failing test.
- e. Instructions by QA personnel are accurately reported.
- f. CQC Reports reflect in general that the four-phase inspection system is being implemented. If not, the QA Rep is reporting this deficiency in his QA Report.
- g. Description of work in progress and materials received and inspected are reported daily. If not, the QA Report will reflect this deficiency.

2. Prepares QA Report

- a. QA Reports are prepared daily, are complete, detailed, factual, unbiased, legible & on the proper form.
- b. Reports reflect in general an appropriate amount of QA activity for the work in progress for which the QA Rep is assigned.
- c. Reports reflect an understanding of an aggressive implementation of the four-phase inspection system.
- d. Reports identify the four phases of inspections participated in and the results of those inspections.
- e. Reports reflect QA observation of QC testing and the results.
- f. Reports reflect that adequate independent QA testing is being performed (QA test reports are attached).

Exhibit 12*1. Guidelines for Preparing a QA Plan (Cont'd).
Attachment 2. Suggested Standards for Exceptional QA Reporting.

- g. Deficiencies noted on a daily report can be tracked to subsequent reports and to the date corrective action is accepted.
- h. Reports reflect proper instructions or clarifications to contractor's staff.
- i. QA Reports include photographs of major deficiencies and deficiencies of a controversial nature.

Exhibit 12*1. Guidelines for Preparing a QA Plan (Cont'd).
Attachment 2. Suggested Standards for Exceptional QA Reporting (Cont'd)

GUIDELINES FOR PREPARING A CQC PLAN

PART I: QC PLAN PREPARATION

1. General: In order to understand what is expected of Contractor Quality Control (CQC) and Government Quality Assurance (QA) programs, first let's agree on some definitions. What is meant by Quality: Quality in this case is simply construction, which meets contract documents, plans and specification. Quality is NOT what may be defined as quality, that the contractor defines as such or by local standards, etc. Quality is defined in contract documentation. Now that Quality has been defined, let's define Control. Control is defined as management. To control is to manage with an end result in mind. Now putting these definitions together, CQC is managing construction in such a manner that the completed construction will meet the requirements as set forth in the contract plans and specifications.

2. Purpose of CQC Plan: The CQC Plan is the contractor's plan which outlines his procedure for establishing and operating a Quality Control System to perform and report sufficient inspections and tests of all items of work, including that of his subcontractor, to insure compliance. This plan should be prepared by the CQC chief who will be managing the QC system.

3. Advance Preparatory Work Essential to the Development or Review of a QC Plan:

a. Make a cursory review of the specification sections, drawings, and if available, cost estimate breakdown to acquire a concept of the scope of the major phases of work.

b. Study Section C in the Description of work entitled Quality Assurance/Quality Control.

c. Throughout preparation or review of an inspection plan, keep in mind the four-phase inspection system of all definable items or phases of work, i.e., preparatory, initial, follow-up and final inspections.

d. Review the contractor's Submittal Register against the specifications prior to the Preparatory Inspection. (The contractor may require more submittals than required by the drawing and specifications.)

e. Highlight (suggest different color) in the specifications of all of the tests that shall be performed by the contractor. The specification requirements for submission of copies of previously conducted tests by a supplier, or independent laboratory, shall be considered as "submittal". (Paragraph d above). These are not tests to be performed by the contractor.

Exhibit 12*2. Guidelines for Preparing a CQC Plan.

f. Develop a list of all phases of work and list the preparatory and initial inspections planned to be conducted. This should be a joint effort between CQC and the Corps individual responsible for Quality Assurance. In developing the list, consider the requirements for preparatory inspections (i.e. all shop drawing/material approvals must have been made). Some TP sections may require more than one preparatory (plumbing/electrical) and some TP sections may be grouped (built-up roofing, roofing insulation and sheet metal work). Some phases of work may have a preparatory followed by a series of initial inspections. Plaster work for example may have only one preparatory (if all materials are on-site) followed by several initial inspections for furring, lath work, installation of accessories, scratch coats, brown coats and finish coats by types of plastering (gypsum, keens, or portland cement). It is very important that the contractor aggressively pursue the preparatory and initial inspections. This is where CQC really pays off. DOING IT RIGHT THE FIRST TIME. QC and QA personnel must work closely during these inspections to ensure that a mutually understood level of quality to be accepted is agreed upon. So, DO NOT BE CONSERVATIVE IN DEVELOPING THIS LIST. Where several types of facilities are under construction you may want to break down the list of preparatory and initial inspections further by facilities. This will facilitate in the assignment of responsibilities to other QC personnel and incorporation of these inspections into the NAS schedule where required.

g. Tabulate the testing requirements (from the highlighting under 3e. above) into a readable format showing specification references, type of test, frequency, conditions, and responsible individual/laboratory in the CQC organization. On large projects it would be advisable to further break down the required testing by facility. This will facilitate making the assignments, authorization and responsibilities to various QC Reps.

h. Determine and list all test equipment to perform all testing. Review specified test procedures to ensure that the equipment listed will satisfy requirements. If contractor lab is to perform test, make arrangements for procurement or delivery of required equipment. If an independent lab is to be used, inspect that lab to verify that it is properly equipped to perform specified testing, and that lab personnel are qualified to perform these tests.

i. Determine to the extent possible what inspection and construction work will be subcontracted. The QC Plan should address, if intended, who will be performing subcontracted inspection work (such as laboratory testing, etc) and construction work (landscaping, mechanical, etc). This section of the plan should address how CQC will interface with subcontractors in these areas. Although not required by contract it is highly advisable that the prime contractor require subcontractors who will be performing major or critical features of work to submit their QC plans which would then become a supplemental plan to the primes. If not known at the time of preparation of the initial plan, indicate what work may be subcontracted and that the plan will be supplemented later to outline CQC procedures in these areas.

4. Guidance on Preparation of the Plan:

a. General: Organize the plan as follows.

- (1) Using a three-ring binder or folder, show contract number, short title of the contract, station or location, and contractor's name on the front face of the binder or folder.

Exhibit 12*2. Guidelines for Preparing a CQC Plan (Cont'd).

- (2) Table of contents.
- (3) Revision sheets. Changes or additions to the plan should be described and the ACO acceptance date shall be shown.
- (4) The organization chart.
- (5) Qualifications of the CQC personnel. (Resumes)
- (6) Copy of the contractor's letter of authority to the CQC Chief signed by a responsible officer of the firm.
- (7) Copy of the CQC Chief letter of direction to each CQC representative outlining his duties and responsibilities, which shall be endorsed as receipt, acknowledged by the representative.
- (8) Four-phase inspection system implementation - discuss how this will be achieved.
- (9) List phases of work for which the four-phase inspection system will be implemented.
- (10) List of tests to be performed and frequency of each.
- (11) Subcontracted work and QC procedures.
- (12) Sample of daily CQC Reports and various test reports.
- (13) Procedures for scheduling and managing submittals and certifying submittals.

b. The Quality Control Organization - The proposed QC organization will reflect how much thought has been given to staffing the project with adequate personnel to control the work. The quality control Chief will normally be supported by additional QC personnel depending on project size and complexity. Careful consideration must be given in the selection of those personnel to ensure that they are qualified to perform their duties. For the development of the organization it is highly advisable to designate a CQC Chief Assistant (back-up) in case of illness or vacation absences of the designated Chief.

c. The Organization Chart - Should show names and relationships of QC Staff elements and the relationship of the QC organization to other elements of authority from an officer of the firm directly to the CQC Chief and to all other elements of the quality control organization including subcontractors. It should show the relationship of the CQC Chief to the job Superintendent and/or Project Manager. An overall project organization chart showing inter-relationship of all contractor staff elements should be provided. It should reflect, if intended, areas in which QC personnel may be involved in the performance of other non-QC type duties. If personnel have not been selected to fill all positions within the QC organization at the time of submitting the plan, provide projected dates for filling these vacancies on the chart. Submit revisions with resumes to the plan later for ACO acceptance of personnel filling those positions.

Exhibit 12*2. Guidelines for Preparing a CQC Plan (Cont'd).

d. Qualifications of Personnel - Now that the QC organization has been structured with relationships provide resumes of proposed personnel endorsed by them, which specifically demonstrate their qualifications to perform assigned duties. Be advised that the Corps expects only qualified personnel to perform functions within the QC organization. This is not an area to train personnel in fields of construction new to them. If the contract requires specific prerequisites qualifications/experience of any QC staff members then they must be met unless the contractor can reasonably show that the proposed individual can satisfactorily perform the required function, then the ACO may consider acceptance conditioned on satisfactory performance.

e. Authority and Area of Responsibility - With an organization adequately sized with qualified personnel you now need to delegate authority and areas of responsibility. It is not uncommon to find QC personnel who have been assigned other responsibilities in addition to their QC assignment. BE CAREFUL, dual assignments in both QC and other project staff duties historically are not successful as they will eventually lead to conflicts in duties to the overall detriment of CQC performance. When this occurs it is usually at the expense of the contractor due to rework efforts and contract delays. If dual assignments are intended be sure that the QC Rep can satisfactorily perform the dual role. If not, he may eventually be replaced through adverse Corps action only because the contractor has unfairly assigned him more and conflicting responsibility than he can satisfactorily perform. Also, be sure that in delegating responsibilities you have covered all areas thoroughly. Areas to be considered are:

(1) Maintenance of the working plans/specifications by posting all change orders, shop drawing, deviations, clarifications, etc., promptly.

