

**MODULE 1
HANDOUT:**

**ER 1180-1-6
Construction Quality
Management**

CEMP-CE Regulation No. 1180-1-6	Department of the Army U.S. Army Corps of Engineers Washington, DC 20314-1000	ER 1180-1-6 30 Sep 95
	Contracts CONSTRUCTION QUALITY MANAGEMENT	
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CEMP-CE
CECW-OC

DEPARTMENT OF THE ARMY
U. S. Army Corps of Engineers
Washington, D.C. 20314-1000

ER 1180-1-6

Regulation
No. 1180-1-6

30 September 1995

Contracts
CONSTRUCTION QUALITY MANAGEMENT

Supplementation to this regulation is required. USACE commanders will provide a copy of their supplement to HQUSACE, (CEMP-CE), WASH, DC 20314-1000, thru chain of command channels.

1. Purpose. This regulation provides the general policy and guidance for establishing quality management procedures in the execution of construction contracts. It defines the related responsibilities and roles of both the contractor and the government in the management of quality in the construction of facilities.
2. Applicability. This regulation applies to all HQUSACE/OCE elements, major subordinate commands, districts, laboratories, and field operating activities (FOA) responsible for awarding and supervising construction contracts.
3. References.
 - a. FAR, part 46.312
 - b. FAR, part 52.246-12
 - c. ER 415-1-11
4. Definitions.
 - a. Quality - conformance to properly developed requirements. In the case of construction contracts, these requirements are established by the contract specifications and drawings.
 - b. Quality Management (QM) - is all control and assurance activities instituted to achieve the quality established by the contract requirements.

This regulation supersedes ER 1180-1-6, dated 30 June 1994.

c. Contractor Quality Control (CQC) - is the construction contractor's system to manage, control and document his/her own, his/her supplier's, and his/her subcontractor's activities to comply with contract requirements.

d. Quality Assurance (QA) - is the system by which the government fulfills its responsibility to be certain the CQC is functioning and the specified end product is realized.

5. Policy.

a. General. Obtaining quality construction is a combined 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 should be established in order to realize this common goal. The contract documents establish the quality required in a project to be constructed. Contracting officers are responsible for assuring the contract documents clearly define the quality of materials and workmanship required for a project and that construction contractors comply with the contract documents and produce the required product. Certain civil works structures are specified by a construction procedure in lieu of end product quality. In these instances, contractors are responsible for the specified procedure and contracting officers must verify design assumptions, and control and assure the end product quality.

b. Contractor Quality Control. Reference 3a establishes a requirement for CQC in construction contracts. In contracts of \$1,000,000 or more, detailed CQC will be applied and a properly edited CEGS-01440 will be included in the contract. Inclusion of detailed CQC in construction contracts under \$1,000,000 is discretionary. When construction services are obtained through an international governmental agreement, CQC will not be used unless it is specifically required by that agreement.

c. Government Quality Assurance. QA is required on all construction contracts. The extent of assurance shall be commensurate with the value and complexity of the contracts involved and the requirements of this regulation.

6. Contractor Responsibility.

a. General. Contractors shall be made 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 ensuring adequate quality control services are provided for work accomplished on- and off-site by his/her organization, suppliers, subcontractors, technical laboratories and consultants. The work activities include safety, submittal management, and all other functions relating to the requirement for quality construction.

b. Staffing. It is the contractor's responsibility to carefully examine the contract requirements for CQC and provide personnel capable of complying with the CQC requirements of the contract clauses and technical provisions. The CQC staff must be of sufficient size and have the qualifications necessary to ensure contract compliance, whether work is 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. The size and composition of the CQC organization may vary as the job progresses. At all times it should be compatible with the level of effort and capability required by the contract and construction schedule.

c. Quality Control Plans and Procedures. Contractors will be required to prepare a quality control plan for all projects except those excluded under the discretionary authority described in paragraph 5 of this regulation. Plans and procedures will include the features described in CEGS-01440.

7. Government Responsibilities.

a. General. 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, constructibility, operability and environmental responsibility, plan-in-hand site reviews, coordination with using agencies or local interests, 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.

b. Planning. Prior to construction, the following activities will be performed:

(1) Develop a written quality assurance organizational operating plan. This plan will be developed at the district level with input from the area/resident engineer and will address the overall QA operations of the district and field offices. It is recommended that the plan be developed in conjunction with the annual office operating budget. The plan will provide a "road map" for the QA operations for the coming year and as such should address projected workload, organization, staffing, job responsibilities, training, pre-award activities, post-award activities, testing, and documentation. In order to be an effective management tool, the plan must be kept current and adjusted for changes in workload, staffing, etc. Therefore, after initial development, the plan will be reviewed and updated as often as necessary but not less than annually. Supplements incorporating project specific requirements will be developed for all contracts by the area/resident/project office. A suggested outline for the QA plan is provided in Appendix A.

(2) Participate in pre-award activities.

(a) Participate in the design review conference. It is recommended that a representative of the field office responsible for the administration of the contract participate.

(b) Conduct biddability, constructibility, operability and environmental reviews as required by ER 415-1-11. Input from field office required.

(c) Conduct site plan-in-hand reviews. This is a field office responsibility.

(d) Establish the contract CQC requirements. Input from field office required.

(3) Review field office workloads and staffing needs.

(4) Assure office and field personnel have a clear understanding of QA/CQC responsibilities. Training needs shall be identified and addressed through the appropriate combination of in-house and PROSPECT course attendance.

(5) Review the contractor's CQC plan and assure affirmative answers to the following questions as a minimum:

- (a) Does the plan adequately cover control of all features of the contract?
 - (b) Is the CQC staff adequately sized to maintain quality and accomplish tests required?
 - (c) Have the person or persons 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 on-site with responsibility for the overall management of the project including quality and production?
 - (f) Are the CQC organization lines of authority and responsibility clear?
 - (g) Are 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 system commissioning procedures clearly detailed?
 - (i) Does it comply with the specific requirements established by the contract?
 - (j) Are definable features of 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.; and curing.
- (6) Accept the CQC plan subject to satisfactory performance and reserve the right to require revisions to correct unsatisfactory performance. Revisions made by the contractor are subject to government acceptance.
- c. Implementation and Enforcement. During construction the following activities will be performed by quality assurance personnel (QAP):

(1) After the preconstruction conference, the area/resident engineer or other responsible designee shall conduct a coordination meeting with the contractor on the CQC/QA program. Minutes of the meeting will be prepared for signature by both the contractor and the government representative.

(2) Delay construction start until after the coordination meeting and submittal and acceptance of at least the interim CQC plan, if required.

(3) Require revision of the 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 contractor's daily quality control reports (QCR) to assure that they adequately document his/her 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 interrelationship of activity and effectiveness.

(8) Participate in the three-phase control process as necessary to assure that the contractor is adequately conducting the required control processes. Attendance at a majority of the preparatory and initial-phase meetings including mechanical, electrical and critical features (i.e., roofing and waterproofing) is required. 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 shall be made 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. A sufficient number of tests, but not less than 5 percent of the frequency of the CQC tests, should be scheduled to verify CQC test procedures and results. For test procedures for which duplicate sampling is appropriate the contractor shall be required to furnish for possible QA testing duplicate samples of test specimens of a

minimum of 20 percent of the CQC tests. A minimum of 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 duplicate samples on which QA test are performed should not be known in advance by the contractor, so that the CQC staff will not know which of the CQC test results are subject to verification. The results of QA test performed on duplicate samples should be made available to and discussed with the contractor in order to reconcile any discrepancies. Testing duplicate samples is part of, not in addition to, the requirement to perform QA test at a minimum frequency of 5 percent of the CQC tests. QA testing and inspection should be conducted at unannounced intervals. The contracting officer's representative 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 submitted as attachments to the contractor's CQC reports, should be reviewed by government engineering, laboratory, and/or QA personnel assigned to the work depending upon the type of test.

(10) Monitor contractor's procedures for tracking construction deficiencies to assure acceptable corrective action and 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 non-conforming construction.

(12) Prepare QA reports (QAR) and all other necessary QA documentation as detailed below:

(a) Quality assurance personnel will prepare a report for each visit day of construction or fabrication on each contract and each project accomplished by government plant and hired labor. If for some reason QAP did not visit the site on a particular day of construction, the reason for non-visit and pertinent observations as to events occurring during period of absence will be included in the QAR for the next subsequent visit day. The purpose of the QAR is to document government activities in the day-to-day administration of the contract. Memoranda for the record (MFR), letters, and the QAR will be used to provide a formal record of contract information. Particular care will be taken to record and preserve all possible data and exhibits with respect to any matter which may become the basis for a claim.

(b) The district/division has the option to use a combined Quality Control/Quality Assurance report. As a minimum this combined form will cover the following areas: Contractor name, date, contract number, daily report number, project title and location, weather, precipitation, temperature (max. and min.), portion of the day suitable for work, contractors/subcontractors on job and area of responsibility, operating plant or equipment, work performed today, results of control activities, tests performed, equipment and materials received, job safety, verbal instructions received, remarks and a statement by the contractor's authorized representative that "The above report is complete and correct and all materials and equipment used and work performed during this reporting period is in compliance with the contract plans and specifications except as noted above". A space will be provided on the combined report form titled "Government Quality Assurance Report". In this section the QAP will document the results of their QA inspections and tests, deficiencies observed, actions taken and corrective actions of the contractor. They should also include comments pertaining to the CQC activities.

(c) If the combined QC/QA report form is not used then the QAR reports will be prepared on ENG Forms 2538-1-R (MILITARY) or 2538-2-R (CIVIL), Inspectors Quality Assurance Report (QAR), Daily Log of Construction, as appropriate. Forms are illustrated at Appendix B. Forms will be obtained from USACE Publications Depot, 2803 52nd Avenue, Hyattsville, MD 20781. The use of electronically generated reports is authorized provided electronic issues are prepared in accordance with existing guidelines on electronic generation, i.e., data elements must be literally and sequentially the same as in the conventional issues. Further guidance on electronic generation of forms is available through the local forms management officer (FMO).

(d) All pertinent items of information will be included on 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.

(e) 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 of any QAP and perform follow-up reviews as deemed necessary to confirm/maintain continued acceptability. Those reports reviewed will be initialed.

(13) The QAP will review the entries on the contractor's QCR. The QCR should contain information on the contractor's quality control operations as described above and not be burdened with other peripheral information. The QCR will be attached to or filed with the QAR, if separate report forms are used, to form a complete quality control/quality assurance report, retained until completion of the job, and then forwarded to the district office 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. QA for Procedural Specifications. Some QA testing in the case of certain critical earthwork and concrete dam structures must be conducted continuously. A comprehensive quality assurance testing program is necessary on the part of the government when specifications limit the contractor to prescriptive procedures leaving the responsibility for end product quality to the government. Contracting officers must limit contractor responsibilities for tests to those which control the prescriptive procedures and strictly avoid any duplication of government testing.

e. Performing Acceptance Inspections. Subsequent to CQC completion inspections, acceptance inspections of completed construction are a government responsibility.

FOR THE COMMANDER:

RH GRIFFIN

ROBERT H. GRIFFIN
Colonel, Corps of Engineers
Chief of Staff

2 Appendices
APP A - Suggested Outline
for Quality Assurance Plan
APP B - ENG FORM 2538-1-R
ENG FORM-2538-2-R

APPENDIX A

SUGGESTED OUTLINE FOR QUALITY ASSURANCE PLAN

NOTE: This outline is provided for guidance only. It is not intended to limit or restrict individual initiative in the development of QA plans. Plans will be dated.

I. Purpose and Scope

- A. Establishes QA annual operating plan
- B. Period covered (i.e., FY____)
- C. Applicability

II. Workload

- A. Contracts underway
- B. Anticipated contracts

III. Organization

- A. Description
- B. Chart

IV. Staffing

- A. Current
- B. Required (keyed to workload)

V. Responsibilities

- A. General
- B. Specific

VI. Training

- A. Needs analysis
- B. Planning

VII. Pre-Award

- A. Design review conferences
- B. Input to CQC specifications, schedule requirements, etc.
- C. BCO reviews
- D. Plan-In-Hand reviews

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APPENDIX A

VIII. Post-Award

- A. QA surveillance
 - 1. Participation in phases
 - 2. Problem solving
 - 3. Deficiency monitoring
- B. QA testing
 - 1. Policy
 - 2. Facilities
 - 3. Schedule
- C. Reporting

IX. Supplements

NOTE: Job Supplements will contain the following items as a minimum:

- A. Staffing
- B. QA surveillance responsibilities
- C. Job specific QA testing to include type and frequency
- D. Definable features of work

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APPENDIX B

QUALITY ASSURANCE REPORT (QAR) DAILY LOG OF CONSTRUCTION - MILITARY (ER 1180-1-6)		THE QCR WILL BE ATTACHED TO OR FILED WITH THE QAR.
		REPORT NUMBER
PROJECT	DATE	
CONTRACTOR (Or hired labor)	CONTRACT NUMBER	
	WEATHER	
CQC Control phases attended and instruction given:		
Results of QA activities and tests, deficiencies observed, actions taken and corrective action of contractor. Indicate changes and remarks relative to contractors CQC activities.		
VERBAL INSTRUCTION GIVEN TO CONTRACTOR: , reactions and remarks		
HAS ANYTHING DEVELOPED ON THE WORK WHICH MIGHT LEAD TO A CHANGE ORDER OR FINDING OF FACT? <input type="checkbox"/> NO <input type="checkbox"/> YES		

(Local reproduction authorized - blank masters available from local FMO)

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Information on progress of work, causes for delays and extent of delays, weather, plant, material, etc.

Information, instructions or actions taken not covered on QCR report or disagreements:

SAFETY: (Include any instructions of approved safety plan, safety manual or for personnel. Specify corrective action taken.)

(Local reproduction authorized - blank masters available from local FMO)

REMARKS: (Include visitors to project and miscellaneous remarks pertinent to work.)

DA REPRESENTATIVE'S SIGNATURE	DATE	SUPERVISOR'S INITIALS	DATE
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(REVERSE OF ENG FORM 2530-1-R)

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QUALITY ASSURANCE REPORT (QAR) DAILY LOG OF CONSTRUCTION - CIVIL (ER 1180-1-6)						THE QCR WILL BE ATTACHED TO OR FILED WITH THE QAR. REPORT NUMBER		
TO						DATE		
PROJECT						CONTRACT NUMBER		
CONTRACTOR (Or hired labor)						WEATHER		
PORTION OF SCHEDULED DAY SUITABLE FOR OPERATIONS						TEMPERATURE		
STRUCTURAL EXCAVATION %	BORROW EXCAVATION %	EMBANKMENT %	CONCRETE %	STRUCTURE %		MINIMUM	MAXIMUM	
HAS ANYTHING DEVELOPED ON THE WORK WHICH MIGHT LEAD TO A CHANGE ORDER OR FINDING OF FACT?						24 HOUR PRECIPITATION		
						INCHES	ENDING	
NUMBER OF GOVERNMENT EMPLOYEES						RIVER STAGE		
SUPERVISORY	OFFICE	LAYOUT	INSPECTION	TOTAL	LABOR	FEET	TIME	
NUMBER OF CONTRACTOR'S EMPLOYEES						NUMBER OF SHIFTS		
SUPERVISORY	SKILLED	LABORERS	TOTAL	FROM	TO	FROM	TO	
						M	M	M
						M	M	M
Attach list of the following: (a) Major items of equipment either idle or working, and (b) Number and classification of employees. Note: If the contractor's Quality Control Report (QCR) contains the information it need not be repeated.								
CONTRACTOR/SUBCONTRACTORS AND AREA OF RESPONSIBILITY FOR WORK PERFORMED TODAY:								
a.								
b.								
c.								
d.								
e.								
f.								
g.								
WORK PERFORMED TODAY: (Indicate location and type of work performed. Refer to work performed by prime and/or subcontractors by letter in Table above.)								
Days of no work and reasons for same:								
Information on progress of work, causes for delays and extent of delays. Fleet, material, etc.								

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CQC CONTROL PHASES ATTENDED AND INSTRUCTIONS GIVEN:			
RESULTS OF QA INSPECTIONS AND TESTS, DEFICIENCIES OBSERVED, ACTIONS TAKEN AND CORRECTIVE ACTION OF CONTRACTOR. INCLUDE COMMENT PERTAINING TO CONTRACTORS CQC ACTIVITIES			
VERBAL INSTRUCTIONS GIVEN TO CONTRACTOR: (Include name, actions and remarks)			
CONTROVERSIAL MATTERS IN DETAIL:			
INFORMATION, INSTRUCTIONS OR ACTIONS TAKEN NOT COVERED IN CQC / AGREEMENTS: <i>(Local reproduction authorized - blank masters available from local FMO)</i>			
REMARKS: (Include visitors to project and miscellaneous remarks pertinent to work)			
SAFETY: (Include any instructions of approved safety plan, safety manual or instructions from Government personnel. Specify corrective action taken.)			
QA REPRESENTATIVE'S SIGNATURE	DATE	SUPERVISOR'S INITIALS	DATE

(Reverse of ENG Form 2538-2-R)

Page 2 of 2 pages.