(2) Maintenance of as-builts.

(3) Scheduling and conducting the preparatory and initial inspections for each major phase or definable feature of work. Should include reporting responsibilities.

(4) Scheduling and conducting the preparatory and initial inspections for each major phase or definable feature of work. Should include report responsibilities.

(5) Follow-up inspections for each phase of work. Should include reporting responsibilities and deficiency correction procedures.

(6) Testing/laboratory operations:

(a) All equipment must be satisfactory for proper testing.

(b) Test equipment must be properly certified.

(c) Laboratory must have copies of all required test procedures.

(d) Lab technicians should be familiar with and should demonstrate ability to perform specified tests.

Exhibit 12*2. Guidelines for Preparing a CQC Plan (Cont'd).

(e) Proper test forms are used.

(f) Testing must be performed timely and test results will be submitted showing all detailed information regarding location of test, results, and specification requirement. Test reports should be stamped in bold letters "PASSED", "FAILED", "RETEST". Retest location must be easily reconciled with the original location of test failure.

(7) Verification of materials as they arrive on site to insure that the materials delivered are the same as approved and stored properly. QC Reps should also be responsible to assure that during and after installation of pre-finished items, such as countertops, tile, cabinets, furniture, mechanical and electrical equipment, etc., that these are properly protected.

(8) Interface between all QC personnel and project management staff shall be clearly defined. For example, prior to placing slab-on-grade the QC rep directly responsible for this phase of work must coordinate with QC reps responsible for underground plumbing /electrical utilities, the laboratory for density compliance on fill and scheduling concrete testing and project management staff to insure that the foremen and workmen understand requirements, etc.

(9) Conduct off-site QC inspections. Off-site QC inspections are highly recommended where equipment or materials are critical to completion, satisfactory functional performance, or where a large number of identical items are to be manufactured. An off-site QC inspection could prevent major delays and costly fixes to field modify items to meet contract requirements.

f. Methods of accomplishing quality control inspections - Minimum management/inspection efforts essential for good QC/QA are as follows and are based on the required four-phase inspection system.

(1) Preparatory Phase: The Preparatory PHASE starts when the contractor makes his bid take off (he must interpret the specifications and plans and decide what will meet them) and ends with the commencement of a representative portion of each definable feature work. The Preparatory Phase is NOT just one single meeting at a specific time but rather a series of events. The first formal meeting of the preparatory phase should establish an understanding between CQC and QA on contract requirements. CQC personnel should request this meeting in order to assure themselves that they have reached an agreement with government personnel as to what is required. A detailed record of the preparatory inspection meeting is required to be submitted with the QC daily report to reflect the agreed on procedures and controls. See **Attachment No. 1** for guidance in the preparation and reporting. Once this agreement is reached (it may take several meetings and shifting on both sides). CQC is ready to meet with the contractor's FIELD staff. Once field supervisory staff have been informed of the construction requirements, formal instructional periods are held with WORK CREWS in order to "pass the word". In many cases, work crews are not informed of specified requirements. THE CONTRACTOR MUST reach down into these crews if he wants the job done right the FIRST TIME.

The Contractor selects any and all means necessary to instruct the affected work crews (photos, sample panels, printed data, etc.)

Exhibit 12*2. Guidelines for Preparing a CQC Plan (Cont'd).

(2) Initial Inspection: CQC, QA and supervisory staff "look over the workman's shoulders" as they start actual construction in order to satisfy themselves that agreements and instructions are being carried out. Again, during this phase, it is not unusual to re-evaluate prior agreements based on factors not known or considered during the preparatory phase. It is essential that all members of the QC staff involved in this phase of work and preceding work be in attendance. See **Attachment No. 2** for guidance on reporting results of this inspection.

(3) Follow-up Inspection: Follow-up Inspections are performed frequently enough to ensure that the agreed on procedures and quality of work resulting from the preparatory and initial phases of inspection continue. Emphasis during this phase of inspection should be on:

(a) Workmanship

(b) Changes/additions to work crews. Ensure that new crews/workers have been informed, PASS-THE-WORD.

(c) Equipment/materials are approved.

(d) Required QC testing is being performed at the specified frequency and results are satisfactory.

When deficiencies are found three things must be done:

(a) Deficiency corrected promptly

(b) Documentation

(c) Determine cause of deficiency and correct situation to prevent a repetition of error.

(4) FINAL INSPECTION - Upon completion of all work or any increment thereof a completion inspection shall be conducted and a punch list developed of items which do not conform to the approved plans and specifications. The punch list with dates for completion will be included with the QA Daily Report.

Exhibit 12*2. Guidelines for Preparing a CQC Plan (Cont'd).

f. Construction Deficiency Tracking Procedure: Due to the scope of most Corps contracts the number of QC Reps being supervised, extended leave absences, personnel turnover, changes in assignments, simple oversight, etc., known construction deficiencies are frequently not followed through in a timely manner. What was originally a relatively simple corrective measure becomes quite complex and sometimes results in contractor requesting to compromise quality for progress. This is an unfavorable position for the contractor to be in as it reflects poorly on contractor QC performance. Therefore, a tracking procedure of construction deficiencies for the prevention of these adverse situations is a must. The intent is for the contractor to develop a Form for logging all deficiencies noted by both QC and QA Reps, which are not corrected on the date, observed. Suggested guidance in the contents of this log might be; reference to QC Report No. Providing details, short description of deficiency; location by facility, road station, etc.; if issued, date and number; date corrective action complete; and QC Report number recording QA acceptance of fix.

g. Testing (laboratory and other on-site testing). The testing portion of the QC Plan should be developed by utilizing results from the testing tabulation earlier. All testing requirements must be listed, individuals held responsible for coordination and conducting, frequency of test should be shown and whether by contractor or independent laboratory. A list of equipment must be furnished with dates of last calibration. If unknown at time of plan development this information can be furnished at time of receipt. Legible copy of forms to be used during laboratory and other on-site testing should be attached. If not prepared, these forms could be addressed during the preparatory inspection meeting.

h. Storage and Handling: A good QC Plan will address storage and handling procedures. Contractors have experienced great losses due to improper storage and handling. Rebar improperly stored results in unnecessary additional cost to remove rust, factory furnished items such as anodized aluminum door/window frames, furniture, cabinets, sealant mechanical/electrical equipment, etc., will if improperly stored and handled result in added cost and delays. A good plan and procedure will help to minimize these costs and delays. An ounce of prevention is better than a pound of cure.

i. Method of Documentation: Contract Section C, paragraph 3.4, provides minimum guidelines for daily CQC reporting. Where several QC personnel are members of the organization it is acceptable and preferred that each member complete his own daily report which becomes a feeder report to the QC Chiefs compiled report. The contractor's report must be fully documented as to work-in-place, inspections, and tests made, results thereof, dimensional checks, equipment and material checks. The report must be factual and complete. If inspections or tests are not reported, it must be assumed that none were made.

Consequently, failure to report CQC activities reflects poorly on the CQC organization and could result in an unsatisfactory rating and withholding of earnings.

Exhibit 12*2. Guidelines for Preparing a CQC Plan (Cont'd).

ATTACHMENT NO. 1 to EXHIBIT 12*2**FORMAT FOR PREPARATORY INSPECTION AND REPORTS**

1. Identify phase of work by TP section, drawing sheet numbers, or other identification and the location of the work covered by this preparatory inspection.
2. List attendees including representatives of related trades.
3. Has each specification, paragraph, drawing, and shop drawing detail been studied?
4. List the submittals involved in this phase of work. Have all items been approved? Were any deviations approved?
5. Are all materials on the job site?
 - a. Have all materials been checked for contract compliance against approved shop drawings?
 - b. List items not on hand or not in accordance with transmittals.
6. List tests required by the TP section(s).
7. Accident Prevention preplanning- hazard control measures?
8. Have procedures for accomplishing the work been reviewed with the appropriate people?
9. Has all preliminary work been accomplished in accordance with contract requirements and is this segment of work ready to start?
10. Ensure that all differences have been resolved between contractor, sub-contractor, QC staff and QA personnel before proceeding.
11. Corps of Engineers' comments during preparatory inspection by name.
12. CQC, Chief signature on report.

Exhibit 12*2. Guidelines for Preparing a CQC Plan (Cont'd).
Attachment 1. Format for Preparatory Inspection and Reports.

ATTACHMENT NO. 2 to EXHIBIT 12*2**FORMAT FOR INITIAL INSPECTION AND REPORTS**

1. Identify phase of work by TP section or other and the exact location of the work reviewed at the initial inspection.
2. List attendees including representatives of related trades.
3. Ensure that materials/equipment reviewed and approved at the preparatory inspection are the same as those intended for use and are on site.
4. List any proposed deviation if not previously approved.
5. Is the method of construction and the equipment intended to be used, the same as that approved.
6. Who will be responsible for follow-up inspections, on the QC staff?
7. Ensure that all differences have been resolved between contractor, sub-contractor, QC staff and QA personnel before proceeding.
8. Corps of Engineers' comments during initial inspection by name.
9. Ensure that the level of acceptable workmanship is established.
10. Ensure that all contractor personnel involved understand, that if at anytime the level of acceptable workmanship falls below that previously established, they will be required to correct the deficiency and conduct another initial inspection.
11. CQC, Chief signature on report.

Note: Frequently a number of initial inspections may occur before the acceptable level of quality is agreed upon. A report should also be prepared resulting from negative initial inspections as well.

Exhibit 12*2. Guidelines for Preparing a CQC Plan (Cont'd).
Attachment 2. Format for Initial Inspection and Reports.

Topics for Training Session	Projected Date	Instructor	CD-QA Assistance Requested

Exhibit 12*3. Training Schedule.

QUALITY ASSURANCE INSPECTION PROCEDURES

Inspection Procedure - All major installations and/or construction sites will be visited, as a minimum, on a semi annual basis. More frequent inspections will be conducted as conditions dictate. Resident Office will normally be advised of Construction Directorate (CD) inspections at least five (5) working days prior to visits.

Entrance interviews will be conducted with RE's or their authorized representative during which the information contained within the CD Briefing Report will be reviewed and evaluated on it's accuracy. QC/QA staffing will also be reviewed as will office automation and procedures.

After the entrance interview field personnel will assist in conducting on-site inspections and should be prepared to discuss all aspects of inspected work including QC/QA management techniques. Contractor field QC personnel should be prepared to participate in inspections if requested. Noted repetitive deficiencies will trigger a more in-depth review of QC/QA records in order to identify management needs.

After the field investigations a more in-depth office evaluation may be conducted depending on the number and/or severity of noted deficiencies. Office investigation will be comprised of a complete review of the affected contract file including QC/QA documentation and where required a review of contract administration procedures.

During the exit interview all noted deficiencies (along with recommended corrective actions) will be reviewed in detail with the Resident Engineer. The Resident Engineer will be given the opportunity to provide verbal or written responses, which will be included in the CD's written field report. The Resident Engineer will be given a rough, handwritten report of findings at the exit interview.

A written field evaluation report will be prepared within seven (7) working days by the CD inspector(s) after return to the CD Office. This report will be routed through the CD staff with copies to appropriate field offices(s). Where required in the report the field office will provide a written response back to the CD within fourteen (14) working days after receipt.

Follow-on or subsequent quarterly inspections will verify that corrections have, in fact, been taken on previously documented deficiencies.

Construction Policy - See Construction Policy No. CP-1-1, Construction Management Assistance (CMA) Program, for the formal policy concerning the above types of visits.

Exhibit 12*4. Quality Assurance Inspection Procedures.

PROCEDURES FOR MANAGING RFI'S

1. Procedures for Managing Requests for Information (RFI's):

In view of the technical complexity of the CSDP, it is necessary to manage the configuration of the design, Construction, Equipment Acquisition/Installation, Systemization, Operations, and Closure for all CSDP facilities. Configuration Management (CM) is specified in the CM Plan. These procedures do not override that plan, but are to establish an administrative process for the receipt, review and reply to contractor-initiated RFI.

Contractors are responsible to comply with the contract documents and to provide the product/facilities in accordance with the documents. This implies or requires compliance with the configuration (Baseline) on which the contract award is made. The government is responsible to verify contract compliance with the current documents and current configuration. The government accomplishes verification through reviews and Quality Assurance (QA) procedures. The contractor accomplishes compliance through Quality Control (QC) procedures. Total Quality Management (TQM) is a Contractor/Government Partnership.

Contractor-initiated RFI's, submitted in accordance with contract requirements, will be processed in accordance with these instructions.

2. Procedures for Managing Requests for Clarifications:

CM is the discipline applying technical and administrative direction and surveillance to (1) identify and document the functional and physical characteristics of a configured item, (2) control changes to those characteristics, (3) record and report change processing and implementation status, and (4) verify compliance of change implementation.

The CM processes are described in the referenced CM Plans. Those procedures recognize that the contractor will make requests for clarifications and the contract requires the following:

a. The SC will require clarifications, request deviations and substitutions, and discover discrepancies as a consequence of the review of drawings, plans, or procedures. The SC shall request such clarifications by issuing to the Government a RFI.

b. A RFI will only submit/present a request for information. A RFI will not be used to revise a contract. If the Government determines that a response will revise or change any contract requirement, the Engineering Change Proposal (ECP) and contract modification processes must be used. Those processes are outlined in Section 7 Contract Administration.

c. Reviewers, generally, will be Resident Office, CEHNC, PMCD, or Design Personnel designated in the Resident Office procedures and those qualified in technical disciplines. See Attachment 1 to this Exhibit for guidance on contract interpretation. If the review requires contract interpretations, other than technical requirements, or if the technical requirements are not clear, CEHNC Construction Directorate will coordinate inquiries with CEHNC Office of Counsel or other organizations as appropriate.

Exhibit 12*5. Procedures for Managing RFI's.

d. Under no circumstances shall a RFI be used in lieu of an ECP. Where there will be an additional cost to the Government or where an ECP is required, a RFI shall not be used as the basis for a claim under any FFP portion of this contract.

e. For the phases other than construction, an assessment of any new work shall be made to determine whether it would be within or outside of the existing baseline.

3. Procedures for Managing Management Plan.

Contractor RFI's will be processed in accordance with the specific details of the Resident Engineer's site specific plan. Plans must consider the following specific requirements:

a. The RFI review and reply process will follow the process depicted on the attached Flow Diagram (Attachment 2) developed for the Anniston Project. Follow-on projects will follow a similar procedure, and develop an Office Management Plan. Some minor adjustments may be made based on mutual agreement between the Resident Engineer and the PMCD site manager.

b. In the event a RFI leads to an ECP and necessary change to other than Phases II, III, or IV of the contract, the PCO representative on the site shall be responsible for any necessary contract modification.

c. All RFI's will be submitted on a contractor-developed standardized form as specified in the contract.

d. The RFI log shall identify those RFI's that become ECP's.

Exhibit 12*5. Procedures for Managing RFI's (Cont'd).

Attachment 1 to Exhibit 12*5

CONTRACT INTERPRETATION

This information is presented to provide general guidance on the basic rules for contract interpretation as an aid in processing RFI's. The information also outlines the Contractor's contractual responsibilities to coordinate the work. Understanding the rules of contract interpretation is essential to prevent claims and misunderstanding.

1. Contract Interpretation.

It is virtually impossible for a set of drawings and specifications to spell out every aspect of the work on a complex construction project. Numerous Government contract performance problems and controversies stem from disagreements about the precise scope of the Government-Contractor Bargain -- The Contract. The complexity of Government projects, particularly those like the Chemical Stockpile Disposal Program (CSDP), the formality of procedures used in contract formation and the lengthy contract documents and specifications which are present in the CSDP Systems contracts, provide fertile ground for contract interpretation controversies. Resolution of these disputes or performances questions, will determine the amount or quality of work to be performed, the price to be paid, or the party who bears the responsibility for various events which may occur. Thus, an understanding of the rules and procedures used in the interpretation process is essential, not only for resolving controversies and disagreements but also for all parties to appreciate the significance of words and acts transpiring during contract formation and performance and their relationship of such to words in the contract document. Moreover, actions under, and the interpretations of, a given contract may impact obligations under future contracts.

The entire process of determining what the parties agreed to in their bargain is referred to as Contract Interpretation. This process involves determining the meaning of words, supplying missing terms and filling in gaps, resolving ambiguities, and sometimes ruling that parties are bound to perform in a manner which appears to be contrary to the words of the contractual documents. Courts and boards follow no predetermined, well-defined analytical framework work when giving a contract meaning through the interpretive process. A generally useful approach, however, is to first seek to ascertain the parties' intent. Courts and boards do this by looking to two sources of information examined sources under various rules of interpretation intended to ensure that contract language is not given a distorted meaning: (1) The language in the contract documents, and (2) evidence extrinsic (outside) to contract documents, pertaining to facts and circumstances surrounding contract formation and performance.

When analysis of intent-determinative information fails to compel an interpretation, courts and boards invoke other methods to resolve interpretation issues. Rules calling for interpretation of the document against the drafter and imposing a "duty" to seek clarification on the contractor allocate risks of contractual ambiguities by resolving disputes in favor of the party least responsible for the ambiguity. If these rules are inapplicable, an objective standard (similarly situated reasonable contractor) may be used to give a contract its legally enforceable meaning.

Exhibit 12*5. Procedures for Managing RFIs (Cont'd).

Attachment 1. Contract Interpretation (Cont'd)

Lacking a rigid method for interpretation, courts and boards can and do begin the interpretive process at any of the above steps. If a "clear" interpretation is found, analysis ends; otherwise a circuitous evaluation of the other factors may ensue. It should be noted that interpretation issues are matters of law. Thus, courts are not bound by board analysis and interpretive conclusions.

2. Basic Objective. The basic objective of contract interpretation is to determine the intent of the parties. The basic objective of this guidance is two-fold: (1) to provide general background and guidance on the principles of contract interpretation and (2) to provide administrative guidance and procedures for processing contractor-initiated Requests for Information (RFI). This guidance is not intended to circumvent the involvement of the Division Counsel in their legal role related to contract interpretation. This exception is understandable in view of the complicated legal principles and processes of contract law. Secondly, it is not intended that this guidance override or conflict with the requirements of Configuration Management Plans.

3. Definition of Contract Terms. Terms and symbols contained in contract documents must be given some meaning in the interpretive process. Generally, the legal rules are followed unless a different intention is manifested;

(a) Where language has a generally prevailing meaning, it is interpreted in accordance with that meaning;

(b) Technical terms and words of art are given their technical meaning when used in a transaction within their technical field.