MODULE 3 HANDOUT:

EP 715-1-2

**A Guide to Effective
Contractor Quality
Control**

CEMP-CE Engineer Pamphlet 715-1-2	Department of the Army U.S. Army Corps of Engineers Washington, DC 20314-1000	EP 715-1-2 February 1990
	A GUIDE TO EFFECTIVE CONTRACTOR QUALITY CONTROL (CQC)	
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EP 715-1 -2
February 1990

US Army Corps
of Engineers

A Guide to Effective
**Contractor
Quality Control
(CQC)**



This Pamphlet supersedes EP 715-1-2, dated
November 1980.

**A Guide to Effective
Contractor Quality Control
(CQC)**

Effective control of construction operations instills pride in work, gains favorable recognition, and saves the contractor money. This booklet explains the Corps' concept of CQC and can assist the contractor to bring about effective control. It does not attempt to tell the contractor how to manage its organization or construction efforts but passes along some reminders of lessons learned and some suggestions as to just what the Corps of Engineers is looking for from the contractor regarding Quality Control.



Albert J. Genetti, Jr.
Colonel, Corps of Engineers
Executive Director, Engineer Staff



The contractor and the Government are both interested in quality construction simply because it means to the Government — getting our money's worth, and to the contractor — satisfactory performance and profit.

CQC is a management system for producing construction complying with the terms of the contract. It encompasses all phases of the work, such as approval of submittals, procurement, storage of materials and equipment, coordination of subcontractor's activities, and the inspections and tests required to be sure that the specified materials are used and installation is acceptable to produce the required end product.

The contractor and the Government both have a role in obtaining quality construction consistent with the contract requirements. The responsibilities of both parties must complement each other and work in harmony.

The contractor is responsible for: (1) producing the quality product on time and in compliance with the terms of the contract; (2) establishing and utilizing a construction quality control program of the scope and character necessary to achieve the quality of construction outlined in the contract; and (3) producing and maintaining acceptable records of its quality control activities.

The Government is responsible for:

(1) establishing construction standards and quality control requirements; (2) construction management activities including, among others, checking adequacy of contractor's control (quality assurance for acceptance), performing specified tests and inspections as designated in the contract, determining that reported construction deficiencies have been corrected; (3) determining payments due to the contractor; and (4) assuring timely completion.

For a **quality control program** to be effective, there must be a planned program of actions and lines of authority and responsibilities must be established.



It is necessary to analyze, develop, and document how the designated QC representatives will manage and control all construction operations. The plan should be geared to fit the contractor's needs. A meeting is required, before start of construction, between contractor and Government personnel to discuss the required plan and the interrelationship of the contractor and Government. Also, the Government representative is available at all times **to** discuss the planned control operations with the contractor. The quality control plan should include at least the following key considerations:

- The plan must include the contractor's system for tracking construction deficiencies to ensure corrective action is taken in a timely manner.
 - A CQC staff of adequate size and technical capabilities **to** timely accomplish all quality control functions.
 - Supervisory staff should have adequate time for CQC activities, as well as the many management responsibilities.
 - Organizational lines of authority and responsibility must be clear and logical.
 - The plan must explain the control, inspection, and test procedures, both on site and off site, and assign these responsibilities to individuals on the CQC staff.
 - Qualifications of the staff should match the control requirements of the plan and an individual's qualifications must be adequate for the duties assigned.
 - The plan must show the procedures for processing submittals and who will be responsible for approving each submittal.
-

- The plan must strongly emphasize that quality will be obtained through a preventive type of control of each definable feature of work. This requires an understanding of a definable feature, as discussed later on in this guide. The plan will include a listing of proposed definable features of work.
- The coverage of testing must be adequate. The plan must list the tests **to** be performed, and state who will be responsible for the results, and who will prepare and sign reports.
- Inspection and test report forms must be comprehensive.
- Frequency of reporting and time for submitting reports must be indicated.

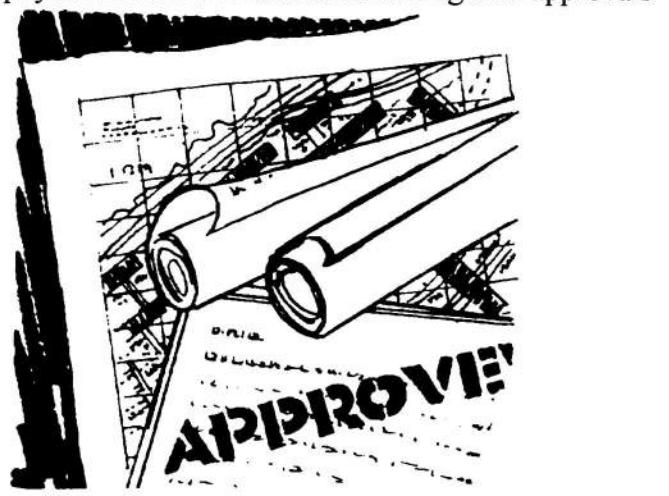
It may be advantageous for a contractor to make **incremental submittals** of the plan or to supplement or revise the plan. If the plan is determined to be inadequate by the Government, the contractor should make the changes necessary to assure the specified or needed control is provided

From years of experience, it has been found that certain procedures work better than others and, therefore, these are usually included in the contract documents. One of these is the **three phase control concept**. The contractor's control



of quality should be divided into at least three phases for all definable features of work. A definable feature is a task which is separate and distinct from other tasks and has separate control requirements. Each control phase provides the opportunity to prevent problems and deficiencies. Generally, construction knowledge and experience alone, although necessary, will not get the job done. The contractor's quality control representative (CQCR) must know in detail the requirements of the specific contract. The CQCR can then put the general construction knowledge and experience to work in control and accomplishment of specific contract requirements. The complete performance of the phase controls is the contractor's responsibility. The role of the Government is to see that the control phases are thoroughly and timely performed and conducted by the contractor designated CQCR and the CQCR is knowledgeable and adequately performs the necessary control. The three control phases are:

Preparatory phase. The preparatory phase, as it applies to a feature of work, commences with actions in advance of construction. A few examples of preparatory actions are approval of shop drawings, lift sheets, test reports, and mix designs; a physical check of material on site against approvals



and contract requirements, safety checks of equipment, and other preparatory steps dependent upon the particular operation. Certain types of complex construction will require lift sheets or detailed sketches to insure proper location and installation of embedded items by all crafts. This is a preparatory action which will pay dividends later by locating conflicts between trade items sufficiently in advance to permit timely correction. Advance planning must be performed to determine that all preparatory actions required prior to construction have been accomplished.

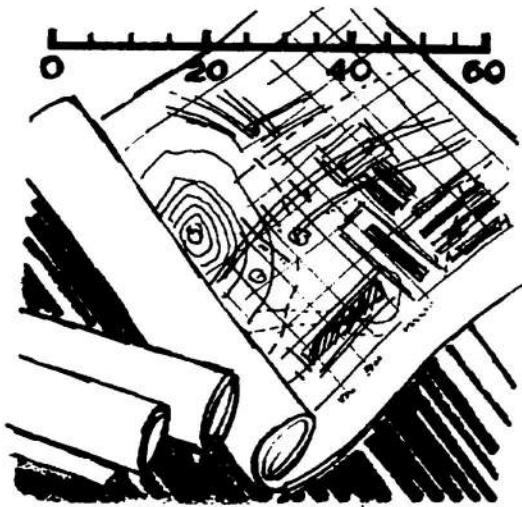


Initial phase. The initial control of each separate feature or segment of work is made at the outset of the operation. Here is the best opportunity to get the work off to a proper start in full compliance with contract requirements. This is the time for the contractor to establish standards of workmanship. If there are differences of opinion in the interpretation of contract requirements, the issue can be discussed and settled at the outset of work much easier than after the work is in place. The initial inspection phase is a practical method of performing preventive inspection and reaching agreements in advance.

Follow-up phase. Follow-up inspection and testing is geared toward a level of effort to determine continuation of compliance and workmanship established during preparatory and initial phases. Follow-up inspections and testing may be on a daily, routine, or predetermined basis as required to assure strict contract compliance. Follow-up inspections become more productive when they are preceded by thorough preparatory and initial phases. With advance determination that material and equipment are in compliance with the contract and with workmanship standards established, follow-up inspection becomes more effective.



Control of construction materials, fabricated items and installed equipment. The contractor is responsible for management and control of submittals and the timely arrival of approved materials and equipment. The contract will include a listing of the required submittals. The contractor's



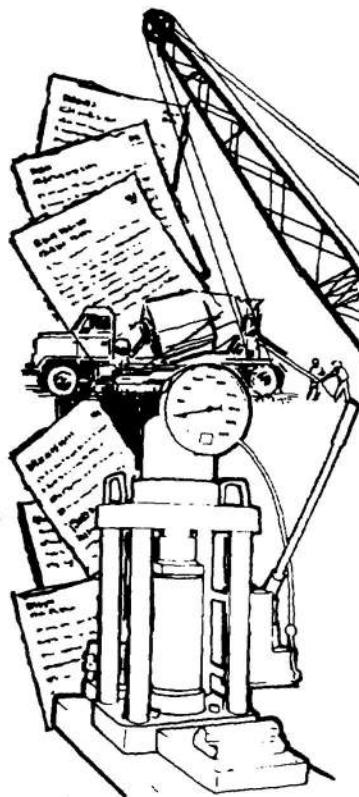
management operation includes reviewing this list to determine that all submittals are included. A submittal register will be prepared using this listing and, if applicable, included in the network schedule. This can be performed in conjunction with the planning of the procurement operation. It has been found that at least 60 days lead time is necessary to maintain adequate control; therefore, the contract usually requires monthly updating of the register or network actually projecting submittal need date 60 days in advance. This procedure should eliminate construction being delayed by missing or unapproved materials and equipment. The schedule must allow adequate time for Government approval when this approval is required.

The contractor is required **to** thoroughly review each submittal **to** assure complete compliance with all contract requirements, and certify compliance on all submittals required in the technical provisions of the contract.

The contract should be reviewed to determine the control that will be necessary for **off site fabrication** items to be procured and to arrange for this control. The control procedures will be included in the quality control plan.

Testing is a very important part of controlling quality. Except for verification tests, the testing is usually the responsibility of the contractor. This responsibility includes:

- Checking the contract to determine tests to be performed.
- Selecting qualified personnel or laboratories.
- Making arrangements for timely conducting of test.
- Selecting test facilities, equipment, and procedures that comply with required standards.
- Compiling and submitting the required test documentation in a timely manner.
- Seeing that all necessary follow-up tests are made.



The Government may check laboratories, equipment, and procedures for compliance with requirements. The Government may also reserve the right to use contractor's laboratory equipment to verify contractor test results.

A necessary phase of control not always spelled out in the contract, but very important is **the completion phase** or last follow-up. When a segment of work is complete, the contractor should carefully examine this work and prepare a list of anything not completed or not conforming to contract requirements. Work yet to be accomplished could include paperwork, such as submittal of test documents, certificates, diagrams, etc. An effective control system closes out as many segments as rapidly as possible. This also allows full payment to be made. Therefore, effort should be spent scheduling and following-up to assure early completion of the items on the list and a sign-off from the Government.

Documentation is the proof of quality control accomplished. The necessary reports must be designed to prove adequacy of control, completed in a way to show accurately all actions taken and, last but not least, they must be timely.



Reports should list for each phase of control the factual results of control actions taken, observations made and any remedial and corrective actions. In addition, they should include complete information on tests, rejected work, instructions received from the Government and all prime and subcontractors' activities during the reporting period.

The Government will be continually reviewing work and studying reports to **determine the adequacy and effectiveness of the contractor's control system.** The Government's interest is in maintaining the necessary control to prevent deficiencies and tear out and it will therefore emphasize inadequacies in the control system instead of individual construction deficiencies. Also, by noting inadequacies in the contractor's control system as well as assuring that defective work is corrected, the Government obtains a true double check on quality.

When deficiencies are found in the control system, there are many actions that the Government may take, depending on the circumstances. Some of these are: improving the quality control plan, correcting deficient management, removing incompetent quality control personnel, correcting defective work, refusing to allow work to continue on defective work, requiring personal superintendence by the contractor, disallowing payment for the defective work, and issuing an interim unsatisfactory performance appraisal (may result in future low bid rejection). Aggressive and effective application of contractor's quality control program minimize or eliminate the need for the Government **to take these actions.**

Through effective quality control, **the contractor can instill employee pride** in their work, gain a reputation and recognition for quality work and, at the same time, **increase the profit margin.**



MODULE 3 HANDOUT:

Section 01 45 00

QUALITY CONTROL

USACE / NAVFAC / AFCESA /NASA UFGS-01 45 00.00 10 (February 2010)

Preparing Activity: USACE

Superseding
UFGS-01 45 01 (January 2008)

UNIFIED FACILITIES GUIDE SPECIFICATIONS

References are in agreement with UMRL dated January 2010

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QUALITY CONTROL

02/10

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SECTION 01 45 00.00 10

QUALITY CONTROL
02/10

NOTE: This guide specification covers requirements
for Contractor Quality Control for construction
projects or design-build construction projects.

Edit this guide specification for project specific
requirements by adding, deleting, or revising text.
For bracketed items, choose applicable items(s) or
insert appropriate information.

Remove information and requirements not required in
respective project, whether or not brackets are
present.

Comments and suggestions on this guide specification
are welcome and should be directed to the technical
proponent of the specification. A listing of
technical proponents, including their organization
designation and telephone number, is on the Internet.

Recommended changes to a UFGS should be submitted as
a Criteria Change Request (CCR).

PART 1 GENERAL

1.1 REFERENCES

NOTE: This paragraph is used to list the
publications cited in the text of the guide
specification. The publications are referred to in
the text by basic designation only and listed in
this paragraph by organization, designation, date,
and title.

Use the Reference Wizard's Check Reference feature
when you add a RID outside of the Section's
Reference Article to automatically place the
reference in the Reference Article. Also use the
Reference Wizard's Check Reference feature to update

the issue dates.

References not used in the text will automatically be deleted from this section of the project specification when you choose to reconcile references in the publish print process.

The publications listed below form a part of this specification to the extent referenced. The publications are referred to within the text by the basic designation only.

ASTM INTERNATIONAL (ASTM)

ASTM D 3740	(2008) Minimum Requirements for Agencies Engaged in the Testing and/or Inspection of Soil and Rock as Used in Engineering Design and Construction
ASTM E 329	(2009) Standard Specification for Agencies Engaged in the Testing and/or Inspection of Materials Used in Construction

U.S. ARMY CORPS OF ENGINEERS (USACE)

ER 1110-1-12	(2006) Quality Management
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1.2 PAYMENT

Separate payment will not be made for providing and maintaining an effective Quality Control program, and all associated costs will be included in the applicable Bid Schedule unit or lump-sum prices.

PART 2 PRODUCTS

Not Used

PART 3 EXECUTION

3.1 GENERAL REQUIREMENTS

NOTE: Selection of construction or design-build construction text required.

Establish and maintain an effective quality control (QC) system in compliance with the Contract Clause titled "Inspection of Construction." QC consist of plans, procedures, and organization necessary to produce an end product which complies with the contract requirements. Cover all construction design and construction operations, both onsite and offsite, and be keyed to the proposed construction design and construction sequence. The project superintendent will be held responsible for the quality of work and is subject to removal by the Contracting Officer for non-compliance with the quality requirements specified in the contract. In this context the highest level manager responsible for the overall construction activities at the site, including quality and production is the project superintendent. The project superintendent must maintain a physical presence at the site at all times and is responsible for all

construction and related activities at the site, except as otherwise acceptable to the Contracting Officer.

3.2 QUALITY CONTROL PLAN

NOTE: Selection of construction or design-build construction text required.

Submit no later than [] days after receipt of notice to proceed, the Contractor Quality Control (CQC) Plan proposed to implement the requirements of the Contract Clause titled "Inspection of Construction." The Government will consider an interim plan for the first [] days of operation. Construction Design and construction will be permitted to begin only after acceptance of the CQC Plan or acceptance of an interim plan applicable to the particular feature of work to be started. Work outside of the accepted interim plan will not be permitted to begin until acceptance of a CQC Plan or another interim plan containing the additional work.