For general phrases, dictionaries or common knowledge may provide a meaning. Case law and regulations may also be examined. Definitions of words and symbols, which have acquired special, non-standard dictionary or technical meanings, may be found in trade publications or derived from trade practice and usage. There are two broad sources of technical terms and words of art in Government contracts: the technical language of various industries and trades and the technical language of Government forms. The written contract document is the primary evidence of the parties' agreement. A thorough analysis of the provisions actually included and incorporated by reference is essential to properly resolve these issues.

4. Contract Clauses. It is frequently impossible to make an interpretation, which gives a reasonable effect to all parts of a contract document. Government contract documents are long, complex, and contain many clauses, which are drafted independently of each other. When two or more clauses are in direct conflict, the conflict may be resolved by one of the interpretations rules establishing an order of precedence. CSDP contracts contain specific provisions dealing with the order of precedence. The clause provides:

"Any inconsistency in this solicitation shall be resolved by giving precedence in the following order: (a) the schedule (excluding the specifications); (b) representations and other instructions; (c) contract clauses; (d) other documents, exhibits, and attachments; and (e) the specifications."

(FAR 52.215-33)

Exhibit 12*5. Procedures for Managing RFIs (Cont'd).

Attachment 1. Contract Interpretation (Cont'd)

The preceding clause is included since the contract is negotiated. However, in view of the Construction Phases, which is Firm-Fixed-Price (construction Sub-Contract), additional precedence provisions are included. The basic provision is provided in FAR 52.236-21;

"52.236-21 Specifications and Drawings for Construction

SPECIFICATIONS AND DRAWINGS FOR CONSTRUCTION (APRIL 1984)

(a) The Contractor shall keep on the work site a copy of the drawings and specifications and shall at all times give the Contracting Officer access thereto. Anything mentioned in the specifications and not shown on the drawings, or shown on the drawings and not mentioned in the specifications, shall be of like effect as if shown or mentioned in both. In case of difference between drawings and specifications, the specifications shall govern. In case of the discrepancy in the figures, in the drawings, or in the specifications, the specifications govern. In case of a discrepancy in the figures, in the drawings, or in the specifications, the matter shall be promptly submitted to the Contracting Officer, who shall promptly make a determination in writing. Any adjustment by the Contractor without such a determination shall be at its own risk and expense. The Contracting Officer shall furnish from time to time such detailed drawings and other information as considered necessary, unless otherwise provided.

(b) Wherever in the specifications or upon the drawings the words "directed," "required," "ordered," "designated," "prescribed," or words of like import shall be understood that the "direction," "requirement," "order," "designation," or "prescription," of the Contracting Officer is intended and similarly the words "approved," "acceptable," "satisfactory," or words of like import shall mean, "approved by," or "acceptable," or "satisfactory to" the Contracting Officer, unless otherwise expressly stated.

(c) Where "as shown," "as indicated," "as detailed," or words of similar import are used, it shall be understood that the reference is made to the drawings accompanying this contract unless stated otherwise. The work "provided" as used herein shall be understood to mean "provide complete in place," that is, "furnished and installed."

(d) Shop drawings mean drawings, submitted to the Government by the Contractor, subcontractor, or any lower tier subcontractor pursuant to a construction contract, showing in detail (1) the proposed fabrication and assembly of structural elements, and (2) the installation (i.e., fit, and attachment details) of materials and equipment. It includes drawings, diagrams, layouts, schematics, descriptive literature, illustration, schedules, performance and test data and similar materials furnished by the contractor to explain in detail specific portions of work required by the contract. The Government may duplicate, use, and disclose in any manner and for any purpose shop drawings delivered under this contract.

Exhibit 12*5. Procedures for Managing RFIs (Cont'd).

Attachment 1. Contract Interpretation (Cont'd)

(e) If this contract requires shop drawings, the Contractor shall coordinate all such drawings, and review them for accuracy, completeness, and compliance with contract requirements and shall indicate its approval thereon as evidence of such coordination and review. Shop drawings submitted to the Contracting Officer without evidence of the Contractor's approval may be returned for resubmission. The Contracting Officer will indicate an approval or disapproval of the shop drawings and if not approved as submitted, shall indicate the Government's reasons therefor. Any work done before such approval shall be at the Contractor's risk. Approval by the Contracting Officer shall not relieve the Contractor from responsibility for any errors or omissions in such drawings, nor from responsibility for any errors or omissions in such drawings, nor from responsibility for complying with the requirements of this contract, except with respect to variations described and approved in accordance with (f) below.

(f) If shop drawings show variations from the contract requirements, the Contractor shall describe such variations in writing, separate from the drawings, at the time of submission. If the Contracting Officer approves any such variation, the Contracting Officer shall issue an appropriate contract modification, except that, if the variation is minor or does not involve a change in price or in time of performance, a modification need not be issued.

(g) The Contractor shall submit to the Contracting Officer for approval, four copies (unless otherwise indicated) of all shop drawings as called for under the various headings of these specifications. Three sets (unless otherwise indicated) of all shop drawings, will be retained by the Contracting Officer and one set will be returned to the Contractor.

(h) This clause shall be included in all subcontracts at any tier."

This clause state: "In case of difference between drawings and specifications, the specifications shall govern."

The inclusion of these clauses has the advantage of permitting relatively mechanical resolution of a conflict. However, as a result of their application, there is no assurance that the decision reached will reflect the intent of the parties. The parties have simply agreed in their contract that the specifications shall govern.

Based on experience, other specific contract clauses have been developed and included in the contract. These, in general, are:

(1) CONTRACT DRAWINGS, MAPS, and SPECIFICATIONS

- (a) Two sets of full-size contract drawings, and one set of CAD tapes will be furnished the successful offeror without a charge, except applicable publications incorporated into the technical provisions by reference. The successful offeror will also be furnished (1) one set of reproducible of the contract drawings, (2) fifteen (15) sets of specifications, and (3) fifteen (15) sets of half-size drawings. The work shall conform to the specifications and the contract drawings listed in the technical provisions.

Exhibit 12*5. Procedures for Managing RFIs (Cont'd).

Attachment 1. Contract Interpretation (Cont'd)

(b) Omissions from the drawings or specifications or the mis-description of details of work which are manifestly necessary to carry out the intent of the drawings and specifications, or which are customarily performed, shall not relieve the successful offeror from performing such omitted or mis-described details of the work but they shall be performed as if fully and correctly set forth and described in the drawings and specifications.

(c) The successful offeror shall check all drawings furnished him immediately upon their receipt and shall promptly notify the Contracting Officer of any discrepancies. Figures marked on drawings shall in general be followed in preference to scale measurements. Large-scale drawings shall govern small-scale drawings. The successful offeror shall compare all drawings and verify the figures before laying out the work and will be responsible for any errors which might have been avoided thereby.

(2) Equipment Layout Drawings

The Contractor shall submit layout drawings in plan and necessary elevation, of all mechanical, electrical, heating, and ventilating equipment space(s) showing the proposed equipment, duct work, piping, conduits, etc., with clearances, for approval of the Contracting Officer, whether or not such layout drawings are specified under the various technical sections of the specifications. In spaces having more than one type of equipment, the layout drawings shall indicate the composite arrangement of all types of equipment and all associated work with all clearances. The layouts of equipment and associated work shall provide adequate and acceptable clearances for entry, servicing, and maintenance. The submittal and approval of equipment layout drawings shall conform to the requirements as before specified for shop drawings. Should the Contractor propose to furnish any equipment or standard products requiring allocations of space, or electrical, mechanical, or piping connections thereto, or supports different from those shown or indicated on the plans or in the specifications, he shall prepare and submit full detail drawings to the Contracting Officer for approval showing all changes. The approved detailed drawings shall become a part of the contract and any changes in the construction resulting from revisions in the details and dimensions on the drawings which are required by the substitution of alternate equipment and/or products shall be made at the expense of the Contractor.

(3) LAYOUT OF WORK (Apr 1984) FAR 52.236-17

The Contractor shall lay out its work from Government established base lines and bench marks indicated on the drawings and shall be responsible for all measurements in connection with the layout. The Contractor shall furnish, at its own expense, all stakes, templates, platforms, equipment, tools, materials and labor required to lay out any part of the work. The Contractor shall be responsible for executing the work to the lines and grades that may be established or indicated by the Contracting Officer. The Contractor shall also be responsible for maintaining and preserving all stakes and other marks established by the Contracting officer until authorized to remove them. If such marks are destroyed by the Contractor or through its negligence before their removal is authorized, the Contracting Officer may replace them and deduct the expense of the replacement from any amounts due to become due to the Contractor.

Exhibit 12*5. Procedures for Managing RFIs (Cont'd).

Attachment 1. Contract Interpretation (Cont'd)

The preceding clauses are provided to set the foundation for timely resolution of conflicts and to aid in the contract administration process. Some very basic rules are established:

- a. In case of difference between drawings and specifications, the specifications shall govern.
- b. "Large Scale" drawings control over "Small Scale" drawings.
- c. Figures marked on drawings shall in general be followed in preference to scale measurements.
- d. The contract will be read as a whole.
- e. Specific terms control over general terms.
- f. Specifications and drawings are read together.
- g. Performance specifications control.
- h. The contract language is presumed to express the intent of the parties.
- i. Ambiguity: Is "uncertainty of meaning..." Is more than mere disagreement.
- j. Ambiguous language will be construed against the drafter.

5. Requests for Clarifications. During contract formation or early in the performance of a contract the contractor or the Government may become aware of an apparent ambiguity or that the other party's interpretation differs from his own. In these circumstances, it is common for one party to specifically request the other party to clarify its interpretation of the terms in question. Solicitation provisions and regulations provide procedures to be followed by bidders and government officials in dealing with requests for clarification submitted in the pre-bid or proposal stage of acquisition.

It is not intended for this discussion to address any issues related to pre-bid or contract formation. Rather, these procedures are to establish an administrative process after contract award.

Exhibit 12*5. Procedures for Managing RFIs (Cont'd).

CHAPTER 13. SAFETY

13.1 Purpose. This section summarizes policy, procedures, and responsibilities for safety and accident prevention during construction of the Chemical Demilitarization Facilities. This section applies to all Government personnel involved with the Chemical Demilitarization Construction Program and particularly applies to the Resident Offices assigned to manage the construction and equipment installation phase of the Systems Contract.

13.2 References.

- a. CEHND 385-1-1, Safety and Occupational Health Program Management
- b. EP 415-1-260, Resident Engineer's Management Guide

It is not the intent of this plan to duplicate published policy and regulation, therefore only two basic documents are referenced. These two references contain numerous other policies, regulations, and procedures. Each Resident Office can develop a viable safety program for employees as well as administer and report the safety requirements of the Systems Contract as it pertains to the contractor's safety management program by using these two regulations.

13.3 Responsibilities.

a. The Chief, Safety Office, CEHNC, is responsible for establishing a safety program that addresses the safety and health of all CEHNC personnel. The Safety Office is also responsible for evaluating the Resident Offices' implementation of their safety plan. CEHNC Safety will interpret and implement safety policy and regulations provided by the Office of the Chief of Engineers.

b. Construction Directorate is responsible for providing guidance and direction to the Resident Engineer in implementing the applicable regulations and policies.

c. The Resident Engineer is responsible for ensuring the Systems Contractor complies with all safety and health requirements as stipulated in the contract. The RE is also responsible for providing a safe and healthful work environment for employees.

d. Employees are responsible for observing good safety practices in their day-to-day work and must wear special equipment, uniforms, protective clothing, or special wearing apparel for protection of self, co-workers, and property. Report accidents immediately; damaged or inoperable personal protective equipment should be reported to the supervisor.

13.4 Procedure. The Resident Engineers' procedures as a minimum should address:

a. Enforcement of the Contractors Accident Prevention Plan. EP 415-1-260 provides a checklist to assist the Resident Engineer during review of the Accident Prevention Plan. Once accepted by the RE, the contractor must provide a review copy of the accident prevention plan to the Safety Office prior to the pre-construction safety conference. The RE should assure that the contractor's accident prevention plan is available at the site and read by all contractor employees.

b. Conducting a Pre-construction Safety Conference. One of the most important aspects of a good safety program is establishing a mutual understanding of key safety personnel and the administration of their programs.

EM 385-1-1 provides a recommended agenda. The RE should notify the Center Safety Office seven days prior to the conference.

c. Activity Hazards Analysis. An activity Hazards Analysis will be performed for all Government employees. Conduct a review of the potential hazards in each duty area and document the results at least annually.

d. Accident Investigation and Reporting. The Center Safety Office is the central contact point for accident investigation and reporting. The RE's safety plan should also identify reporting requirements of the site facility safety office. HND 385-1-1, chapter 4, appendix B, discusses detailed procedures and instructions to the field office on fatalities, lost-time injuries, and damage to property.

e. Personal Protection Equipment.

(1) Personal protective equipment will be furnished to all Government employees according to the nature of exposure and protection required by their job hazard analysis. For example, office personnel, whose major duties are clerical, would not need safety shoes to safely perform their duties. Whereas, a quality assurance representative will need safety shoes, protective eyewear, etc., to safely perform his duties.

(2) Safety shoes and safety glasses can be purchased through the Contracting Directorate from local suppliers in Huntsville. Depending on its location, the RO may elect to establish his or her own procedures for procurement of personal protective equipment.

(3) Hard hats will be purchased by the RO through the General Services Administration. Requirements for reflective tape, insignia, etc., will be in accordance with EM 385-1-1.

f. Employee Safety and Health Training. Each RO employee whose duties involve a potential exposure to toxic chemicals will receive annual baseline physicals. The safety office on the facility will assess the potential for exposure. Each supervisor should review each employee's day-to-day duties to determine the type and amount of training required and then documents the training in each individual's development plan. Non-supervisory personnel should receive a minimum eight hours training during a two-year period.

g. Operation of Motor Vehicles.

(1) All Government employees who operate vehicles on official business will possess a valid state driver's license.

(2) Government personnel who operate vehicles on official business should take a recognized driver's training course, e.g., Defense Driving approximately every four years.

(3) Seat belts must be worn when operating or riding in a government vehicle.

CHAPTER 14. LABOR RELATIONS

14.1 General. In view of the unique administrative role of the Resident Engineer, the uniqueness of the CSDP, and the type of contract used for CDSP, it is imperative that the Resident Engineer's role in establishing an active and effective Labor Relations Program be clearly defined and established. Chapter 1 identified the organizational relations for the program. The primary responsibility of the Resident Engineer is the enforcement of construction labor standards for Phases II, III, and IV of the Systems Contract. The Resident Engineer's primary guidance is as outlined in ER 1180-1-8, *Contracts Labor Relations*, dated 30 December 1994, guidance received from the Center Labor Advisor, and the specific instructions of this section.

14.2 Organization.

a. Under provisions of the Systems Contract, the contractor is responsible for establishing program procedures for personnel management and industrial relations. Once accepted and approved by the PCO, the SC will establish a labor relations program, which will insure compliance with all Federal Labor Standards applicable to this contract. Additionally, the SC is responsible for establishing acceptable procedures for all labor and personnel matters relating to all contract phases. The contract requirements for worker access (clearances, badging, transportation, and security) are very restrictive and more complex than normal construction requirements. The Resident Engineer is not responsible nor required to enforce these contractual and internal SC procedures. However, the Resident Engineer may participate, if the PCO desires, in the administration of the program as related to the construction phases.

b. Pursuant to the authority delegated by the PCO and pursuant to the Memorandum of Agreement with IOC, the Resident Engineer is primarily responsible for the enforcement of all construction labor standards applicable to this contract.

14.3 Responsibilities.

a. The Systems Contractor has the contractual responsibility to manage the Industrial Relations Program and act as the primary point of contact during the construction phases. This responsibility includes ensuring that all tiers of subcontractors comply with the applicable requirements of the contract for both the services and the construction phases. The Davis-Bacon Act is the primary law applicable to the construction phases and the McNamara-O'Hara Service Contract Act is the primary law applicable to services. The PCO administers the non-construction requirements; the Resident Engineer advises and, within his delegated authority, administers the construction phases.

b. The Resident Engineer's delegated authority is as provided in FAR 42.302(a)(54). Duties include: Monitor Contractor Industrial Labor Relations matters under the contract; apprise the Contracting Officer and, if designated by the Agency, the Cognizant Labor Relations Advisor, of actual or potential labor disputes; and coordinate the removal of urgently required material from the Strike Bound Contractor's Plant upon instruction from and authorization of the Contracting Officer.

c. ER 1180-1-8 and EP 415-1-260 provides insight and general guidance for Resident Engineer responsibilities and is not repeated in this section except to either clarify or supplement the guidance.

Except, as specifically authorized by the Director, Chemical Demilitarization Construction Directorate, all questions or concerns related to the Resident Engineer's responsibilities will be submitted to the Directorate. Direct contact or notice to the PCO may be authorized for unique problems. The Huntsville Center Labor Relations Advisor is the Office of Counsel. The Resident Engineer will develop enforcement and reporting procedures, in accordance with ER 1180-1-8, and as follows for these specific actions:

(1) Pre-construction Conference. In coordination and cooperation with the PCO, the Resident Engineer will discuss the contract requirements for labor compliance. It is important at this time to discuss the contractor's proposed method of construction to disclose situations and conditions, which were not anticipated. This is particularly applicable to the existing wage classifications. If new classifications are necessary, requirements should be identified. A guide for discussions is in appendix I, ER 1180-1-8, Pre-construction Conference Checklist. The Huntsville Center Labor Advisor will attend the Pre-construction Conference.

(2) Prime Contractor Payrolls. The Resident Engineer is responsible for ensuring that the Systems Contractor submits payrolls in a timely manner. It is emphasized that the prime contractor is more than a mere conduit for transmission of payrolls. The Systems Contractor is obliged to ensure that all required information on such payrolls is furnished prior to submission. The Resident Engineer will maintain the Payroll Records, ENG Form 3180, at the Resident Office. When the construction is complete, the records will be transferred to the PCO and coordinated with the final construction payment. Exhibit 14*1 provides general payroll guidelines, with samples, which may be provided to the contractor.

(3) Employee Interviews. The Resident Engineer is responsible for establishing a procedure for QA representatives to conduct labor standard interviews. These interviews are essential in detecting employee misclassification or other common violations. Use SF Form 1445, Labor Standards Interview, together with the Privacy Act Statement to report interviews. Frequency, use, and filing of the form will follow instructions of ER 1180-1-8.