3.2.1 Content of the CQC Plan

Include, as a minimum, the following to cover all design and construction construction operations, both onsite and offsite, including work by subcontractors, fabricators, suppliers, and purchasing agents subcontractors, designers of record, consultants, architect/engineers (AE), fabricators, suppliers, and purchasing agents:

- a. A description of the quality control organization, including a chart showing lines of authority and acknowledgment that the CQC staff will implement the three phase control system for all aspects of the work specified. Include a CQC System Manager who reports to the project superintendent.
- b. The name, qualifications (in resume format), duties, responsibilities, and authorities of each person assigned a CQC function.
- c. A copy of the letter to the CQC System Manager signed by an authorized official of the firm which describes the responsibilities and delegates sufficient authorities to adequately perform the functions of the CQC System Manager, including authority to stop work which is not in compliance with the contract. Letters of direction to all other various quality control representatives outlining duties, authorities, and responsibilities will be issued by the CQC System Manager. Copies of these letters must be furnished to the Government.
- d. Procedures for scheduling, reviewing, certifying, and managing submittals, including those of subcontractors, offsite fabricators, suppliers, and purchasing agentssubcontractors, designers of record, consultants, architect engineers (AE), offsite fabricators, suppliers, and purchasing agents. These procedures must be in accordance with Section 01 33 00 SUBMITTAL PROCEDURES.
- e. Control, verification, and acceptance testing procedures for each specific test to include the test name, specification paragraph

5.17
7.4

requiring test, feature of work to be tested, test frequency, and person responsible for each test. (Laboratory facilities approved by the Contracting Officer must be used.)

- 4.1 a-c f. Procedures for tracking preparatory, initial, and follow-up control phases and control, verification, and acceptance tests including documentation.
- 7.0? g. Procedures for tracking construction design and construction deficiencies from identification through acceptable corrective action. Establish verification procedures that identified deficiencies have been corrected.
- samples
@ end. h. Reporting procedures, including proposed reporting formats.
- 8.0. i. A list of the definable features of work. A definable feature of work is a task which is separate and distinct from other tasks, has separate control requirements, and may be identified by different trades or disciplines, or it may be work by the same trade in a different environment. Although each section of the specifications may generally be considered as a definable feature of work, there are frequently more than one definable features under a particular section. This list will be agreed upon during the coordination meeting.

3.2.2 Additional Requirements for Design Quality Control (DQC) Plan

NOTE: Use this paragraph only for design-build projects.

The following additional requirements apply to the Design Quality Control (DQC) plan:

(1) Provide and maintain a Design Quality Control (DQC) Plan as an effective quality control program which will assure that all services required by this design-build contract are performed and provided in a manner that meets professional architectural and engineering quality standards. As a minimum, all documents must be technically reviewed by competent, independent reviewers identified in the DQC Plan. The same element that produced the product shall not perform the independent technical review (ITR). Correct errors and deficiencies in the design documents prior to submitting them to the Government.

(2) Include the design schedule in the master project schedule, showing the sequence of events involved in carrying out the project design tasks within the specific contract period. This should be at a detailed level of scheduling sufficient to identify all major design tasks, including those that control the flow of work. Include review and correction periods associated with each item. This should be a forward planning as well as a project monitoring tool. The schedule reflects calendar days and not dates for each activity. If the schedule is changed, submit a revised schedule reflecting the change within 7 calendar days. Include in the DQC Plan the discipline-specific checklists to be used during the design and quality control of each submittal. Submit at each design phase as part of the project documentation

these completed checklists. ER 1110-1-12 provided some useful information in developing checklists.

(3) Implement the DCQC Plan by an Design Quality Control Manager who has the responsibility of being cognizant of and assuring that all documents on the project have been coordinated. This individual must be a person who has verifiable engineering or architectural design experience and is a registered professional engineer or architect. Notify the Contracting Officer, in writing, of the name of the individual, and the name of an alternate person assigned to the position.

The Contracting Officer will notify the Contractor in writing of the acceptance of the DQC Plan. After acceptance, any changes proposed by the Contractor are subject to the acceptance of the Contracting Officer.

3.2.3 Acceptance of Plan

Acceptance of the Contractor's plan is required prior to the start of construction design and construction. Acceptance is conditional and will be predicated on satisfactory performance during the construction design and construction. The Government reserves the right to require the Contractor to make changes in his CQC Plan and operations including removal of personnel, as necessary, to obtain the quality specified.

3.2.4 Notification of Changes

After acceptance of the CQC Plan, notify the Contracting Officer in writing of any proposed change. Proposed changes are subject to acceptance by the Contracting Officer.

3.3 COORDINATION MEETING

NOTE: Selection of construction or design-build
construction text required.

After the Preconstruction Conference, before start of construction, Postaward Conference, before start of design or construction, and prior to acceptance by the Government of the CQC Plan, meet with the Contracting Officer or Authorized Representative and discuss the Contractor's quality control system. Submit the CQC Plan a minimum of [] calendar days prior to the Coordination Meeting. During the meeting, a mutual understanding of the system details must be developed, including the forms for recording the CQC operations operations, design activities, control activities, testing, administration of the system for both onsite and offsite work, and the interrelationship of Contractor's Management and control with the Government's Quality Assurance. Minutes of the meeting will be prepared by the Government, signed by both the Contractor and the Contracting Officer and will become a part of the contract file. There may be occasions when subsequent conferences will be called by either party to reconfirm mutual understandings and/or address deficiencies in the CQC system or procedures which may require corrective action by the Contractor.

3.4 QUALITY CONTROL ORGANIZATION

NOTE: Selection of construction or design-build construction text required.

3.4.1 Personnel Requirements

The requirements for the CQC organization are a CQC System Manager CQC System Manager, a Design Quality Manager, and sufficient number of additional qualified personnel to ensure safety and contract compliance. The Safety and Health Manager must receive direction and authority from the CQC System Manager and serve as a member of the CQC staff. Personnel identified in the technical provisions as requiring specialized skills to assure the required work is being performed properly will also be included as part of the CQC organization. The Contractor's CQC staff must maintain a presence at the site at all times during progress of the work and have complete authority and responsibility to take any action necessary to ensure contract compliance. The CQC staff will be subject to acceptance by the Contracting Officer. Provide adequate office space, filing systems and other resources as necessary to maintain an effective and fully functional CQC organization. Promptly complete and furnish all letters, material submittals, shop drawing submittals, schedules and all other project documentation to the CQC organization. The CQC organization shall be responsible to maintain these documents and records at the site at all times, except as otherwise acceptable to the Contracting Officer.

3.4.2 CQC System Manager

NOTE: The designer should insert desired requirements, evaluate the project to determine the level of CQC System Manager required, and select options accordingly.

Identify as CQC System Manager an individual within the onsite work organization who is responsible for overall management of CQC and have the authority to act in all CQC matters for the Contractor. The CQC System Manager must be [a graduate engineer, graduate architect, or a graduate of construction management, with a minimum of [____] years construction experience on construction similar to this contract.] [a construction person with a minimum of [____] years in related work.] This CQC System Manager must be on the site at all times during construction and be employed by the prime Contractor. The CQC System Manager must be [assigned no other duties] [assigned as System Manager but may have duties as project superintendent in addition to quality control]. Identify in the plan an alternate to serve in the event of the CQC System Manager's absence. The requirements for the alternate are the same as the CQC System Manager.

3.4.3 CQC Personnel

NOTE: Insert desired requirements if the complexity, or size of the project warrants specialized individuals in specific disciplines to perform quality control. Item j. must be specified when the contract specifications contain Section 23 05 93 TESTING, ADJUSTING, AND BALANCING OF HVAC SYSTEMS. Select options accordingly.

In addition to CQC personnel specified elsewhere in the contract, provide as part of the CQC organization specialized personnel to assist the CQC System Manager for the following areas: [electrical,] [mechanical,] [civil,] [structural,] [environmental,] [architectural,] [materials technician,] [submittals clerk,] [occupied family housing coordinator]. These individuals [must be directly employed by the prime Contractor and may not be employed by a supplier or subcontractor on this project] [may be employees of the prime or subcontractor]; be responsible to the CQC System Manager; be physically present at the construction site during work on their areas of responsibility; have the necessary education and/or experience in accordance with the experience matrix listed herein. These individuals [must have no other duties other than quality control] [may perform other duties but must be allowed sufficient time to perform their assigned quality control duties as described in the Quality Control Plan]. [A single person may cover more than one area provided that they are qualified to perform QC activities in each designated and that workload allows.]

Experience Matrix

Area	Qualifications
a. Civil	Graduate Civil Engineer or Construction Manager with 2 years experience in the type of work being performed on this project or technician with 5 yrs related experience
b. Mechanical	Graduate Mechanical Engineer or Construction Manager with 2 yrs experience or person with 5 yrs related experience
c. Electrical	Graduate Electrical Engineer or Construction Manager with 2 yrs related experience or person with 5 yrs related experience
d. Structural	Graduate Structural Engineer or Construction Manager with 2 yrs experience or person with 5 yrs related experience
e. Architectural	Graduate Architect with 2 yrs experience or person with 5 yrs related experience
f. Environmental	Graduate Environmental Engineer with 3 yrs experience
g. Submittals	Submittal Clerk with 1 yr experience
h. Occupied family housing	Person, customer relations

Experience Matrix

Area	Qualifications
i. Concrete, Pavements and Soils	Materials Technician with 2 yrs experience for the appropriate area
j. Testing, Adjusting and Balancing (TAB) Personnel	Specialist must be a member of AABC or an experienced technician of the firm certified by the NEBB.
k. Design Quality Control Manager	Registered Architect or Professional Engineer

3.4.4 Additional Requirement

In addition to the above experience [and] [and/or] education requirements the CQC System Manager must have completed the course entitled "Construction Quality Management For Contractors". This course is periodically offered at [____].

3.4.5 Organizational Changes

Maintain the CQC staff at full strength at all times. When it is necessary to make changes to the CQC staff, revise the CQC Plan to reflect the changes and submit the changes to the Contracting Officer for acceptance.

3.5 SUBMITTALS AND DELIVERABLES

Submittals, if needed, must comply with the requirements in Section 01 33 00 SUBMITTAL PROCEDURES. The CQC organization is responsible for certifying that all submittals and deliverables are in compliance with the contract requirements. When Section 23 08 00.00 10 COMMISSIONING OF HVAC SYSTEMS are included in the contract, the submittals required by those sections must be coordinated with Section 01 33 00 SUBMITTAL PROCEDURES to ensure adequate time is allowed for each type of submittal required.

3.6 CONTROL

Contractor Quality Control is the means by which the Contractor ensures that the construction, to include that of subcontractors and suppliers, complies with the requirements of the contract. At least three phases of control must be conducted by the CQC System Manager for each definable feature of the construction work as follows:

3.6.1 Preparatory Phase

This phase is performed prior to beginning work on each definable feature of work, after all required plans/documents/materials are approved/accepted, and after copies are at the work site. This phase includes:

- a. A review of each paragraph of applicable specifications, reference codes, and standards. Make available during the preparatory

inspection a copy of those sections of referenced codes and standards applicable to that portion of the work to be accomplished in the field. Maintain and make available in the field for use by Government personnel until final acceptance of the work.

- b. Review of the contract drawings.
- c. Check to assure that all materials and/or equipment have been tested, submitted, and approved.
- d. Review of provisions that have been made to provide required control inspection and testing.
- e. Examination of the work area to assure that all required preliminary work has been completed and is in compliance with the contract.
- f. Examination of required materials, equipment, and sample work to assure that they are on hand, conform to approved shop drawings or submitted data, and are properly stored.
- g. Review of the appropriate activity hazard analysis to assure safety requirements are met.
- h. Discussion of procedures for controlling quality of the work including repetitive deficiencies. Document construction tolerances and workmanship standards for that feature of work.
- i. Check to ensure that the portion of the plan for the work to be performed has been accepted by the Contracting Officer.
- j. Discussion of the initial control phase.
- k. The Government must be notified at least [_____] hours in advance of beginning the preparatory control phase. Include a meeting conducted by the CQC System Manager and attended by the superintendent, other CQC personnel (as applicable), and the foreman responsible for the definable feature. Document the results of the preparatory phase actions by separate minutes prepared by the CQC System Manager and attach to the daily CQC report. Instruct applicable workers as to the acceptable level of workmanship required in order to meet contract specifications.

3.6.2 Initial Phase

This phase is accomplished at the beginning of a definable feature of work. Accomplish the following:

- a. Check work to ensure that it is in full compliance with contract requirements. Review minutes of the preparatory meeting.
- b. Verify adequacy of controls to ensure full contract compliance. Verify required control inspection and testing.
- c. Establish level of workmanship and verify that it meets minimum acceptable workmanship standards. Compare with required sample panels as appropriate.

- d. Resolve all differences.
- e. Check safety to include compliance with and upgrading of the safety plan and activity hazard analysis. Review the activity analysis with each worker.
- f. The Government must be notified at least [] hours in advance of beginning the initial phase. Prepare separate minutes of this phase by the CQC System Manager and attach to the daily CQC report. Indicate the exact location of initial phase for future reference and comparison with follow-up phases.
- g. The initial phase should be repeated for each new crew to work onsite, or any time acceptable specified quality standards are not being met.

3.6.3 Follow-up Phase

Perform daily checks to assure control activities, including control testing, are providing continued compliance with contract requirements, until completion of the particular feature of work. Record the checks in the CQC documentation. Conduct final follow-up checks and correct all deficiencies prior to the start of additional features of work which may be affected by the deficient work. Do not build upon nor conceal non-conforming work.

3.6.4 Additional Preparatory and Initial Phases

Conduct additional preparatory and initial phases on the same definable features of work if: the quality of on-going work is unacceptable; if there are changes in the applicable CQC staff, onsite production supervision or work crew; if work on a definable feature is resumed after a substantial period of inactivity; or if other problems develop.

3.7 TESTS

3.7.1 Testing Procedure

Perform specified or required tests to verify that control measures are adequate to provide a product which conforms to contract requirements. Upon request, furnish to the Government duplicate samples of test specimens for possible testing by the Government. Testing includes operation and/or acceptance tests when specified. Procure the services of a Corps of Engineers approved testing laboratory or establish an approved testing laboratory at the project site. Perform the following activities and record and provide the following data:

- a. Verify that testing procedures comply with contract requirements.
- b. Verify that facilities and testing equipment are available and comply with testing standards.
- c. Check test instrument calibration data against certified standards.
- d. Verify that recording forms and test identification control number system, including all of the test documentation requirements, have been prepared.
- e. Record results of all tests taken, both passing and failing on the

CQC report for the date taken. Specification paragraph reference, location where tests were taken, and the sequential control number identifying the test. If approved by the Contracting Officer, actual test reports may be submitted later with a reference to the test number and date taken. Provide an information copy of tests performed by an offsite or commercial test facility directly to the Contracting Officer. Failure to submit timely test reports as stated may result in nonpayment for related work performed and disapproval of the test facility for this contract.

3.7.2 Testing Laboratories

3.7.2.1 Capability Check

The Government reserves the right to check laboratory equipment in the proposed laboratory for compliance with the standards set forth in the contract specifications and to check the laboratory technician's testing procedures and techniques. Laboratories utilized for testing soils, concrete, asphalt, and steel must meet criteria detailed in ASTM D 3740 and ASTM E 329.

3.7.2.2 Capability Recheck

If the selected laboratory fails the capability check, the Contractor will be assessed a charge of [] to reimburse the Government for each succeeding recheck of the laboratory or the checking of a subsequently selected laboratory. Such costs will be deducted from the contract amount due the Contractor.

3.7.3 Onsite Laboratory

The Government reserves the right to utilize the Contractor's control testing laboratory and equipment to make assurance tests, and to check the Contractor's testing procedures, techniques, and test results at no additional cost to the Government.

3.7.4 Furnishing or Transportation of Samples for Testing

NOTE: Insert appropriate addresses.

Costs incidental to the transportation of samples or materials will be borne by the Contractor. Samples of materials for test verification and acceptance testing by the Government must be delivered to the Corps of Engineers Division Laboratory, f.o.b., at the following address:

For delivery by mail: []

For other deliveries: []

Coordination for each specific test, exact delivery location, and dates will be made through the Area Office.

3.8 COMPLETION INSPECTION

3.8.1 Punch-Out Inspection

Conduct an inspection of the work by the CQC Manager near the end of the

work, or any increment of the work established by a time stated in the SPECIAL CONTRACT REQUIREMENTS Clause, "Commencement, Prosecution, and Completion of Work", or by the specifications. Prepare and include in the CQC documentation a punch list of items which do not conform to the approved drawings and specifications, as required by paragraph DOCUMENTATION. Include within the list of deficiencies the estimated date by which the deficiencies will be corrected. Make a second inspection the CQC System Manager or staff to ascertain that all deficiencies have been corrected. Once this is accomplished, notify the Government that the facility is ready for the Government Pre-Final inspection.

3.8.2 Pre-Final Inspection

The Government will perform the pre-final inspection to verify that the facility is complete and ready to be occupied. A Government Pre-Final Punch List may be developed as a result of this inspection. Ensure that all items on this list have been corrected before notifying the Government, so that a Final inspection with the customer can be scheduled. Correct any items noted on the Pre-Final inspection in a timely manner. These inspections and any deficiency corrections required by this paragraph must be accomplished within the time slated for completion of the entire work or any particular increment of the work if the project is divided into increments by separate completion dates.

3.8.3 Final Acceptance Inspection

The Contractor's Quality Control Inspection personnel, plus the superintendent or other primary management person, and the Contracting Officer's Representative must be in attendance at the final acceptance inspection. Additional Government personnel including, but not limited to, those from Base/Post Civil Facility Engineer user groups, and major commands may also be in attendance. The final acceptance inspection will be formally scheduled by the Contracting Officer based upon results of the Pre-Final inspection. Notify the Contracting Officer at least 14 days prior to the final acceptance inspection and include the Contractor's assurance that all specific items previously identified to the Contractor as being unacceptable, along with all remaining work performed under the contract, will be complete and acceptable by the date scheduled for the final acceptance inspection. Failure of the Contractor to have all contract work acceptably complete for this inspection will be cause for the Contracting Officer to bill the Contractor for the Government's additional inspection cost in accordance with the contract clause titled "Inspection of Construction".

3.9 DOCUMENTATION

Maintain current records providing factual evidence that required quality control activities and/or tests have been performed. Include in these records the work of subcontractors and suppliers on an acceptable form that includes, as a minimum, the following information:

- a. Contractor/subcontractor and their area of responsibility.
- b. Operating plant/equipment with hours worked, idle, or down for repair.
- c. Work performed each day, giving location, description, and by whom. When Network Analysis (NAS) is used, identify each phase of work performed each day by NAS activity number.

- d. Test and/or control activities performed with results and references to specifications/drawings requirements. Identify the control phase (Preparatory, Initial, Follow-up). List of deficiencies noted, along with corrective action.
- e. Quantity of materials received at the site with statement as to acceptability, storage, and reference to specifications/drawings requirements.
- f. Submittals and deliverables reviewed, with contract reference, by whom, and action taken.
- g. Offsite surveillance activities, including actions taken.
- h. Job safety evaluations stating what was checked, results, and instructions or corrective actions.
- i. Instructions given/received and conflicts in plans and/or specifications.
- j. Contractor's verification statement.

Indicate a description of trades working on the project; the number of personnel working; weather conditions encountered; and any delays encountered. Cover both conforming and deficient features and include a statement that equipment and materials incorporated in the work and workmanship comply with the contract. Furnish the original and one copy of these records in report form to the Government daily within [____] hours after the date covered by the report, except that reports need not be submitted for days on which no work is performed. As a minimum, prepare and submit one report for every 7 days of no work and on the last day of a no work period. All calendar days must be accounted for throughout the life of the contract. The first report following a day of no work will be for that day only. Reports must be signed and dated by the CQC System Manager. Include copies of test reports and copies of reports prepared by all subordinate quality control personnel within the CQC System Manager Report.

3.10 SAMPLE FORMS

NOTE: List enclosed forms. Sample forms are not a part of this guide specification and should be provided by the specifier.

Sample forms enclosed at the end of this section.

3.11 NOTIFICATION OF NONCOMPLIANCE

The Contracting Officer will notify the Contractor of any detected noncompliance with the foregoing requirements. Take immediate corrective action after receipt of such notice. Such notice, when delivered to the Contractor at the work site, will be deemed sufficient for the purpose of notification. If the Contractor fails or refuses to comply promptly, the

Contracting Officer may issue an order stopping all or part of the work until satisfactory corrective action has been taken. No part of the time lost due to such stop orders will be made the subject of claim for extension of time or for excess costs or damages by the Contractor.

-- End of Section --

MODULE 4

EP 415-1-260 App B

CEMP-CP Pamphlet No. 415-1-260	Department of the Army U.S. Army Corps of Engineers Washington, DC 20314-1000	EP 415-1-260 6 Dec 90
	Construction RESIDENT ENGINEER MANAGEMENT GUIDE	
	Distribution Restriction Statement Approved for public release; distribution is unlimited.	

EP 415-1-260
6 Dec 90

APPENDIX B

PRECONSTRUCTION CONFERENCE GUIDANCE

Section I. Preconstruction Conference Attendance Format

Preconstruction Conference Attendance

Contract No.

Name (Title or Rank) Representing Telephone No.

EP 415-1-260
6 Dec 90

PRECONSTRUCTION CONFERENCE GUIDANCE

Section II. Agenda for Preconstruction Conference

NOTE: Selection of items for discussion should be based on the job requirements and the experience of the contractor.

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. Safety.

EM 385-1-1, Safety and Health Requirements Manual.
Accident prevention.
Accident reporting.
Cleaning up.
Activity hazard analysis.

3. Design Briefing (if required).

Briefing on design criteria.
Briefing on critical areas to observe during construction.

4. User Coordination.

5. Labor Relations.

Davis-Bacon Act.
Contract Work Hours Standards Act.
Apprentices.
Payroll and payroll records.
Compliance with Copeland Act requirements.
Withholding of funds.
Contract termination.
Subcontracts.

6. Defense Priorities and Allocations System. (DPAS)

Priorities, allocations, and allotments.

Buy American Act.

Government-furnished property (when applicable).

Salvage materials and equipment (when applicable).

7. Environmental Protection.

8. Administrative and Technical Requirements.

Contract clauses.

Special clauses.

Using service regulations.

Correspondence procedures.

9. Contractor Organization.

Responsible representative at home office.

Responsible representative at job site.

Quality control personnel.

Authorities of representatives.

Plan of operation.

10. Discussion.

Critical items.

Problem areas.

Questions.

PRECONSTRUCTION CONFERENCE GUIDANCE

Section III. Preconstruction Conference Sample Minutes

Location:
For:
Contract No.
Contractor:
Address: Zip Code:
Contracting Officer and ACO:

Contracting Officer Representative:
Resident Engineer:

1. **Commencement.** The conference convened at _____ hours on _____
at _____
the _____ Resident Office.

2. **Introduction.** Each of the persons attending the meeting introduced themselves. _____ explained the purpose of the meeting, which is to orient the contractor with respect to safety, resident office, and other requirements; introduced the Corps of Engineers, the contractor, and the using service personnel; and held a general discussion of items of major importance with respect to the contract. A list of personnel attending the meeting is attached.

3. **Notice to proceed.** Notice to proceed was issued on _____. The contract amount is _____. The contract time is _____ calendar days after receiving the notice to proceed. Notice to proceed was acknowledged on _____, establishing a contract complete date of _____. Interim completion dates are as follows:

4. Authorization and organization.

a. Authorization. The authorized representative of the contracting officer is authorized to administer the contract under authority delegated by the contracting officer. The administrative contracting officer (ACO), operating under specific authority delegated by the contracting officer, may issue modifications under the changes clause of the contract up to \$100,000, or such other amount as is written in the delegation of authority to the ACO. Only the contracting officer and the ACO within the limits of

delegated authority may make changes to the contract. There is no existing authority with the Corps of Engineers to waive any contract requirement.

b. Resident office organization. The resident office organization consists of the following personnel with the following responsibilities: _____ is the assistant resident engineer who acts on behalf of the resident engineer. Project engineer, _____, and construction representative, _____, have authority to ensure construction contract compliance by issuing advice when construction does not comply with contract requirements. _____, office engineer, administers the office functions; i.e., labor relations, modifications, pay estimates, and administrative details.

c. Contractor's organization. _____ is the project superintendent who is responsible for constructing the project safely and on time, and for negotiating and signing modifications to the contract. _____ is the chief, quality control, and is responsible for quality control and job safety in accordance with the contract. Subcontractors, with a brief description of work to be performed, are as follows:

- (1)
- (2)
- (3)

The normal work shift will be from _____ a.m. until _____ p.m. _____ days a week.

5. **Safety.** The contracting officer has advised the contractor by letter that all work under this contract will be done in accordance with provisions of the Corps of Engineers' Safety and Health Requirements. The basis for this action is contract clause "Accident Prevention." This clause further provides that the contractor will take such additional measures as the contracting officer may determine to be reasonably necessary for the purpose. The contractor is also required by law to comply with the Safety and Health Regulations for Construction (CFR, Title 29, Part 1926). As the contracting officer's representative, it is the resident engineer's responsibility to review the contractor's written safety program before starting work. Information and guidelines for

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preparing the proposal were presented at the preaward conference. The proposal (has) (has not) been received and (has) (has not) be reviewed. The proposal submitted (is) (is not) adequate for the type of work to be performed. The proposal, as approved, will be the safety program for this project. Copies of the safety program will be made available:

- a. To all supervisors and all quality control personnel.
- b. To each subcontractor and its supervisors.
- c. On bulletin boards for information and guidance of all concerned. Under the terms of the "Accident Prevention" clause, the contractor is responsible for subcontractor compliance with EM 385-1-1. This responsibility is further extended to subcontractor compliance with the safety program developed for this project. The contract special clause "Contractor Quality Control" specifies that each quality control inspector will be responsible for inspecting the work for compliance with EM 385-1-1 and the contractor's approved safety program, and immediately shall bring to the attention of the contractor's supervisory personnel any unsafe working condition and/or instances of noncompliance noted. The quality control inspector's safety activities will be documented as required by section 2, Accident Reporting and Recordkeeping inspected before it is allowed to be used on the job. All work on electrical lines or equipment will be done deenergized, unless otherwise authorized by the resident engineer. The contractor is responsible for preparing a hazard analysis plan in accordance with the special clause. The purpose of this preplanning is to provide the contractor and the resident engineer an opportunity to analyze the major phases of the construction for hazards peculiar to the particular operation. Major safety hazards the resident engineer anticipates during construction are:

- (1)
- (2)
- (3)
- (4)

The contractor's accident prevention preplanning will cover the above items. Finally, the onsite representatives will be monitoring the safety activities. Failure to comply with the safety requirements of the contract will require the contracting officer to exercise the remedies outlined in subparagraph (d) of the "Accident Prevention" clause. The minutes of this meeting, being agreed to and signed, will become a part of the safety program for this project. A copy of these minutes will be on file at the job site.

6. Value engineering. VE is an organized effort directed at analyzing the function of construction, systems, equipment, and supplies for achieving the required function at the lowest overall cost consistent with the requirements for performance reliability and maintainability. VE may be simply defined as the use of every available means to attain only the required functions at a minimum of cost. The VE clause of the contract indicates the method for preparing and processing a VE submittal as well as the method of computing equitable adjustments in the contract price. Due to the substantial savings in construction cost which have resulted from the use of VE, district personnel, including the district commander, are vitally interested in the contractor making a concerted effort to find ways of securing the required functions of the facility at a figure less than present contract price. An expeditious review will be given to VE proposals. To expedite this review, it is requested that the proposals be furnished in a format similar to that furnished in the VE Newsletter sent to the contractor. This proposal should be furnished to the resident engineer to review for completeness and expeditious forwarding to the VE Officer, together with any known background data and recommendations. Final action is expeditious in order that maximum cost reduction in the contract may be obtained.

7. Local regulations. The following items concerning using service operation were discussed:

- a. Identification of workers and vehicles.
- b. Requests for outages and street closings.
- c. Regulations concerning welding and cutting.
- d. Fire regulations.
- e. Strike.

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- f. Haul roads.
- g. Traffic control.
- h. Storage of materials.
- i. Utilities furnished.
- j. Salvage property.
- k. Government-furnished property.
- l. Security requirements.
- m. Waste and borrow areas.
- n. Permits.

8. **DPAS System.** All purchase orders issued for military construction projects should be marked to include a DO-C2 priority rating to ensure as prompt a delivery as possible. It is the contractor's responsibility to secure deliveries as required to maintain satisfactory progress on the job. However, if materials are not delivered as promised, the resident office can provide expediting assistance.

9. **Environmental protection.** The resident engineer advised the contractor that environment protection is a requirement of the contract specifications and that it would be necessary for him to comply with all environmental pollution control programs established by the contract, the city, and the state. The following items were discussed in detail:

- a. Protection of existing tress, shrubs, and grass.
- b. Dust control on haul roads, excavation work, and borrow areas.
- c. Keeping toilet facilities clean.
- d. Services performed during working hours.
- e. Burning materials.

The contractor was instructed to furnish to the resident office within 10 days a proposal for implementing the environmental pollution control program.

10. Progress reporting.

a. Progress schedule (note to RE-delete if N/A). The contract requires that the contractor submit a schedule showing how the work will be performed and the sequencing of work. This schedule shall present a feasible and practicable plan to accomplish all of the work in accordance with the contract requirements. The schedule shall show a breakdown of the principal features of the work by bar graphs, with contract cost and curve plotted so that the percentage of work scheduled for completion at any given date may be determined. ENG Form 2454, Construction Progress Chart, (was) (was not) discussed since the contractor (was) (was not) familiar with this item. This progress schedule is also necessary to process partial payment estimates. Partial payment estimates cannot be processed until the schedule is submitted, reviewed, and approved. The cut-off date will be the _____ of each month for payment estimates.

b. Network analysis system (note to RE--delete if N/A). The contract requires the use of the network analysis system for the surveillance of the contract progress. This network analysis will indicate the proposed method of conducting the work required under the contract. A specific discussion was held which advised the contractor of due dates for preliminary and/or a complete network analysis system. The specific requirements in the contract concerning the following items were discussed:

(1) The diagrams shall show the order and interdependence of activities and the sequence in which the work is to be accomplished.

(2) Detailed network activities shall include, in addition to construction activities, the submittal and approval of samples of materials and shop drawings; procurement of critical materials and equipment; and fabrication, installation, and testing of special materials and equipment.

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(3) The contractor shall submit at monthly intervals a report of the actual construction progress by updating the mathematical analysis. The reports shall show the activities or portions of activities completed, and their total value will be used as a basis for the contractor's periodic request for payment.

(4) The contractor shall also submit a narrative report with the updated analysis, which shall include but not be limited to a description of the problem areas, current and anticipated delays, their impact, and an explanation of corrective action taken or proposed.

11. Correspondence. All correspondence pertaining to this contract should be addressed to the resident engineer, U.S. Army Corps of Engineers, in original with two copies.

12. Record drawings. It is the responsibility of the contractor's quality control organization to maintain record drawings. Three sets of marked-up drawings are required, and one up-to-date, marked-up set should be on the job site at all times. The record marked up prints shall be currently accurate and be jointly inspected monthly for accuracy and completeness by the contractor's quality control personnel and the contracting officer's representative. Two copies of the preliminary record marked prints shall be furnished to the contracting officer at the time of final inspection for review and approval. At the time of approval of preliminary record drawings, the contracting officer will furnish the contractor the tracings of the original set of contract drawings. Thirty days after receiving the approved record preliminary drawings and the tracings, the contractor shall submit to the contracting officer the final record drawings, the approved preliminary record marked prints, and all required reproduced items. The specific requirements for preparing these are listed in the contract specifications.

13. Modifications. Upon receiving the letter requesting a proposal, the contractor should review the change work, estimate costs, and furnish a proposal to the contracting officer's representative as expeditiously as possible. This proposal should include a complete cost breakdown indicating all labor, materials, equipment, and subcontract costs for evaluation. This will be reviewed by the contracting officer's representative, and a meeting will be held for any negotiations necessary to arrive at a fair and equitable adjustment in cost and time for the changed or additional work.

Modifications will not proceed without written authority or direct instructions from the contracting officer or the ACO; otherwise, the contractor assumes the risk of not being reimbursed for additional expenses. Should the using service desire something different from that required by the contract, the Corps must issue a change prior to the contractor taking any action. Should the contractor act without direction from the Corps, it may be at the contractor's own expense.

14. Quality control program. There is a contract requirement for the contractor to maintain an adequate inspection system and perform such inspections to assure that the work conforms to the contract requirements and to maintain and make available to the Government adequate records of such inspections. The contract indicates the number and types of personnel required for the contractor's quality control organization to perform these inspections. The contract also includes the types and description of inspections necessary for each definable item or segment of work. The contractor is required to give careful consideration to an inspection plan for accomplishing this responsibility. This plan is furnished to the Government. The items which must be covered by this inspection plan are listed in the contract. For the other items of work which must be accomplished by the inspection system, there are specific instructions included in both special and technical clauses of the contract.

15. Time extensions. Attention was called to the paragraph entitled "Time Extensions for Unusually Severe Weather" included in the construction special clauses. This contains the procedure which will be used to determine the number of days to be included in allowable time extensions for weather delays. This system operates most successfully when the contractor submits a letter at the end of each month during which adverse weather was encountered and caused a delay of the work.