(4) Wage Rate/Regulation Posting. The Systems Contractor is required, by contract provisions, to post a copy of applicable wage rates and other labor notices. The Resident Engineer will ensure that the Labor Relations Plan includes this requirement. Location and posting of the applicable materials will follow guidance of ER 1180-1-8. The Resident Engineer will periodically inspect the bulletin boards to ensure compliance with these requirements.

(5) Notice of Award to Subcontractors. The SC will notify the Resident Engineer within 14 days after the award of any subcontract made by the SC or a lower tier subcontractor and to provide the name and address of the new subcontractor(s) and a summary of the work subcontracted. At the same time, the SC will furnish a statement signed by the subcontractor acknowledging the inclusion in his subcontract of applicable labor clauses. Standard Form 1413, Statement and Acknowledgment must be executed and submitted to the Resident Engineer in duplicate (both copies signed). The original copy will be filed in the contract file and a duplicate signed copy furnished to the Center Labor Advisor. Reproduced copies, as necessary, should be furnished to the CAB for contract administration purposes.

(6) Labor Disputes, Work Stoppages, Activities, and Complaints of Labor Representatives. The Systems Contractor will handle labor difficulties and work stoppages. As provided in the contract

provision's clause entitled, "*Notice to the Government of Labor Disputes*," whenever the System Contractor has knowledge that any actual or potential labor dispute is delaying or threatens to delay the contract schedule, the contractor will immediately notify the Contracting Officer. In the CSDP, notices for Phases II, III, and IV will be submitted to the Resident Engineer. The Resident Engineer will make initial reports to the Center Labor Advisor by telephone or facsimile. The report will contain the information available at the time and in the order identified on DD Form 1507, Work Stoppage Report. Initial reports, forwarded by telephone, will be confirmed as soon as possible by submitting DD Form 1507 in duplicate to the Labor Advisor. The RE will make follow-up reports on significant changes not less than weekly until the dispute is resolved. The RE will send, within five days after the end of the work stoppage a final report, in duplicate.

(7) **Additional Classifications and Rates.** The Davis-Bacon Act states that the Contracting Officer will require that any class of laborers or mechanics not listed in the wage decision which will be employed on the contract will be classified or reclassified to conform to the wage decision. The Resident Engineer will relay on ER 1180-1-8 for detailed guidance on administrative actions. Submit requests through Chief CD to the Center Labor Advisor using SF 1444, Request for Authorization of Additional Classification and Rate.

14.4 Small Business and Small Disadvantaged Business Utilization.

a. General. In normal construction contracts, the Corps of Engineers Contracting Officer is responsible for approving the successful offeror's subcontracting plan prior to award. However, in view of the contract type, the PCO at IOC is responsible for this action. EP 415-1-260 provides guidance on the subject in chapter 7, Contract Administration. This chapter includes Huntsville Center guidance on the subject, since it is anticipated that the Systems Contractor will include this requirement under the Labor Relations Program. The guidance in chapter 7 is applicable.

The MOA with IOC requires the Resident Engineer, if requested, to assist the PCO in receiving and approving the plan as related to the construction phases. Send a request for assistance to the Chief of the Construction Directorate, who will coordinate the request. The Huntsville Center Small and Disadvantaged Business Office (SADBU) will support the Construction Directorate.

b. Pre-construction Conference (Post-award Orientation). Subcontracting requirements, including the plan incorporated into the contract, reporting requirements, incentives, and other contract decisions must be included in the agenda for pre-construction conferences and notes in the minutes. The Resident Engineer will coordinate this requirement with the PCO. The Center SADBU will participate in this conference. The conference will address all critical items identified in ER-1180-1-8, Appendix I, and Chapter 11 of this plan, Post-award Orientation.

c. Performance Ratings. The Resident Engineer will officially evaluate the construction contractor's performance and prepare yet another report. A contractor's performance rating must include an evaluation of compliance or noncompliance with subcontracting plans and related labor compliance. In the CSDP, the PCO will provide the Resident Engineer access to the negotiated Small Business and Small Disadvantaged Business Subcontracting Plan. The Center SADBU will coordinate and assist the Resident Engineer and the PCO in the evaluation

14.5 Labor Standards Checklist

a. Exhibit 14*2 is a sample handout that summarizes the basic labor requirements and checklists to assist the contractor in complying with contract requirements. Modify this exhibit to ensure updating of contract provisions and to reflect current requirements. It is recommended that this information be discussed in the pre-construction conference.

U.S. DEPARTMENT OF LABOR WAGE AND HOUR DIVISION		S A M P L E		PAYROLL		Form Approved Reg. 11 Series No. 41										
Name of contractor <input checked="" type="checkbox"/> ON SUBCONTRACTOR <input type="checkbox"/>		FOR WEEK ENDING 7 NOVEMBER 1992		PROJECT AND LOCATION WASTE WATER TREATMENT PLANT, Maxwell		PROJECT OR CONTRACT NO. DCA01-92-C-0100										
Jane's Construction Company		1000 W. Street Mobile, Alabama 36609		PROJECT NO. CONTRACT NO.												
1 NAME, ADDRESS, AND SOCIAL SECURITY NUMBER OF EMPLOYEE	2 JOB TITLE OR CLASSIFICATION	3 TO DAY AND DATE							4 TOTAL HOURS	5 RATE OF PAY	6 GROSS AMOUNT EARNED	7 DEDUCTIONS			8 NET WAGE PAID FOR WEEK	
		MON	TUE	WED	THU	FRI	SAT	SUN				FED. TAX	STATE INCOME TAX	UNION DUES		OTHER DEDUC.
Paul Andrews 100 Oak St. Montgomery, AL 36123 SSN: 123-45-6789	Laborer								3	13.50	\$405.00	19.96	54.00	15.00	80.96	\$311.54
Guy Thomas 2173 Virginia Ct. Montgomery, AL 36123 SSN: 345-67-8910	Carpenter							3	15.00	\$450.00	23.01	67.00	16.50	15.00	121.51	\$323.49
Stanley Woodard 908 Sunset Blvd. Montgomery, AL 36123 SSN: 678-91-2345	Electrician							24	12.00	\$288.00	18.72	27.00	5.45	15.00	66.16	\$221.84
Marysue Mathis 809 Dunbar St. Montgomery, AL 36123 SSN: 457-78-9123	Laborer							40	9.00	360.00	19.10	71.00	19.00		109.00	\$251.00

Exhibit 14*1. Payroll Guidelines.

Exhibit 14*2. Labor Standards Checklist.

GLOSSARY

ACCELERATION:

Type I: Buying back equitable time extensions due the construction contractor under the contract clauses of his contract which covers unforeseen circumstances beyond the contractor's control and without his fault or negligence, such as fires, strikes, and unusually severe weather.

Type II: Buying back equitable time extensions due the construction contractor under other contract clauses of his contract, such as "Changes" and "Differing Site Conditions."

ACCEPTANCE:

An authorized representative on behalf of the Government recognizes partial or complete performance of a contract, accepts ownership of materials, supplies, equipment, and facilities, or accepts rendered services.

**ACTUAL
PROGRESS:**

A measure of work accomplished by a contractor for a given time period. (See Scheduled Progress.)

ACTS OF GOD:

¹An extraordinary interruption of the usual course of events that experience, prescience, or care cannot reasonably foresee or prevent. ²An event in nature, such as a flood or earthquake, over which neither the Government nor the contractor has any control.

**ADJUSTMENT
IN ESTIMATED
QUANTITIES:**

A contract adjustment pursuant to the contract clause on variation in estimated quantities.

**ADMINISTRATIVE
CHANGE:**

A unilateral contract change, in writing, that does not affect the substantive rights of the parties (e.g., a change in the paying office or the appropriation data.)

**ADMINISTRATIVE
CONTRACTING
OFFICER (ACO):**

See chapter 1, paragraph 1-3, Authorities.

**AGGREGATE
(TOTAL) AMOUNT
OF A CHANGE:**

When an item of work is changed, the aggregate dollar value of the change is the difference between the costs to complete the work as originally specified and the costs to complete the change. When one item of work is deleted and another item of work is added, the aggregate value of the change is the absolute value of the sum of the deleted work and the added work. For example, if changing the wall location, the aggregate amount of the change is not the original cost of the wall deleted and cost of new wall added. The change is only the net difference. However, if a wall is added and a boiler is deleted, the aggregate amount of the change is the sum of plus and minus. (ASPM, Chapter 10)

AMCCOM

Head of the Contracting Activity (HCA)/Head of the Purchasing Activity (HPA):

AUDIT:

Contractor's statements of actual or estimated costs are examined by auditors to an extent deemed appropriate. Auditors rely on their experience with contractors and upon appraisals of the effectiveness of contractor's policies, procedures, controls, and practices to complete the audit. Audit reviews may consist of desk reviews, test checks of a limited number of transactions, or examinations in depth.

**BENEFICIAL
OCCUPANCY
DATE (BOD):**

The day on which beneficial occupancy is granted to the agency requiring use of the facility after construction. By mutual agreement the beneficial occupant will allow the Construction agency access to the building as required to complete remaining items of construction.

**BENEFICIAL
OCCUPANCY:**

Occupancy of an uncompleted building, structure, or facility under circumstances which are advantageous to the occupant and which produce relatively little interference with the builder in completing construction. Prior to occupancy by the using service, a written agreement among the contractor, construction agency, and the using service is provided listing deficiencies, remaining work, and other conditions of occupancy that must be consummated. Beneficial occupancy may be a contract requirement.