16. Liquidated damages. Liquidated damages for failure to complete the work on schedule are _____

_____.

17. **Submittals.** The contractor shall review and approve submittals from subcontractors and suppliers and transmit submittals to the contracting officer as called for in the specifications. Submittals to the CO shall be either for "approval" or for "information only" as indicated in the contract. If approved by the contracting officer, each copy of the drawings will be identified as approved by being stamped and dated. The contractor shall make any corrections required by the contracting officer. If the contractor considers any corrections indicated on the submittals to constitute a change to the contract drawings or specifications, notice (as required under the clause "Changes") must be given to the contracting officer. _____ sets will be returned to the contractor. Approval of the drawings by the contracting officer shall not be construed as a complete check, but will indicate only that the general method of construction and detailing is satisfactory. Approval of such drawings will not relieve the contractor of the responsibility for the dimensions and design of adequate connections, details, and satisfactory construction of all work. The contractor shall certify, with each submittal of shop drawings, that the shop drawings have been reviewed in detail and that they are correct and in strict conformance with the contract drawings and specifications, except as otherwise stated. Not less than _____ days should be allowed for review by the contracting officer.

18. **Payrolls.** Timely submittal is required for certified copies of all the contractor's payrolls, including DD Form 879, Statement of Compliance, which contains a fringe benefits statement. The employee must be paid proper wages for the type of work done, and this may include more than one type of work for a single worker. The project bulletin board displaying wage rates and an equal opportunity poster should be installed according to contract requirements. Employees will be interviewed periodically by a Government representative to ensure compliance with applicable wage rates. The contract includes specific instructions concerning fringe benefits and overtime provisions. These were discussed fully including a \$10.00 per day penalty for each overtime violation and the withholding of a sufficient amount to cover violations of the Davis-Bacon Act. The remaining information in "Instructions to Contractors on Contract Labor Requirements," which had been previously furnished to the contractor, was discussed, including: Apprentices, information required on payrolls, correction of payrolls, subcontractor requirements, labor disputes, and equal opportunity requirements.

19. **Payment estimates.** The ending date for work to be included in the monthly payment estimates shall be as previously stated. Allowance will be given for properly stored materials which are included in invoices submitted by the contractor. Payment for completed items of work will be based upon amounts agreed to mutually by the contractor and a representative of the resident office prior to the pay estimate ending date.

20. **Insurance.** Evidence shall be furnished indicating compliance with workmen's compensation, comprehensive general liability, and automobile liability as required by the contract. Also, the requirement for notice to the contracting officer prior to cancellation is discussed.

21. **Special Technical Aspects.** A discussion was held concerning:

- a. Status of concrete mix design.
- b. Special protection or processing of aggregate.
- c. Testing of cement, admixtures, and curing compound.
- d. Concrete protection and curing.
- e. Phasing of work.
- f. Questions by contractor.

22. **Repetitive deficiencies.** A discussion was held concerning repetitive construction deficiencies peculiar to this type of construction.

23. **Warranty of construction.** The warranty of construction clause requires the contractor, subcontractors, manufacturers, and suppliers to warrant that all work under the contract conforms to the contract specifications and contains no defect of workmanship, material, or design for a period of 1 year after final acceptance. Although the initial period of the warranty is 1 year, this clause requires that any item of work requiring corrective action is further warranted for an additional year from the completion of the remedial work. The contractor is responsible not only for its own work, but for damage to other property caused by failure of that work.

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24. **Forms and guides.** The contractor was furnished the following supply of forms and guides:

- a. Instructions to the contractor on contract labor requirements.
- b. Equal opportunity posters.
- c. Monthly Exposure Reports.
- d. First aid case history.
- e. ENG Form 4025, Transmittal of Shop Drawings, Equipment Data, Material Samples, or Manufacturer's Certifications of Compliance For Approval.
- f. Instructions to the contractor for transmittal of shop drawings.
- g. ENG Form 4288, Submittal Register.
- h. DD Form 879, Statement of Compliance.
- i. Concrete placement checklist.
- j. Concrete strength tests.
- k. ENG Form 2454, Construction Progress Chart.
- l. Progress reports, military.
- m. SF 1413, Statement and Acknowledgement.
- n. Quality control guide for testing of materials and equipment.

Contractor

U.S. Army Corps of Engineers

**MODULE 5
HANDOUT:**

**Submittal Register
Eng Form 4288**

&

**Submittal
Transmittal
Eng Form 4025**

Preparation of ENG FORM 4288: Submittal Register.

Basics of Submittal Register Preparation:

1. Items are materials, products, certifications, qualifications, etc. as required by the various contract specifications. "Items" are separate items not groups of items. Use of "Electrical Equipment" as an item is not acceptable. Each item of electrical equipment required by that specification section is a separate item. See *explanation attached*.
2. Submittals are required by almost all specification sections and not just the technical sections. This includes, but is not limited to, sections 00700, 01305, 01311, 01440, 01500, etc.

Contractor Responsibilities:

1. Review and identify blanks (columns a, b, p thru s) to be filled in by the contractor.
2. Submit completed Submittal Register to the Contracting Officers Representative for review and approval. See attached explanation.
3. Modify as directed by the Contracting Officer.
4. Use as a tool to administer the material acquisition, implementation on the project, readiness and scheduling of the Three Phase Control Process.
5. Keep the Submittal Register up to date.

Explanation of Preparation of ENG FORM 4288, Submittal Register

To the Contractor:

Identify each item to be submitted and recognize the distinction between GA and FIO. Enter transmittal numbers, schedule dates in their respective columns. Review each and every submittal in accordance with contract requirements; spec sections 1300, 1305, 1440, and each technical section. Enter contractor's action code and dates in their respective columns. Separate GA and FIO submittal items on separate transmittals. Also separate specification sections to only one per transmittal.

CAUTION to the Contractor:

Action codes placed on the transmittal and differing from those found to be required by the government will indicate that there has been a breakdown in the contractor's quality control program. Incorrect action codes by independent reviewers (Registered Professional Engineers/Architects) will reflect on their professional credentials.

Explanation of Preparation of ENG FORM 4025

*Transmittal of Shop Drawings, Equipment Data, Material Samples,
or Manufacturers Certificates of Compliance.*

The blocks "DATE", "TO", "FROM", "CONTRACT NO.", and "PROJECT TITLE AND LOCATION" are self-explanatory.

Transmittal No:

This is the unique number assigned to this transmittal and will contain the specification number and a dash number. In the example, "16415-1" is the first submittal, and "16415-1.1" is a resubmittal of "16415-1".

In the block "Check One:", identify if "THIS IS A NEW TRANSMITTAL", or "THIS IS A RESUBMITTAL OF TRANSMITTAL", the item was previously submitted. Please include the previous transmittal number if a resubmittal.

Specification Section No:

This is the contract specification section number for which items are being transmitted. Ex: 3300, 13120, 16415, etc. This is where GA or FIO may be identified.

Certification:

A minimum of one copy of the transmittal ENG FORM 4025 must contain an *original signature*.

Columns:

Column a: Item No.'s shall be numeric and must be the same designator as identified in column "b" of ENG Form 4288.

Column b: Provide a brief description of submittal item and not a general category. As much as possible, the description should match the contract requirement or description, as in a "Equipment Schedule". In the example, it's "Fixture C2" and not the general term "Light Fixtures" or "Electrical Equipment". It means each "type of pipe" not just "pipe". See ENG FORM 4025 example attached. This description must match the description in column d of ENG FORM 4288.

Column c: This column asks for the type of submittal being transmitted. Please refer to Spec 1300, paragraph 1.1 for a listing of the types of submittals; the types identified in Spec 1300 by SD-XX.

Column d: Show the number of copies being transmitted.

Column e: Show the specification paragraph or paragraphs which define the item. This is not just the paragraph on submittals but may be one or more paragraphs from Part 1 "General", Part 2 "Products" and/or Part 3 "Execution". See ENG FORM 4025 examples attached.

Column f: If the item being transmitted is shown or defined on the drawings, the drawing sheet number is placed in this column. See example attached.

Column a: After the contractor (or his registered engineer/architect where appropriate) has reviewed the submitted item their action code shall be placed in this column. Those items found acceptable by the contractor and unacceptable by the Government indicate a possible improper review by the contractor and/or his registered engineer/architect; therefore the QC program may not be functioning properly needing immediate attention and correction. Registered Engineers/Architects should be careful how they review and code each item, as this reflects on their professional credentials.

Column h: If the contractor finds he must deviate from the contract requirements he must request a variance. Mark this column and provide a complete explanation and supporting technical documentation of why the variance is necessary and how the Government will get equal quality. Approval of a variance may be justification for a credit to the Government. See *ENG FORM 4025 example attached*.

Column i: This column is for the Governments use. Action codes shown here can be compared to the action codes of column g to determine effectiveness of the contractors quality control program. See the back side of the ENG Form 4025 for the action.

TRANSMITTAL COMMENTS

TRANSMITTAL COMMENTS

TRANSMITTAL OF SHOP DRAWINGS, EQUIPMENT DATA, MATERIAL SAMPLES, OR MANUFACTURER'S CERTIFICATES OF COMPLIANCE

Please read instructions on the reverse side prior to initiating this form

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16413-2

10

REMARKS

Item #4 - Building Wire. Variance to use THHN instead of XHHW.

I certify that the above submitted items have been reviewed in detail and are correct and in strict conformance with the contract drawings and specifications except as otherwise stated

Jon Doe

John Doe, C.Q.C.
NAME AND SIGNATURE OF CONTRACTOR

SECTION II - APPROVAL ACTION

NAME, TITLE AND SIGNATURE OF APPROVING AUTHORITY

ENVIRONMENTAL LAW / MARCH 1991

ENG FORM 4025, May 91

EDITION OF AUG 69 IS OBSOLETE.

(Proportion: GEMP:CE)

(Proprietà: CEMPIRE)

MODULE 5 HANDOUT:

**"BUY
AMERICA ACT"**

< PREV | NEXT >

25.000 Scope of part.

- (a) This part provides policies and procedures for—
 - (1) Acquisition of foreign supplies, services, and construction materials; and
 - (2) Contracts performed outside the United States.
- (b) It implements the Buy American Act, trade agreements, and other laws and regulations.

25.001 General.

- (a) The Buy American Act—

(1) Restricts the purchase of supplies, that are not domestic end products, for use within the United States. A foreign end product may be purchased if the contracting officer determines that the price of the lowest domestic offer is unreasonable or if another exception applies (see Subpart 25.1); and

(2) Requires, with some exceptions, the use of only domestic construction materials in contracts for construction in the United States (see Subpart 25.2).

(b) The restrictions in the Buy American Act are not applicable in acquisitions subject to certain trade agreements (see Subpart 25.4). In these acquisitions, end products and construction materials from certain countries receive nondiscriminatory treatment in evaluation with domestic offers. Generally, the dollar value of the acquisition determines which of the trade agreements applies. Exceptions to the applicability of the trade agreements are described in Subpart 25.4.

(c) The test to determine the country of origin for an end product under the Buy American Act (see the various country "end product" definitions in 25.003) is different from the test to determine the country of origin for an end product under the trade agreements, or the criteria for the report on end products manufactured outside the United States (see 25.004).

(1) The Buy American Act uses a two-part test to define a "domestic end product" or "domestic construction material" (manufactured in the United States and a formula based on cost of domestic components). The component test has been waived for acquisition of commercially available off-the-shelf items.

(2) Under the trade agreements, the test to determine country of origin is "substantial transformation" (i.e., transforming an article into a new and different article of commerce, with a name, character, or use distinct from the original article).

(3) For the reporting requirement at 25.004, the only criterion is whether the place of manufacture of an end product is in the United States or outside the United States, without regard to the origin of the components.

(4) When using funds appropriated under the American Recovery and Reinvestment Act of 2009 (Pub. L. 111-5), the definition of "domestic manufactured construction material" requires manufacture in the United States but does not include a requirement with regard to the origin of the components.

25.002 Applicability of subparts.

The following table shows the applicability of the subparts. Subpart 25.5 provides comprehensive procedures for offer evaluation and examples.

SUBPART	SUPPLIES FOR USE		CONSTRUCTION		SERVICES PERFORMED	
	INSIDE U.S.	OUTSIDE U.S.	INSIDE U.S.	OUTSIDE U.S.	INSIDE U.S.	OUTSIDE U.S.
25.1 Buy American Act—Supplies	X	—	—	—	—	—
25.2 Buy American Act—Construction Materials	—	—	X	—	—	—
25.3 Contracts Performed Outside the United States	—	X	—	X	—	X
25.4 Trade Agreements	X	X	X	X	X	X
25.5 Evaluating Foreign Offers—Supply Contracts	X	X	—	—	—	—
25.6 American Recovery and Reinvestment Act—Buy American Act—Construction Materials				X		
25.7 Prohibited Sources	X	X	X	X	X	X
25.8 Other International Agreements and Coordination	X	X	—	X	—	X
25.9 Customs and Duties	X	—	—	—	—	—
25.10 Additional Foreign Acquisition Regulations	X	X	X	X	X	X
25.11 Solicitation Provisions and Contract Clauses	X	X	X	X	X	X

25.003 Definitions.

As used in this part—

"Canadian end product" means an article that—

(1) Is wholly the growth, product, or manufacture of Canada; or

(2) In the case of an article that consists in whole or in part of materials from another country, has been substantially transformed in Canada into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was transformed. The term refers to a product offered for purchase under a supply contract, but for purposes of calculating the value of the end product includes services (except transportation services) incidental to the article, provided that the value of those incidental services does not exceed that of the article itself.

"Caribbean Basin country" means any of the following countries: Antigua and Barbuda, Aruba, Bahamas, Barbados, Belize, British Virgin Islands, Dominica, Grenada, Guyana, Haiti, Jamaica, Montserrat, Netherlands Antilles, St. Kitts and Nevis, St. Lucia, St. Vincent and the Grenadines, or Trinidad and Tobago.

"Caribbean Basin country end product"—

(1) Means an article that—

(i)(A) Is wholly the growth, product, or manufacture of a Caribbean Basin country; or

(B) In the case of an article that consists in whole or in part of materials from another country, has been substantially transformed in a Caribbean Basin country into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was transformed; and

(ii) Is not excluded from duty-free treatment for Caribbean countries under 19 U.S.C. 2703(b).

(A) For this reason, the following articles are not Caribbean Basin country end products:

(1) Tuna, prepared or preserved in any manner in airtight containers.

(2) Petroleum, or any product derived from petroleum.

(3) Watches and watch parts (including cases, bracelets, and straps) of whatever type including, but not limited to, mechanical, quartz digital, or quartz analog, if such watches or watch parts contain any material that is the product of any country to which the Harmonized Tariff Schedule of the United States (HTSUS) column 2 rates of duty apply (*i.e.*, Afghanistan, Cuba, Laos, North Korea, and Vietnam).

(4) Certain of the following: textiles and apparel articles; footwear, handbags, luggage, flat goods, work gloves, and leather wearing apparel; or handloomed, handmade, and folklore articles.

(B) Access to the HTSUS to determine duty-free status of articles of the types listed in paragraph (1)(ii)(A)(4) of this definition is available via the Internet at <http://www.usitc.gov/tata/hts/>. In particular, see the following:

(1) General Note 3(c), Products Eligible for Special Tariff treatment.

(2) General Note 17, Products of Countries Designated as Beneficiary Countries under the United States-Caribbean Basin Trade Partnership Act of 2000.

(3) Section XXII, Chapter 98, Subchapter II, Articles Exported and Returned, Advanced or Improved Abroad, U.S. Note 7(b).

(4) Section XXII, Chapter 98, Subchapter XX, Goods Eligible for Special Tariff Benefits under the United States-Caribbean Basin Trade Partnership Act; and

(2) Refers to a product offered for purchase under a supply contract, but for purposes of calculating the value of the acquisition, includes services (except transportation services) incidental to the article, provided that the value of those incidental services does not exceed that of the article itself.

"Civil aircraft and related articles" means—

(1) All aircraft other than aircraft to be purchased for use by the Department of Defense or the U.S. Coast Guard;

(2) The engines (and parts and components for incorporation into the engines) of these aircraft;

(3) Any other parts, components, and subassemblies for incorporation into the aircraft; and

(4) Any ground flight simulators, and parts and components of these simulators, for use with respect to the aircraft, whether to be used as original or replacement equipment in the manufacture, repair, maintenance, rebuilding, modification, or conversion of the aircraft and without regard to whether the aircraft or articles receive duty-free treatment under section 601(a)(2) of the Trade Agreements Act.

"Component" means an article, material, or supply incorporated directly into an end product or construction material.