**BILATERAL
MODIFICATION:**

A supplemental agreement on which the Contracting Officer and the contractor have agreed to a price and/or time adjustment.

**BUSINESS
CLEARANCE
MEMORANDUM**

(BCM): A document reflecting that a proposed contractual action represents good business judgment, conforms to Federal, DOD, and Army acquisition policies and that the price established is fair and reasonable.

**CONTRACT
CHANGE:**

Any variation from the terms or requirements of a contract, commonly called "change."

**CHANGE
ORDER:**

A written order, signed by the Contracting Officer, directing the contractor to make a change in the contract. The Changes Clause in the contract authorizes the Contracting Officer to initiate the order without the contractor's consent. A change order is an obligation to the Government in the value of the work ordered. If the price/ time have not been agreed upon (definitized), the government estimates for the changed work must be sound, up-to-date, and represent the obligated change order amount. Note that the amount of the modification ordering the work is independent of the obligated amount. See Notice to Proceed for written orders pertaining to clauses other than the Changes Clause.

**CHANGE
REGISTER:**

A record that reflects all changes made to the contract.

**CHANGE
WORK:**

Work specifically changed by a contract clause.

CLAIM:

A written request made by the contractor for time, money, or both, asserted under a contract.

**COMPETITION
IN CONTRACTING
ACT OF 1984****(CICA):**

The Competition in Contracting Act of 1984, effective 1 April 1985, substantially changed the basic statutes underlying the Federal procurement system. Agencies will provide full and open competition by (1) soliciting sealed bids, (2) requesting competitive proposals, or (3) by other competitive procedures unless a statutory exception permits other than full and open competition. There are justifications, approval, and notice requirements for contracts employing other than full and open competition. The Act also requires that competition advocates be appointed, and it enumerates their responsibilities. CICA also establishes provisions relating to bid protests.

CONFLICT IN PLANS AND SPECIFICATIONS:	Statements or meanings on the contract specifications and drawings which cannot be reconciled by reasonable interpretation.
CONSENT OF	An acknowledgement by a surety that its bond given in connection with a SURETY: contract continues to apply to the modified work (change).
CONSTRUCTION:	Construction, alteration, or repair (including dredging, excavating and painting) of buildings, structures, or other real property.
CONSTRUCTIVE ACCELERATION:	A denial of a valid request for any time extension with a directive to adhere to the contract completion date which results in acceleration of work.
CONSTRUCTIVE CHANGE:	An act or omission by the Contracting Officer, which in fact effects a change in the work.
CONSTRUCTIVE DELAY:	An act or omission by the Contracting Officer which in fact delays the completion of the work.
CONTRACT:	All types of agreements and orders for the procurement of supplies or services. It includes awards and notices of award, fixed-price, cost, cost- plus-fixed- fee, or incentive contracts, letter contracts and purchase orders.
CONTRACT CLAUSE:	Any general (boilerplate), special or technical provision, or part thereof, of a contract.
CONTRACT COMPLETION	Date established by the contract for completion of all or of specified: DATE portions of work.
CONTRACTING OFFICER:	See chapter 1, paragraph 1-3, Authorities.
CONTRACTING OFFICER'S REPRESENTATIVE (COR):	See chapter 1, paragraph 1-3, Authorities.

COST ANALYSIS: The review and evaluation of the separate cost elements and proposed profit of (a) an offeror's or contractor's cost or pricing data and (b) the judgmental factors applied in projecting from the data to the estimated costs in order to form an opinion on the degree to which the proposed costs represent what the cost of the contract should be, assuming reasonable economy and efficiency.

**COST
BREAKDOWN:** Separating total cost into identifiable elements.

COST OR PRICING

DATA: All facts that, as of the date of agreement on the price of a contract (or the price of a contract modification), a prudent buyer or seller would reasonably expect to affect price negotiations significantly. Such term does not include information that is judgmental, but does include the factual information from which a judgment was derived.

DAMAGES: The increased cost a contractor resulting from Government acts or omissions affecting the contract but not incorporated into a change order. The value of the loss to the Government resulting from contractor acts or omissions.

DELAY: A significant slowing down or stopping of a contractor's scheduled progress in completing work required under a contract. This may be caused by acts of the Government or contractor or from something beyond control of either, and may be either excusable or non-excusable.

DESIGN CHANGE: A change for which redesign effort is required. A design change materially affects the approved requirements, the basis of design, the existing scope of the contract plans and specifications, or operating capability of the facility.

DEFENSE

CONTRACT AUDIT

AGENCY (DCAA): The government agency that performs external audits for Corps of Engineers contracts (military only).

DESIGNATED BILLING OFFICE (DBO):

Office or person to first receives the contractor's proper invoice or request for payment. In most cases, the Area/Resident or Project Office that is administering the contract.

DESIGNATED PAYMENT OFFICE (DPO):

Office actually responsible for issuing payment of invoices for contract work or services.

**DIFFERING SITE
CONDITIONS:**

Refers to subsurface or latent physical conditions at the site differing materially from those indicated in the contract. Also included in this clause are unknown physical conditions at the site, of an unusual nature, differing materially from those ordinarily encountered and generally recognized as inherent in work of the character provided for in the contract.

DIRECT COSTS:

Cost of the materials, supplies and prime contractor or subcontractor work and labor that go into and can be clearly identified with a particular phase of a project.

DISPUTE:

A disagreement as to a question of fact or contract interpretation, which cannot be resolved to the mutual satisfaction of the contracting parties.

EFFICIENCY LOSS:

The loss productivity of labor and equipment required to perform a given task, which may result from actions of the Government under a contract clause. It is usually expressed as a percentage.

**ENGINEERING
CHANGE:**

A change in design requiring revised drawings and/or specifications prepared by Engineering Directorate.

**EQUITABLE
ADJUSTMENT:**

A contract adjustment in price or time under, certain contract clauses, or both, to compensate the contractor expense incurred due to actions of the Government or to compensate the Government for contract reductions. An equitable adjustment includes an allowance for profit. Certain clauses provide for adjustments, excluding profit. Those adjustments are not considered "equitable adjustments."

**ESTIMATED
QUANTITY:**

The quantity indicated in the bid schedule estimated to be that required to complete a bid item.

**EXCUSABLE
DELAY:**

A delay in the work for which, under the terms of the contract, a time extension can be granted.

EXPEDITE

(pertaining to

To reduce the performance period originally specified. Approval by the head contract: of the Agency (on a non-delegable basis) is required to expedite the completion date of a contract funded by a Military Construction Appropriation Act, if additional costs are involved. The approval authority must (1) certify that the additional expenditures are necessary to protect the National interest and (2) establish a reasonable completion date for the project. The Contracting Officer may approve an expedited completion date if no additional costs are involved.

**EXPEDITED
PROCEDURE**(pertaining to
changes):

Issuing a Notice to Proceed before completion of negotiations of a change.

FIELD CHANGE:

A field change is one initiated by the Resident Engineer to make revisions to the contract plans and specifications to adjust to actual field conditions encountered.

**FINAL CONTRACT
PAYMENT:**

The last payment made by the Government to a contractor for all work performed under the contract, after which the contractor may make no new claims. This is accomplished by marking the last pay estimate with the word "final" and obtaining a Release Statement.

**GENERAL AND
ADMINISTRATIVE****OVERHEAD (G&A):**

Costs frequently referred to as home office expense; usually these costs are incurred elsewhere other than at the job site; general costs of doing business.

**GOVERNMENT
APPROVAL:**

Approval of a process, descriptive data, drawing, or other documents by the Contracting Officer as required by the contract.

**GOVERNMENT-
CAUSED DELAY:**

An action or non-action by the Government which results in a significant delay of a contractor's scheduled progress in completing work required under a contract. This is an excusable delay.

**GOVERNMENT
ESTIMATE:**

An independent estimate of time and price prepared prior to negotiations with a contractor on changes to the contract.

**GOVERNMENT-
FURNISHED**

EQUIPMENT (GFE): Equipment in the possession of or acquired directly by the Government and subsequently delivered to or made available to the contractor for use or for incorporation into the work.

**GOVERNMENT-
FURNISHED**

PROPERTY (GFP): That property or equipment to be furnished to the contractor at a specified location and at a specified time by the Government at no cost to the contractor.

**HEAD OF THE
AGENCY OR
SECRETARY:**

The Secretary of the Army and the term "His Duly Authorized Representative" mean the Chief of Engineers, Department of Army, or an individual or board designated by him.

IMPACT COSTS:

Those costs which are variously described by a contractor as indirect or "ripple" and claimed to be sufficiently related to direct cost as to be recoverable. Often viewed by the Government as being consequential.

**INTERMEDIATE
COMPLETION****DATES:**

Dates established in a contract for completion or occupancy of designated facilities or features of a facility before the date for completion of all work under the contract. Known commonly as BOD.

**INSPECTION OF
SITE (SITE****INVESTIGATION):**

The investigation of the site by the contractor, required by the contractor clauses of the contract, to acquaint and satisfy himself as to the conditions affecting the work.

INSPECTOR:

That person assigned by the Contracting Officer to check materials of construction, methods of construction and workmanship for contract compliance.