"Construction material" means an article, material, or supply brought to the construction site by a contractor or subcontractor for incorporation into the building or work. The term also includes an item brought to the site preassembled from articles, materials, or supplies. However, emergency life safety systems, such as emergency lighting, fire alarm, and audio evacuation systems, that are discrete systems incorporated into a public building or work and that are produced as complete systems, are evaluated as a single and distinct construction material regardless of when or how the individual parts or components of those systems are delivered to the construction site. Materials purchased directly by the Government are supplies, not construction material.

"Cost of components" means—

(1) For components purchased by the contractor, the acquisition cost, including transportation costs to the place of incorporation into the end product or construction material (whether or not such costs are paid to a domestic firm), and any applicable duty (whether or not a duty-free entry certificate is issued); or

(2) For components manufactured by the contractor, all costs associated with the manufacture of the component, including transportation costs as described in paragraph (1) of this definition, plus allocable overhead costs, but excluding profit. Cost of components does not include any costs associated with the manufacture of the end product.

"Designated country" means any of the following countries:

(1) A World Trade Organization Government Procurement Agreement country (Aruba, Austria, Belgium, Bulgaria, Canada, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hong Kong, Hungary, Iceland, Ireland, Israel, Italy, Japan, Korea (Republic of), Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, Netherlands, Norway, Poland, Portugal, Romania, Singapore, Slovak Republic, Slovenia, Spain, Sweden, Switzerland, Taiwan (known in the World Trade Organization as "the Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu" (Chinese Taipei)) or United Kingdom);

(2) A Free Trade Agreement country (Australia, Bahrain, Canada, Chile, Costa Rica, Dominican Republic, El Salvador, Guatemala, Honduras, Mexico, Morocco, Nicaragua, Oman, Peru, or Singapore);

(3) A least developed country (Afghanistan, Angola, Bangladesh, Benin, Bhutan, Burkina Faso, Burundi, Cambodia, Central African Republic, Chad, Comoros, Democratic Republic of Congo, Djibouti, East Timor, Equatorial Guinea, Eritrea, Ethiopia, Gambia, Guinea, Guinea-Bissau, Haiti, Kiribati, Laos, Lesotho, Liberia, Madagascar, Malawi, Maldives, Mali, Mauritania, Mozambique, Nepal, Niger, Rwanda, Samoa, Sao Tome and Principe, Senegal, Sierra Leone, Solomon Islands, Somalia, Tanzania, Togo, Tuvalu, Uganda, Vanuatu, Yemen, or Zambia); or

(4) A Caribbean Basin country (Antigua and Barbuda, Aruba, Bahamas, Barbados, Belize, British Virgin Islands, Dominica, Grenada, Guyana, Haiti, Jamaica, Montserrat, Netherlands Antilles, St. Kitts and Nevis, St. Lucia, St. Vincent and the Grenadines, or Trinidad and Tobago).

"Designated country end product" means a WTO GPA country end product, an FTA country end product, a least developed country end product, or a Caribbean Basin country end product.

"Domestic construction material" means—

(1) An unmanufactured construction material mined or produced in the United States;

(2) A construction material manufactured in the United States, if—

(i) The cost of its components mined, produced, or manufactured in the United States exceeds 50 percent of the cost of all its components. Components of foreign origin of the same class or kind for which nonavailability determinations have been made are treated as domestic; or

(ii) The construction material is a COTS item.

"Domestic end product" means—

(1) An unmanufactured end product mined or produced in the United States;

(2) An end product manufactured in the United States, if—

(i) The cost of its components mined, produced, or manufactured in the United States exceeds 50 percent of the cost of all its components. Components of foreign origin of the same class or kind as those that the agency determines are not mined, produced, or manufactured in sufficient and reasonably available commercial quantities of a satisfactory quality are treated as domestic. Scrap generated, collected, and prepared for processing in the United States is considered domestic; or

(ii) The end product is a COTS item.

"Domestic offer" means an offer of a domestic end product. When the solicitation specifies that award will be made on a group of line items, a domestic offer means an offer where the proposed price of the domestic end products exceeds 50 percent of the total proposed price of the group.

"Eligible offer" means an offer of an eligible product. When the solicitation specifies that award will be made on a group of line items, an eligible offer means a foreign offer where the combined proposed price of the eligible products and the domestic end products exceeds 50 percent of the total proposed price of the group.

"Eligible product" means a foreign end product, construction material, or service that, due to applicability of a trade agreement to a particular acquisition, is not subject to discriminatory treatment.

"End product" means those articles, materials, and supplies to be acquired for public use.

"Foreign construction material" means a construction material other than a domestic construction material.

"Foreign contractor" means a contractor or subcontractor organized or existing under the laws of a country other than the United States.

"Foreign end product" means an end product other than a domestic end product.

"Foreign offer" means any offer other than a domestic offer.

"Free Trade Agreement country" means Australia, Bahrain, Canada, Chile, Costa Rica, Dominican Republic, El Salvador, Guatemala, Honduras, Mexico, Morocco, Nicaragua, Oman, Peru, or Singapore.

"Free Trade Agreement country end product" means an article that—

(1) Is wholly the growth, product, or manufacture of a Free Trade Agreement (FTA) country; or

(2) In the case of an article that consists in whole or in part of materials from another country, has been substantially transformed in an FTA country into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was transformed. The term refers to a product offered for purchase under a supply contract, but for purposes of calculating the value of the end product, includes services (except transportation services) incidental to the article, provided that the value of those incidental services does not exceed that of the article itself.

"Israeli end product" means an article that—

(1) Is wholly the growth, product, or manufacture of Israel; or

(2) In the case of an article that consists in whole or in part of materials from another country, has been substantially transformed in Israel into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was transformed.

"Least developed country" means any of the following countries: Afghanistan, Angola, Bangladesh, Benin, Bhutan, Burkina Faso, Burundi, Cambodia, Central African Republic, Chad, Comoros, Democratic Republic of Congo, Djibouti, East Timor, Equatorial Guinea, Eritrea, Ethiopia, Gambia, Guinea, Guinea-Bissau, Haiti, Kiribati, Laos, Lesotho, Liberia, Madagascar, Malawi, Maldives, Mali, Mauritania, Mozambique, Nepal, Niger, Rwanda, Samoa, Sao Tome and Principe, Senegal, Sierra Leone, Solomon Islands, Somalia, Tanzania, Togo, Tuvalu, Uganda, Vanuatu, Yemen, or Zambia.

"Least developed country end product" means an article that—

(1) Is wholly the growth, product, or manufacture of a least developed country; or

(2) In the case of an article that consists in whole or in part of materials from another country, has been substantially transformed in a least developed country into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was transformed. The term refers to a product offered for purchase under a supply contract, but for purposes of calculating the value of the end product, includes services (except transportation services) incidental to the article, provided that the value of those incidental services does not exceed that of the article itself.

"Noneligible offer" means an offer of a noneligible product.

"Noneligible product" means a foreign end product that is not an eligible product.

"United States" means the 50 States, the District of Columbia, and outlying areas.

"U.S.-made end product" means an article that is mined, produced, or manufactured in the United States or that is substantially transformed in the United States into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was transformed.

"World Trade Organization Government Procurement Agreement (WTO GPA) country" means any of the following countries: Aruba, Austria, Belgium, Bulgaria, Canada, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hong Kong, Hungary, Iceland, Ireland, Israel, Italy, Japan, Korea (Republic of), Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, Netherlands, Norway, Poland, Portugal, Romania, Singapore, Slovak Republic, Slovenia, Spain, Sweden, Switzerland, Taiwan, or United Kingdom.

"WTO GPA country end product" means an article that—

(1) Is wholly the growth, product, or manufacture of a WTO GPA country; or

(2) In the case of an article that consists in whole or in part of materials from another country, has been substantially transformed in a WTO GPA country into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was transformed. The term refers to a product offered for purchase under a supply contract, but for purposes of calculating the value of the end product, includes services (except transportation services) incidental to the article, provided that the value of those incidental services does not exceed that of the article itself.

25.004 Reporting of acquisition of end products manufactured outside the United States.

(a) In accordance with the requirements of 41 U.S.C. 10a, the head of each Federal agency must submit a report to Congress on the amount of the acquisitions made by the agency from entities that manufacture end products outside the United States in that fiscal year.

(b) This report will be partially based on information collected from offerors using solicitation provision 52.225-18, Place of Manufacture (and its commercial item equivalent in 52.212-3, Offeror Representations and Certifications-Commercial items). For purposes of this report, the criteria established in the law is only whether the place of manufacture of an end product is in the United States or outside the United States, without regard to the origin of the components (see 25.001(c)).

Subpart 25.1—Buy American Act—Supplies

25.100 Scope of subpart.

(a) This subpart implements—

(1) The Buy American Act (41 U.S.C. 10a - 10d);

(2) Executive Order 10582, December 17, 1954; and

(3) Waiver of the component test of the Buy American Act for acquisitions of commercially available off-the-shelf (COTS) items in accordance with 41 U.S.C. 431.

(b) It applies to supplies acquired for use in the United States, including supplies acquired under contracts set aside for small business concerns, if—

(1) The supply contract exceeds the micro-purchase threshold; or

(2) The supply portion of a contract for services that involves the furnishing of supplies (e.g., lease) exceeds the micro-purchase threshold.

25.101 General.

- (a) The Buy American Act restricts the purchase of supplies that are not domestic end products. For manufactured end products, the Buy American Act uses a two-part test to define a domestic end product.
- (1) The article must be manufactured in the United States; and
- (2) The cost of domestic components must exceed 50 percent of the cost of all the components. In accordance with 41 U.S.C. 431, this component test of the Buy American Act has been waived for acquisitions of COTS items (see 12.505(a)).
- (b) The Buy American Act applies to small business set-asides. A manufactured product of a small business concern is a U.S.-made end product, but is not a domestic end product unless it meets the component test in paragraph (a)(2) of this section.
- (c) Exceptions that allow the purchase of a foreign end product are listed at 25.103. The unreasonable cost exception is implemented through the use of an evaluation factor applied to low foreign offers that are not eligible offers. The evaluation factor is not used to provide a preference for one foreign offer over another. Evaluation procedures and examples are provided in Subpart 25.5.

25.102 Policy.

Except as provided in 25.103, acquire only domestic end products for public use inside the United States.

25.103 Exceptions.

When one of the following exceptions applies, the contracting officer may acquire a foreign end product without regard to the restrictions of the Buy American Act:

(a) *Public interest*. The head of the agency may make a determination that domestic preference would be inconsistent with the public interest. This exception applies when an agency has an agreement with a foreign government that provides a blanket exception to the Buy American Act.

(b) *Nonavailability*. The Buy American Act does not apply with respect to articles, materials, or supplies if articles, materials, or supplies of the class or kind to be acquired, either as end items or components, are not mined, produced, or manufactured in the United States in sufficient and reasonably available commercial quantities and of a satisfactory quality.

(1) *Class determinations*.

(i) A nonavailability determination has been made for the articles listed in 25.104. This determination does not necessarily mean that there is no domestic source for the listed items, but that domestic sources can only meet 50 percent or less of total U.S. Government and nongovernment demand.

(ii) Before acquisition of an article on the list, the procuring agency is responsible to conduct market research appropriate to the circumstances, including seeking of domestic sources. This applies to acquisition of an article as—

(A) An end product; or

(B) A significant component (valued at more than 50 percent of the value of all the components).

(iii) The determination in paragraph (b)(1)(i) of this section does not apply if the contracting officer learns at any time before the time designated for receipt of bids in sealed bidding or final offers in negotiation that an article on the list is available domestically in sufficient and reasonably available commercial quantities of a satisfactory quality to meet the requirements of the solicitation. The contracting officer must—

(A) Ensure that the appropriate Buy American Act provision and clause are included in the solicitation (see 22.1101(a), 22.1101(b), or 25.1102);

(B) Specify in the solicitation that the article is available domestically and that offerors and contractors may not treat foreign components of the same class or kind as domestic components; and

(C) Submit a copy of supporting documentation to the appropriate council identified in 1.201-1, in accordance with agency procedures, for possible removal of the article from the list.

(2) *Individual determinations*.

(i) The head of the contracting activity may make a determination that an article, material, or supply is not mined, produced, or manufactured in the United States in sufficient and reasonably available commercial quantities of a satisfactory quality.

(ii) If the contracting officer considers that the nonavailability of an article is likely to affect future acquisitions, the contracting officer may submit a copy of the determination and supporting documentation to the appropriate council identified in 1.201-1, in accordance with agency procedures, for possible addition to the list in 25.104.

(3) A written determination is not required if all of the following conditions are present:

(i) The acquisition was conducted through use of full and open competition.

(ii) The acquisition was synopsized in accordance with 5.201.

(iii) No offer for a domestic end product was received.

(c) *Unreasonable cost*. The contracting officer may determine that the cost of a domestic end product would be unreasonable, in accordance with 25.105 and Subpart 25.5.

(d) *Resale*. The contracting officer may purchase foreign end products specifically for commissary resale.

(e) *Information technology that is a commercial item*. The restriction on purchasing foreign end products does not apply to the acquisition of information technology that is a commercial item, when using fiscal year 2004 or subsequent fiscal year funds (Section 535(a) of Division F, Title V, Consolidated Appropriations Act, 2004, and similar sections in subsequent appropriations acts).

25.104 Nonavailable articles.

(a) The following articles have been determined to be nonavailable in accordance with 25.103(b)(1)(i):

Acetylene, black.

Agar, bulk.

Anise.

Antimony, as metal or oxide.

Asbestos, amosite, chrysotile, and crocidolite.

Bamboo shoots.

Bananas.

Bauxite.

Beef, corned, canned.

Beef extract.

Bephenium hydroxynaphthoate.

Bismuth.

Books, trade, text, technical, or scientific; newspapers; pamphlets; magazines; periodicals; printed briefs and films; not printed in the United States and for which domestic editions are not available.

Brazil nuts, unroasted.
Cadmium, ores and flue dust.
Calcium cyanamide.
Capers.
Cashew nuts.
Castor beans and castor oil.
Chalk, English.
Chestnuts.
Chiclets.
Chrome ore or chromite.
Cinchona bark.
Cobalt, in cathodes, rondelles, or other primary ore and metal forms.
Cocoa beans.
Coconut and coconut meat, unsweetened, in shredded, desiccated, or similarly prepared form.
Coffee, raw or green bean.
Colchicine alkaloid, raw.
Copra.
Cork, wood or bark and waste.
Cover glass, microscope slide.
Crane rail (85-pound per foot).
Cryolite, natural.
Dammar gum.
Diamonds, industrial, stones and abrasives.
Emetine, bulk.
Ergot, crude.
Erythritol tetrานitrate.
Fair linen, altar.
Fibers of the following types: abaca, abace, agave, coir, flax, jute, jute burlaps, palmyra, and sisal.
Goat and kidskins.
Goat hair canvas.
Grapefruit sections, canned.
Graphite, natural, crystalline, crucible grade.
Hand file sets (Swiss pattern).
Handsewing needles.
Hemp yarn.
Hog bristles for brushes.
Hyoscine, bulk.
Ipecac, root.
Iodine, crude.
Kaurigum.
Lac.
Leather, sheepskin, hair type.
Lavender oil.
Manganese.
Menthol, natural bulk.
Mica.
Microprocessor chips (brought onto a Government construction site as separate units for incorporation into building systems during construction or repair and alteration of real property).
Modacrylic fur ruff.
Nickel, primary, in ingots, pigs, shots, cathodes, or similar forms; nickel oxide and nickel salts.
Nitroguanidine (also known as picrite).
Nux vomica, crude.
Oiticica oil.
Olive oil.
Olives (green), pitted or unpitted, or stuffed, in bulk.
Opium, crude.
Oranges, mandarin, canned.
Petroleum, crude oil, unfinished oils, and finished products.
Pine needle oil.
Platinum and related group metals, refined, as sponge, powder, ingots, or cast bars.
Pyrethrum flowers.
Quartz crystals.
Quebracho.
Quinidine.
Quinine.
Rabbit fur felt.
Radium salts, source and special nuclear materials.
Rosettes.
Rubber, crude and latex.
Rutile.
Santonin, crude.
Secretin.
Shellac.
Silk, raw and unmanufactured.

Spare and replacement parts for equipment of foreign manufacture, and for which domestic parts are not available.
Spices and herbs, in bulk.
Sugars, raw.
Swords and scabbards.
Talc, block, steatite.
Tantalum.
Tapioca flour and cassava.
Tartar, crude; tartaric acid and cream of tartar in bulk.
Tea in bulk.
Thread, metallic (gold).
Thyme oil.
Tin in bars, blocks, and pigs.
Triprolidine hydrochloride.
Tungsten.
Vanilla beans.
Venom, cobra.
Water chestnuts.
Wax, carnauba.
Wire glass.
Woods; logs, veneer, and lumber of the following species: Alaskan yellow cedar, angelique, balsa, ekki, greenheart, lignum vitae, mahogany, and teak.
Yarn, 50 Denier rayon.

(b) This list will be published in the *Federal Register* for public comment no less frequently than once every five years. Unsolicited recommendations for deletions from this list may be submitted at any time and should provide sufficient data and rationale to permit evaluation (see [1.502](#)).

25.105 Determining reasonableness of cost.

- (a) The contracting officer—
- (1) Must use the evaluation factors in paragraph (b) of this section unless the head of the agency makes a written determination that the use of higher factors is more appropriate. If the determination applies to all agency acquisitions, the agency evaluation factors must be published in agency regulations; and
- (2) Must not apply evaluation factors to offers of eligible products if the acquisition is subject to a trade agreement under [Subpart 25.4](#).
- (b) If there is a domestic offer that is not the low offer, and the restrictions of the Buy American Act apply to the low offer, the contracting officer must determine the reasonableness of the cost of the domestic offer by adding to the price of the low offer, inclusive of duty—
- (1) 6 percent, if the lowest domestic offer is from a large business concern; or
- (2) 12 percent, if the lowest domestic offer is from a small business concern. The contracting officer must use this factor, or another factor established in agency regulations, in small business set-asides if the low offer is from a small business concern offering the product of a small business concern that is not a domestic end product (see [Subpart 19.5](#)).
- (c) The price of the domestic offer is reasonable if it does not exceed the evaluated price of the low offer after addition of the appropriate evaluation factor in accordance with paragraph (a) or (b) of this section. (See evaluation procedures at [Subpart 25.5](#).)

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Subpart 25.2—Buy American Act—Construction Materials**25.200 Scope of Subpart.**

- (a) This subpart implements—
(1) The Buy American Act (41 U.S.C. 10a - 10d);
(2) Executive Order 10582, December 17, 1954; and
(3) Waiver of the component test of the Buy American Act for acquisitions of commercially available off-the-shelf (COTS) items in accordance with 41 U.S.C. 431.
(b) It applies to contracts for the construction, alteration, or repair of any public building or public work in the United States.
(c) When using funds appropriated or otherwise provided by the American Recovery and Reinvestment Act of 2009 (Pub. L. 111-5) (Recovery Act) for construction, see Subpart 25.6.

25.201 Policy.

Except as provided in 25.202, use only domestic construction materials in construction contracts performed in the United States.

25.202 Exceptions.

- (a) When one of the following exceptions applies, the contracting officer may acquire foreign construction materials without regard to the restrictions of the Buy American Act:
(1) *Impracticable or inconsistent with public interest.* The head of the agency may determine that application of the restrictions of the Buy American Act to a particular construction material would be impracticable or would be inconsistent with the public interest. The public interest exception applies when an agency has an agreement with a foreign government that provides a blanket exception to the Buy American Act.
(2) *Nonavailability.* The head of the contracting activity may determine that a particular construction material is not mined, produced, or manufactured in the United States in sufficient and reasonably available commercial quantities of a satisfactory quality. The determinations of nonavailability of the articles listed at 25.104(a) and the procedures at 25.103(b)(1) also apply if any of those articles are acquired as construction materials.
(3) *Unreasonable cost.* The contracting officer concludes that the cost of domestic construction material is unreasonable in accordance with 25.204.
(b) *Determination and findings.* When a determination is made for any of the reasons stated in this section that certain foreign construction materials may be used, the contracting officer must list the excepted materials in the contract. The agency must make the findings justifying the exception available for public inspection.
(c) *Acquisitions under trade agreements.* For construction contracts with an estimated acquisition value of \$7,443,000 or more, see Subpart 25.4.

25.203 Preaward determinations.

- (a) For any acquisition, an offeror may request from the contracting officer a determination concerning the inapplicability of the Buy American Act for specifically identified construction materials. The time for submitting the request is specified in the solicitation in paragraph (b) of either 52.225-10 or 52.225-12, whichever applies. The information and supporting data that must be included in the request are also specified in the solicitation in paragraphs (c) and (d) of either 52.225-9 or 52.225-11, whichever applies.
(b) Before award, the contracting officer must evaluate all requests based on the information provided and may supplement this information with other readily available information.

25.204 Evaluating offers of foreign construction material.

- (a) Offerors proposing to use foreign construction material other than that listed by the Government in the applicable clause at 52.225-9, paragraph (b)(2), or 52.225-11, paragraph (b)(3), or covered by the WTO GPA or a Free Trade Agreement (paragraph (b)(2) of 52.225-11), must provide the information required by paragraphs (c) and (d) of the respective clauses.
(b) Unless the head of the agency specifies a higher percentage, the contracting officer must add to the offered price 6 percent of the cost of any foreign construction material proposed for exception from the requirements of the Buy American Act based on the unreasonable cost of domestic construction materials. In the case of a tie, the contracting officer must give preference to an offer that does not include foreign construction material excepted at the request of the offeror on the basis of unreasonable cost.
(c) Offerors also may submit alternate offers based on use of equivalent domestic construction material to avoid possible rejection of the entire offer if the Government determines that an exception permitting use of a particular foreign construction material does not apply.
(d) If the contracting officer awards a contract to an offeror that proposed foreign construction material not listed in the applicable clause in the solicitation (paragraph (b)(2) of 52.225-9, or paragraph (b)(3) of 52.225-11), the contracting officer must add the excepted materials to the list in the contract clause.

25.205 Postaward determinations.

- (a) If a contractor requests a determination regarding the inapplicability of the Buy American Act after contract award, the contractor must explain why it could not request the determination before contract award or why the need for such determination otherwise was not reasonably foreseeable. If the contracting officer concludes that the contractor should have made the request before contract award, the contracting officer may deny the request.
(b) The contracting officer must base evaluation of any request for a determination regarding the inapplicability of the Buy American Act made after contract award on information required by paragraphs (c) and (d) of the applicable clause at 52.225-9 or 52.225-11 and/or other readily available information.
(c) If a determination, under 25.202(a), is made after contract award that an exception to the Buy American Act applies, the contracting officer must negotiate adequate consideration and modify the contract to allow use of the foreign construction material. When the basis for the exception is the unreasonable price of a domestic construction material, adequate consideration is at least the differential established in 25.202(a) or in accordance with agency procedures.

25.206 Noncompliance.

The contracting officer must—

- (a) Review allegations of Buy American Act violations;

- (b) Unless fraud is suspected, notify the contractor of the apparent unauthorized use of foreign construction material and request a reply, to include proposed corrective action; and
- (c) If the review reveals that a contractor or subcontractor has used foreign construction material without authorization, take appropriate action, including one or more of the following:
- (1) Process a determination concerning the inapplicability of the Buy American Act in accordance with [25.205](#).
 - (2) Consider requiring the removal and replacement of the unauthorized foreign construction material.
 - (3) If removal and replacement of foreign construction material incorporated in a building or work would be impracticable, cause undue delay, or otherwise be detrimental to the interests of the Government, the contracting officer may determine in writing that the foreign construction material need not be removed and replaced. A determination to retain foreign construction material does not constitute a determination that an exception to the Buy American Act applies, and this should be stated in the determination. Further, a determination to retain foreign construction material does not affect the Government's right to suspend or debar a contractor, subcontractor, or supplier for violation of the Buy American Act, or to exercise other contractual rights and remedies, such as reducing the contract price or terminating the contract for default.
 - (4) If the noncompliance is sufficiently serious, consider exercising appropriate contractual remedies, such as terminating the contract for default. Also consider preparing and forwarding a report to the agency suspending or debarring official in accordance with [Subpart 9.4](#). If the noncompliance appears to be fraudulent, refer the matter to other appropriate agency officials, such as the officer responsible for criminal investigation.

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Subpart 25.4—Trade Agreements**25.400 Scope of subpart.**

- (a) This subpart provides policies and procedures applicable to acquisitions that are covered by—
- (1) The World Trade Organization Government Procurement Agreement (WTO GPA), as approved by Congress in the Uruguay Round Agreements Act (Public Law 103-465);
 - (2) Free Trade Agreements (FTA), consisting of—
 - (i) NAFTA (the North American Free Trade Agreement, as approved by Congress in the North American Free Trade Agreement Implementation Act of 1993 ([19 U.S.C. 3301 note](#)));
 - (ii) Chile FTA (the United States-Chile Free Trade Agreement, as approved by Congress in the United States-Chile Free Trade Agreement Implementation Act (Public Law 108-77));
 - (iii) Singapore FTA (the United States-Singapore Free Trade Agreement, as approved by Congress in the United States-Singapore Free Trade Agreement Implementation Act (Pub. L. 108-78) ([19 U.S.C. 3805 note](#)));
 - (iv) Australia FTA (the United States-Australia Free Trade Agreement, as approved by Congress in the United States-Australia Free Trade Agreement Implementation Act (Pub. L. 108-286) ([19 U.S.C. 3805 note](#)));
 - (v) Morocco FTA (The United States-Morocco Free Trade Agreement, as approved by Congress in the United States-Morocco Free Trade Agreement Implementation Act (Pub. L. 108-302) ([19 U.S.C. 3805 note](#)));
 - (vi) CAFTA-DR (The Dominican Republic-Central America-United States Free Trade Agreement, as approved by Congress in the Dominican Republic-Central America-United States Free Trade Agreement Implementation Act (Pub. L. 109-53) ([19 U.S.C. 4001 note](#)));
 - (vii) Bahrain FTA (the United States-Bahrain Free Trade Agreement, as approved by Congress in the United States-Bahrain Free Trade Agreement Implementation Act (Pub. L. 109-169) ([19 U.S.C. 3805 note](#)));
 - (viii) Oman FTA (the United States-Oman Free Trade Agreement, as approved by Congress in the United States-Oman Free Trade Agreement Implementation Act (Pub. L. 109-283) ([19 U.S.C. 3805 note](#))); and
 - (ix) Peru FTA (the United States-Peru Trade Promotion Agreement, as approved by Congress in the United States-Peru Trade Promotion Agreement Implementation Act (Pub. L. 110-138) ([19 U.S.C. 3805 note](#)));
 - (3) The least developed country designation made by the U.S. Trade Representative, pursuant to the Trade Agreements Act ([19 U.S.C. 2511\(b\)\(4\)](#)), in acquisitions covered by the WTO GPA;
 - (4) The Caribbean Basin Trade Initiative (CBTI) (determination of the U.S. Trade Representative that end products or construction material granted duty-free entry from countries designated as beneficiaries under the Caribbean Basin Economic Recovery Act ([19 U.S.C. 2701, et seq.](#)), with the exception of Panama, must be treated as eligible products in acquisitions covered by the WTO GPA);
 - (5) The Israeli Trade Act (the U.S.-Israel Free Trade Area Agreement, as approved by Congress in the United States-Israel Free Trade Area Implementation Act of 1985 ([19 U.S.C. 2112 note](#))); or
 - (6) The Agreement on Trade in Civil Aircraft (U.S. Trade Representative waiver of the Buy American Act for signatories of the Agreement on Trade in Civil Aircraft, as implemented in the Trade Agreements Act of 1979 ([19 U.S.C. 2513](#))).
- (b) For application of the trade agreements that are unique to individual agencies, see agency regulations.

25.401 Exceptions.

- (a) This subpart does not apply to—
- (1) Acquisitions set aside for small businesses;
 - (2) Acquisitions of arms, ammunition, or war materials, or purchases indispensable for national security or for national defense purposes;
 - (3) Acquisitions of end products for resale;
 - (4) Acquisitions from Federal Prison Industries, Inc., under [Subpart 8.6](#), and acquisitions under [Subpart 8.7](#), Acquisition from Nonprofit Agencies Employing People Who Are Blind or Severely Disabled; and
 - (5) Other acquisitions not using full and open competition, if authorized by [Subpart 6.2](#) or [6.3](#), when the limitation of competition would preclude use of the procedures of this subpart; or sole source acquisitions justified in accordance with [13.501\(a\)](#).
- (b) In the World Trade Organization Government Procurement Agreement (WTO GPA) and each FTA, there is a U.S. schedule that lists services that are excluded from that agreement in acquisitions by the United States. Acquisitions of the following services are excluded from coverage by the U.S. schedule of the WTO GPA or an FTA as indicated in this table:

	THE SERVICE (FEDERAL SERVICE CODES FROM THE FEDERAL PROCUREMENT DATA SYSTEM PRODUCT/SERVICE CODE MANUAL ARE INDICATED IN PARENTHESSES FOR SOME SERVICES.)	WTO GPA	BAHRAIN FTA, CAFTA- DR, CHILE FTA, NAFTA, OMAN FTA AND PERU FTA	SINGAPORE FTA	AUSTRALIA AND MOROCCO FTA
(1)	All services purchased in support of military services overseas.	X	X	X	X
(2)	(i) Automatic data processing (ADP) telecommunications and transmission services (D304), except enhanced (i.e., value-added) telecommunications services.	X	X		
	(ii) ADP teleprocessing and timesharing services (D305), telecommunications network management services (D316), automated news services, data services or other information services (D317), and other ADP and telecommunications services (D399).	X	X		
	(iii) Basic telecommunications network services (i.e., voice telephone services, packet-switched data transmission services, circuit-switched data transmission services, telex services, telegraph services, facsimile services, and private leased circuit services, but not information services, as defined in 47 U.S.C. 153(20)).	*	*	X	X
(3)	Dredging.	X	X	X	X
(4)	(i) Operation and management contracts of certain Government or privately owned facilities used for Government purposes, including Federally Funded Research and Development Centers.	X		X	
	(ii) Operation of all Department of Defense, Department of Energy, or the National Aeronautics and Space Administration facilities; and all Government-owned research and development facilities or Government-owned environmental laboratories.	**	X	**	X
(5)	Research and development.	X	X	X	X

(6) Transportation services (including launching services, but not including travel agent services - V503).	X	X	X	X
(7) Utility services.	X	X	X	X
(8) Maintenance, repair, modification, rebuilding and installation of equipment related to ships (J019).		X		X
(9) Nonnuclear ship repair (J998).		X		X

* Note 1. Acquisitions of the services listed at (2)(iii) of this table are a subset of the excluded services at (2)(i) and (ii), and are therefore not covered under the WTO GPA.
** Note 2. Acquisitions of the services listed at (4)(ii) of this table are a subset of the excluded services at (4)(i), and are therefore not covered under the WTO GPA.

25.402 General.

(a)(1) The Trade Agreements Act ([19 U.S.C. 2501, et seq.](#)) provides the authority for the President to waive the Buy American Act and other discriminatory provisions for eligible products from countries that have signed an international trade agreement with the United States, or that meet certain other criteria, such as being a least developed country. The President has delegated this waiver authority to the U.S. Trade Representative. In acquisitions covered by the WTO GPA, Free Trade Agreements, or the Israeli Trade Act, the USTR has waived the Buy American Act and other discriminatory provisions for eligible products. Offers of eligible products receive equal consideration with domestic offers.

(2) The contracting officer shall determine the origin of services by the country in which the firm providing the services is established. See [Subpart 25.5](#) for evaluation procedures for supply contracts covered by trade agreements.

(b) The value of the acquisition is a determining factor in the applicability of trade agreements. Most of these dollar thresholds are subject to revision by the U.S. Trade Representative approximately every 2 years. The various thresholds are summarized as follows:

Trade Agreement	Supply Contract (equal to or exceeding)	Service Contract (equal to or exceeding)	Construction Contract (equal to or exceeding)
WTO GPA	\$194,000	\$194,000	\$7,443,000
FTAs			
Australia FTA	67,826	67,826	7,443,000
Bahrain FTA	194,000	194,000	8,817,449
CAFTA-DR (Costa Rica, Dominican Republic, El Salvador, Guatemala, Honduras, and Nicaragua)	67,826	67,826	7,443,000
Chile FTA	67,826	67,826	7,443,000
Morocco FTA	194,000	194,000	7,443,000
NAFTA			
—Canada	25,000	67,826	8,817,449
—Mexico	67,826	67,826	8,817,449
Oman FTA	194,000	194,000	8,817,449
Peru FTA	194,000	194,000	7,443,000
Singapore FTA	67,826	67,826	7,443,000
Israeli Trade Act	50,000	—	—

25.403 World Trade Organization Government Procurement Agreement and Free Trade Agreements.

(a) Eligible products from WTO GPA and FTA countries are entitled to the nondiscriminatory treatment specified in [25.402\(a\)\(1\)](#). The WTO GPA and FTAs specify procurement procedures designed to ensure fairness (see [25.408](#)).

(b) Thresholds.

(1) To determine whether the acquisition of products by lease, rental, or lease-purchase contract (including lease-to-ownership, or lease-with-option-to purchase) is covered by the WTO GPA or an FTA, calculate the estimated acquisition value as follows:

(i) If a fixed-term contract of 12 months or less is contemplated, use the total estimated value of the acquisition.