JOINT OCCUPANCY**DATE (JOD):**

The date on which construction has progressed to a point where the using agency is allowed to commence installation of equipment or perform other desired work in designated facilities or areas. Such using agency activities will be scheduled so as to cause a minimum of interference with activities of the construction agency.

- JOINT OCCUPANCY:** Simultaneous occupancy of a construction site by work force, or separate contractor, of using service and the construction contractor. The construction contractor continues to perform major features of construction and the using service, or its contractor, performs work normally done after the construction contractor has completed his work to the point of beneficial occupancy.
- JOB OVERHEAD:** Indirect costs that are commonly incurred on a project basis and can be at contributed directly to the contract, such as maintaining a job office at site. Job overhead differs from direct costs in that job overhead costs are not allowed to a single work item but to several.
- LATENT DEFECT:** A defect in the work not in accord with the specifications, which could not be observed by reasonable inspection.
- LIMIT OF AUTHORITY:** The monetary amount set out in the delegation of authority beyond which the designee has no authority to act; or the authority set out by FAR, OCE or other regulations beyond which the designated person has no authority to act.
- LIQUIDATED DAMAGES:** An amount of money stated in the contract as being the liability of a contractor for failure to complete the work by a designated time.
- MILITARY SPECIFICATION:** A detailed specification on a specific subject, approved by the Department of Defense, and incorporated into construction contracts by reference.
- MODIFICATION:** A formal document (supplemental agreement within or outside the contract scope of work) that alters the contract specifications, delivery point, rate of delivery, contract period, price, quantity, or other contract provisions of an existing contract.
- MULTIPLE MODIFICATION CHANGE:** The same unique change order request issued in separate modifications. This is used in cases where a notice to proceed (undefinitized contract action) has been issued. In addition, the change could involve a substantial sum and considerable time would be required to determine the equitable adjustment or the exact extent of the change. It would be inequitable to require the contractor to finance the change until the equitable adjustment or the extent of the change order request may provide an amount for interim payment purposes and will expressly stipulate that such amount is tentative and that the final adjustments will be made in the definitized modification for the change order.

- NEGOTIATION:** The process of arriving at a mutually agreeable price, time, scope, and specification for a contract; or additions or deletions to an existing contract. It may include cost and/or pricing analysis, audit or other techniques.
- NORMAL WEATHER:** That kind of weather, which could be expected for a period of time, based upon the weather experience of the locale.
- NOTICE TO PROCEED (NTP):** A formal notice to the contractor to proceed with work under the contract or under a contract change within the scope of work. This notice may be prior to acceptance of the contractor's proposal for the change, or after an agreement on cost and time. A notice to proceed is an obligation to the Government for the value of the work included in the notice. See "change order" for definition relative to Changes clause.
- OFFSITE INSPECTION:** The inspection of fabricated or manufactured items in the plant prior to delivery to job site. The inspection may be performed by Corps of Engineers personnel or by other Government agency.
- OVERHEAD:** The indirect costs of a contractor that cannot be attributed to a single item or unit of construction work. It may include salaries of supervisory and executive personnel, office expense, taxes, insurance, etc.
- OVERRUN IN QUANTITIES:** The actual quantity of work performed by a contractor, which exceeds the estimated amount, shown in the bid schedule of the contract.
- PATENT DEFECT:** A defect in the work not in accord with the specifications but which could be observed by reasonable inspection.
- PAY ESTIMATE:** Estimate prepared by the Resident Engineer to reflect earnings by a contractor over a specific period of time.
- PAYMENT BOND:** A bond which is executed in connection with a contract and which secures the payment of all persons supplying labor and material in the prosecution of the work provided for in the contract.
- PERCENT COMPLETE:** Ratio of work completed to the total work called for in the contract. May be expressed in money or time.

PERFORMANCE

BOND: A bond which is executed in connection with a contract and which secures the performance and fulfillment of all the undertakings, covenants, terms, conditions and agreements contained in the contract.

PRENEGOTIATION

OBJECTIVES: The Government's cost or price objective, the type of contract, and the profit or fee objective. Must be established before the negotiation of any pricing action.

PRICE

ADJUSTMENT: A change to the established price of the contract arrived at by mutual agreement between the Government and contractor.

PRICE ANALYSIS: Process of examining and evaluating a prospective price without evaluation of the separate cost elements and proposed profit.

PRICE**NEGOTIATION**

MEMORANDUM: A record of negotiation setting forth the principle elements of the negotiation for inclusion in the contract file.

PRICING DATA: Facts submitted to substantiate a quoted price.

PLANS: Drawings, a graphic representation for the construction to be accomplished by a contract.

PRIME

CONTRACTOR: The party with which the Government contracts directly.

PROGRESS

PAYMENT: Payment made at designated intervals to allow compensation for work accomplished prior to final completion.

PROGRESS

SCHEDULE: Timetable devised to reflect the planned sequence of prosecution of the contract work.

PROPOSAL: An offer by a contractor, in response to a request by the Government, to accomplish stated work for a certain price within a given period of time.

PROPRIETARY: Equipment or material available from a single source. Generally prohibited in construction contracts.

QUALITY

ASSURANCE: That function of management by which conformance of material and workmanship to contract and specification requirements are assured. This assurance is obtained by evaluation of production quality controls and inspections exercised by procedures, supplemented by direct verification inspection of product.

REASONABLE

VALUE: A reasonable monetary worth of something or a fair return or equivalent in goods or services.

SCHEDULED

PROGRESS: Ratio of work completed to work planned for completion at a specific time.

SEALED BIDDING: Procurement by competitive bids and awards; involves basic steps of (1) publicizing the invitation, (2) invitation for bids, (3) submission of bids by prospective contractors, and (4) awarding the contract.

SOLE SOURCE: Single point of supply for materials or services.

SPECIFICATIONS: A detailed, precise presentation of a plan or proposal; statement of legal particulars such as contract terms.

STOP ORDER: Order issued by the Contracting Officer to suspend work; may be in whole or in part.

SPECIAL CLAUSES: Provisions of a contract relating to conditions peculiar to a specific contract.

SUBCONTRACTOR: Any supplier, distributor, vendor, or firm, which furnishes or services to or for a prime contractor or another subcontractor.

SUBCONTRACTOR

DELAY: Delay in performance of work resulting from action or inaction by a subcontractor.

SUPPLEMENTAL

AGREEMENT: A contract modification within or outside the contract scope of work, which is accomplished by mutual action of the parties. Changes that are outside the general scope of a contract cannot be required of the contractor without his and his sureties' consent or acceptance. A supplemental agreement outside the contract scope is subject to the requirements of the Competition in the Contracting Act.

SUSPENSION

OF WORK: Actions resulting from an order of the Contracting Officer to delay, interrupt, or suspend all or part of the work for a given period of time for the convenience of the Government.

**TERMINATION
OF CONTRACT:**

Actions by the Government in accordance with contract clauses to terminate, in whole or in part, work with the contractor. Termination may be for the convenience of the Government.

**TRUTH IN
NEGOTIATIONS:**

Term used to refer to Public Law 87-653, the "Truth in Negotiation Act;" concept of "Truth in Pricing;" purpose is to require contractors to submit truthful cost or pricing data.

TIME EXTENSION: Extension of the specified time to complete an item of work.

**UNDEFINITIZED
CONTRACT
ACTION:**

Note: Initiating work on an un-priced change order does not constitute as "Undefinitized Contract Action" (UCA) as defined in DFARS Subpart 217.74. UCA's are new contracts or modifications, which are outside the scope of the contract. The Corps of Engineers, however, has elected to apply the DFARS' procedures for processing UCA's to un-priced change orders. Therefore, any contract action for which the contract terms, specifications, or price are not agreed upon before performance is begun is considered a UCA.

**UNDERRUN
IN QUANTITY:**

The actual quantity of work performed by a contract less than the estimated amount shown in the bid schedule of the contract.

**UNILATERAL
MODIFICATION:**

A modification on which the Contracting Officer and the contractor cannot agree to a price and/or time adjustment equal to or within the Government Estimate. In such cases the modification containing the adjustment in price and/or time price contained in the Government Estimate may be issued unilaterally, with or without a Contracting Officer's Final Decision. Unilateral modifications are also used to make administrative changes and to issue termination notices.

**UNUSUALLY
SEVERE
WEATHER:**

That kind of weather, which is in itself severe and can be of a violent nature. If the average weather over a period of time is significantly different than the normal then it is said to be other than normal. In either case, if such weather affects the job and causes a delay, it is excusable, provided there is no fault or negligence on the part of the contractor.

VALUE

ENGINEERING:

An organized effort to provide the required function of systems, materials or construction at the lowest overall cost consistent with the required performance, operation, and maintainability of the item. Contractors are encouraged to submit Value Engineering Change Proposals (VECP) under the Value Engineering Clause of the contract.

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Print 25 sets on card stock (weight, quality, and type-font furnished on the attached example).

1. Introduction	2. Office Management	3. Personnel Management	4. Fiscal Management	5. Property Administration
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6. Pre-construction Administration	7. Contract Administration	7.1 General	7.2 Contract Clauses	7.3 Modification Process
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7.14 Unilateral Modifications	7.15 Special Considerations	7.16 Claims & Disputes	8. Payment Vouchers	9. Contractor Submittals
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10. As-built Drawings	11. Post-Award Orientation	12. Qual. Assurance Mgmt.	13. Safety	14. Labor Relations
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