(ii) If a fixed-term contract of more than 12 months is contemplated, use the total estimated value of the acquisition plus the estimated residual value of the leased equipment at the conclusion of the contemplated term of the contract.

(iii) If an indefinite-term contract is contemplated, use the estimated monthly payment multiplied by the total number of months that ordering would be possible under the proposed contract, i.e., the initial ordering period plus any optional ordering periods.

(iv) If there is any doubt as to the contemplated term of the contract, use the estimated monthly payment multiplied by 48.

(2) The estimated value includes the value of all options.

(3) If, in any 12-month period, recurring or multiple awards for the same type of product or products are anticipated, use the total estimated value of these projected awards to determine whether the WTO GPA or an FTA applies. Do not divide any acquisition with the intent of reducing the estimated value of the acquisition below the dollar threshold of the WTO GPA or an FTA.

(c) Purchase restriction.

(1) Under the Trade Agreements Act ([19 U.S.C. 2512](#)), in acquisitions covered by the WTO GPA, acquire only U.S.-made or designated country end products or U.S. or designated country services, unless offers for such end products or services are either not received or are insufficient to fulfill the requirements. This purchase restriction does not apply below the WTO GPA threshold for supplies and services, even if the acquisition is covered by an FTA.

(2) This restriction does not apply to purchases of supplies by the Department of Defense from a country with which it has entered into a reciprocal agreement, as provided in departmental regulations.

25.404 Least developed countries.

For acquisitions covered by the WTO GPA, least developed country end products, construction material, and services must be treated as eligible products.

25.405 Caribbean Basin Trade Initiative.

Under the Caribbean Basin Trade Initiative, the United States Trade Representative has determined that, for acquisitions covered by the WTO GPA, Caribbean Basin country end products, construction material, and services must be treated as eligible products. In accordance with Section 201 (a)(3) of the Dominican Republic-Central America-United States Free Trade Implementation Act (Pub. L. 109-53), when the CAFTA-DR agreement enters into force with respect to a country, that country is no longer designated as a beneficiary country for purposes of the Caribbean Basin Economic Recovery Act, and is therefore no longer included in the definition of "Caribbean Basin country" for purposes of the Caribbean Basin Trade Initiative.

25.406 Israeli Trade Act.

Acquisitions of supplies by most agencies are covered by the Israeli Trade Act, if the estimated value of the acquisition is \$50,000 or more but does not exceed the WTO GPA threshold for supplies (see [25.402\(b\)](#)). Agencies other than the Department of Defense, the Department of Energy, the Department of Transportation, the Bureau of Reclamation of the Department of the Interior, the Federal Housing Finance Board, and the Office of Thrift Supervision must evaluate offers of Israeli end products without regard to the restrictions of the Buy American Act. The Israeli Trade Act does not prohibit the purchase of other foreign end products.

25.407 Agreement on Trade in Civil Aircraft.

Under the authority of Section 303 of the Trade Agreements Act, the U.S. Trade Representative has waived the Buy American Act for civil aircraft and related articles, that meet the substantial transformation test of the Trade Agreements Act, from countries that are parties to the Agreement on Trade in Civil Aircraft. Those countries are Austria, Belgium, Bulgaria, Canada, Denmark, Egypt, Finland, France, Germany, Greece, Ireland, Italy, Japan, Luxembourg, Macao, the Netherlands, Norway, Portugal, Romania, Spain, Sweden, Switzerland, and the United Kingdom.

25.408 Procedures.

- (a) If the WTO GPA or an FTA applies (see [25.401](#)), the contracting officer must—
(1) Comply with the requirements of [5.203](#), Publicizing and response time;
(2) Comply with the requirements of [5.207](#), Preparation and transmittal of synopses;
(3) Not include technical requirements in solicitations solely to preclude the acquisition of eligible products;
(4) Specify in solicitations that offerors must submit offers in the English language and in U.S. dollars (see [52.214-34](#), Submission of Offers in the English Language, and [52.214-35](#), Submission of Offers in U.S. Currency, or paragraph (c)(5) of [52.215-1](#), Instruction to Offerors—Competitive Acquisitions); and
(5) Provide unsuccessful offerors from WTO GPA or FTA countries notice in accordance with [14.409-1](#) or [15.503](#).
(b) See [Subpart 25.5](#) for evaluation procedures and examples.

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Subpart 25.6—American Recovery and Reinvestment Act—Buy American Act—Construction Materials

25.600 Scope of subpart.

This subpart implements section 1605 in Division A of the American Recovery and Reinvestment Act of 2009 (Pub. L. 111-5) (Recovery Act) and the Buy American Act. It applies to construction projects that use funds appropriated or otherwise provided by the Recovery Act.

25.601 Definitions.

As used in this subpart—

“Domestic construction material” means—

- (1) An unmanufactured construction material mined or produced in the United States; or
- (2) A construction material manufactured in the United States.

“Foreign construction material” means a construction material other than a domestic construction material.

“Manufactured construction material” means any construction material that is not unmanufactured construction material.

“Recovery Act designated country” means a World Trade Organization Government Procurement Agreement country, a Free Trade Agreement country, or a least developed country.

“Steel” means an alloy that includes at least 50 percent iron, between .02 and 2 percent carbon, and may include other elements.

“Unmanufactured construction material” means raw material brought to the construction site for incorporation into the building or work that has not been—

- (1) Processed into a specific form and shape; or
- (2) Combined with other raw material to create a material that has different properties than the properties of the individual raw materials.

25.602 Policy.

Except as provided in [25.603](#)—

(a) None of the funds appropriated or otherwise made available by the Recovery Act may be used for a project for the construction, alteration, maintenance, or repair of a public building or public work (as defined at [22.401](#)) unless—

- (1) The public building or public work is located in the United States; and

- (2) All of the iron, steel, and other manufactured goods used as construction material in the project are produced or manufactured in the United States.

(i) Production in the United States of the iron or steel used as construction material requires that all manufacturing processes must take place in the United States, except metallurgical processes involving refinement of steel additives. These requirements do not apply to steel or iron used as components or subcomponents of other manufactured construction material.

(ii) There is no requirement with regard to the origin of components or subcomponents in other manufactured construction material, as long as the manufacture of the construction material occurs in the United States.

- (b) Use only domestic unmanufactured construction material, as required by the Buy American Act.

25.603 Exceptions.

(a) When one of the following exceptions applies, the contracting officer may allow the contractor to incorporate foreign construction materials without regard to the restrictions of section 1605 of the Recovery Act or the Buy American Act:

(1) *Nonavailability*. The head of the contracting activity may determine that a particular construction material is not mined, produced, or manufactured in the United States in sufficient and reasonably available commercial quantities of a satisfactory quality. The determinations of nonavailability of the articles listed at [25.104\(a\)](#) and the procedures at [25.103\(b\)\(1\)](#) also apply if any of those articles are acquired as construction materials.

(2) *Unreasonable cost*. The contracting officer concludes that the cost of domestic construction material is unreasonable in accordance with [25.605](#).

(3) *Inconsistent with public interest*. The head of the agency may determine that application of the restrictions of section 1605 of the Recovery Act or the Buy American Act to a particular construction material would be inconsistent with the public interest.

(b) *Determinations*. When a determination is made, for any of the reasons stated in this section, that certain foreign construction materials may be used—

- (1) The contracting officer shall list the excepted materials in the contract; and

(2) The head of the agency shall publish a notice in the Federal Register within two weeks after the determination is made, unless the construction material has already been determined in the FAR to be domestically nonavailable (see list at [25.104](#)). The notice shall include—

- (i) The title “Buy American Exception under the American Recovery and Reinvestment Act of 2009”;
- (ii) The dollar value and brief description of the project; and
- (iii) A detailed justification as to why the restriction is being waived.

(c) *Acquisitions under trade agreements*.

(1) For construction contracts with an estimated acquisition value of \$7,443,000 or more, also see [Subpart 25.4](#). Offers of products determined to be eligible products per [Subpart 25.4](#) shall receive equal consideration with domestic offers per [Subpart 25.4](#).

- (2) For purposes of the Recovery Act, designated countries do not include the Caribbean Basin Countries.

25.604 Preaward determination concerning the inapplicability of section 1605 of the Recovery Act or the Buy American Act.

(a) For any acquisition, an offeror may request from the contracting officer a determination concerning the inapplicability of section 1605 of the Recovery Act or the Buy American Act for specifically identified construction materials. The time for submitting the request is specified in the solicitation in paragraph (b) of either [52.225-22](#) or [52.225-24](#), whichever applies. The information and supporting data that must be included in the request are also specified in the solicitation in paragraphs (c) and (d) of either [52.225-21](#) or [52.225-23](#), whichever applies.

(b) Before award, the contracting officer must evaluate all requests based on the information provided and may supplement this information with other readily available information.

(c) Determination based on unreasonable cost of domestic construction material.

(1) *Iron, steel, and other manufactured construction material*. The contracting officer must compare the offered price of the contract using foreign manufactured construction material to the estimated price if all domestic manufactured construction material were used. If use of domestic

manufactured construction material would increase the overall offered price of the contract by more than 25 percent, then the contracting officer shall determine that the cost of the domestic manufactured construction material is unreasonable.

(2) *Unmanufactured construction material.* The contracting officer must compare the cost of each foreign unmanufactured construction material to the cost of domestic unmanufactured construction material. If the cost of the domestic unmanufactured construction material exceeds the cost of the foreign unmanufactured construction material by more than 6 percent, then the contracting officer shall determine that the cost of the unmanufactured construction material is unreasonable.

25.605 Evaluating offers of foreign construction material.

(a) If the contracting officer has determined that an exception applies because the cost of certain domestic construction material is unreasonable, in accordance with section 25.604, then the contracting officer shall apply evaluation factors to the offer incorporating the use of such foreign construction material as follows:

(1) Use an evaluation factor of 25 percent, applied to the total offered price of the contract, if foreign iron, steel, or other manufactured goods are incorporated in the offer as construction material based on an exception for unreasonable cost requested by the offeror.

(2) In addition, use an evaluation factor of 6 percent applied to the cost of foreign unmanufactured construction material incorporated in the offer based on an exception for unreasonable cost requested by the offeror.

(3) Total evaluated price = offered price + (.25 x offered price, if (a)(1) applies) + (.06 x cost of foreign unmanufactured construction material, if (a)(2) applies).

(b) If two or more offers are equal in price, the contracting officer must give preference to an offer that does not include foreign construction material excepted at the request of the offeror on the basis of unreasonable cost.

(c) Offerors also may submit alternate offers based on use of equivalent domestic construction material to avoid possible rejection of the entire offer if the Government determines that an exception permitting use of a particular foreign construction material does not apply.

(d) If the contracting officer awards a contract to an offeror that proposed foreign construction material not listed in the applicable clause in the solicitation (paragraph (b)(3) of 52.225-21, or paragraph (b)(3) of 52.225-23), the contracting officer must add the excepted materials to the list in the contract clause.

25.606 Postaward determinations.

(a) If a contractor requests a determination regarding the inapplicability of section 1605 of the Recovery Act or the Buy American Act after contract award, the contractor must explain why it could not request the determination before contract award or why the need for such determination otherwise was not reasonably foreseeable. If the contracting officer concludes that the contractor should have made the request before contract award, the contracting officer may deny the request.

(b) The contracting officer must base evaluation of any request for a determination regarding the inapplicability of section 1605 of the Recovery Act or the Buy American Act made after contract award on information required by paragraphs (c) and (d) of the applicable clause at 52.225-21 or 52.225-23 and/or other readily available information.

(c) If a determination, under 25.603(a), is made after contract award that an exception to section 1605 of the Recovery Act or to the Buy American Act applies, the contracting officer must negotiate adequate consideration and modify the contract to allow use of the foreign construction material. When the basis for the exception is the unreasonable cost of a domestic construction material, adequate consideration is at least the differential established in 25.605(a).

25.607 Noncompliance.

The contracting officer must—

(a) Review allegations of violations of section 1605 of the Recovery Act or Buy American Act;

(b) Unless fraud is suspected, notify the contractor of the apparent unauthorized use of foreign construction material and request a reply, to include proposed corrective action; and

(c) If the review reveals that a contractor or subcontractor has used foreign construction material without authorization, take appropriate action, including one or more of the following:

(1) Process a determination concerning the inapplicability of section 1605 of the Recovery Act or the Buy American Act in accordance with 25.606.

(2) Consider requiring the removal and replacement of the unauthorized foreign construction material.

(3) If removal and replacement of foreign construction material incorporated in a building or work would be impracticable, cause undue delay, or otherwise be detrimental to the interests of the Government, the contracting officer may determine in writing that the foreign construction material need not be removed and replaced. A determination to retain foreign construction material does not constitute a determination that an exception to section 1605 of the Recovery Act or the Buy American Act applies, and this should be stated in the determination. Further, a determination to retain foreign construction material does not affect the Government's right to suspend or debar a contractor, subcontractor, or supplier for violation of section 1605 of the Recovery Act or the Buy American Act, or to exercise other contractual rights and remedies, such as reducing the contract price or terminating the contract for default.

(4) If the noncompliance is sufficiently serious, consider exercising appropriate contractual remedies, such as terminating the contract for default. Also consider preparing and forwarding a report to the agency suspension or debarment official in accordance with Subpart 9.4. If the noncompliance appears to be fraudulent, refer the matter to other appropriate agency officials, such as the officer responsible for criminal investigation.

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Subpart 25.7—Prohibited Sources**25.700 Scope of subpart.**

This subpart implements—

- (a) Economic sanctions administered by the Office of Foreign Assets Control (OFAC) in the Department of the Treasury prohibiting transactions involving certain countries, entities, and individuals; and

(b) The Sudan Accountability and Divestment Act of 2007 (Pub. L. 110-174).

25.701 Restrictions on acquisitions of supplies or services from prohibited sources.

(a) Except as authorized by OFAC, agencies and their contractors and subcontractors must not acquire any supplies or services if any proclamation, Executive order, or statute administered by OFAC, or if OFAC's implementing regulations at 31 CFR Chapter V, would prohibit such a transaction by a person subject to the jurisdiction of the United States.

(b) Except as authorized by OFAC, most transactions involving Cuba, Iran, and Sudan are prohibited, as are most imports from Burma or North Korea into the United States or its outlying areas. In addition, lists of entities and individuals subject to economic sanctions are included in OFAC's List of Specially Designated Nationals and Blocked Persons at <http://www.treas.gov/offices/enforcement/ofac/sdn>. More information about these restrictions, as well as updates, is available in OFAC's regulations at 31 CFR Chapter V and/or on OFAC's website at <http://www.treas.gov/offices/enforcement/ofac>.

(c) Refer questions concerning the restrictions in paragraphs (a) or (b) of this section to the—

Department of the Treasury

Office of Foreign Assets Control

Washington, DC 20220

(Telephone (202) 622-2490).

25.702 Prohibition on contracting with entities that conduct restricted business operations in Sudan.**25.702-1 Definitions.**

As used in this section—

"Appropriate Congressional committees" means—

(1) The Committee on Banking, Housing, and Urban Affairs, The Committee on Foreign Relations, and the Select Committee on Intelligence of the Senate; and

(2) The Committee on Financial Services, the Committee on Foreign Relations, and the Permanent Select Committee on Intelligence of the House of Representatives.

"Business operations" means engaging in commerce in any form, including by acquiring, developing, maintaining, owning, selling, possessing, leasing, or operating equipment, facilities, personnel, products, services, personal property, real property, or any other apparatus of business or commerce.

"Marginalized populations of Sudan" means—

(1) Adversely affected groups in regions authorized to receive assistance under section 8(c) of the Darfur Peace and Accountability Act (Pub. L. 109-344) ([50 U.S.C. 1701 note](#)); and

(2) Marginalized areas in Northern Sudan described in section 4(9) of such Act.

"Restricted business operations"—

(1) Means, except as provided in paragraph (2) of this definition, business operations in Sudan that include power production activities, mineral extraction activities, oil-related activities, or the production of military equipment, as those terms are defined in the Sudan Accountability and Divestment Act of 2007 (Pub. L. 110-174).

(2) Does not include business operations that the person (as that term is defined in Section 2 of the Sudan Accountability and Divestment Act of 2007) conducting the business can demonstrate—

(i) Are conducted under contract directly and exclusively with the regional government of southern Sudan;

(ii) Are conducted pursuant to specific authorization from the Office of Foreign Assets Control in the Department of the Treasury, or are expressly exempted under Federal law from the requirement to be conducted under such authorization;

(iii) Consist of providing goods or services to marginalized populations of Sudan;

(iv) Consist of providing goods or services to an internationally recognized peacekeeping force or humanitarian organization;

(v) Consist of providing goods or services that are used only to promote health or education; or

(vi) Have been voluntarily suspended.

25.702-2 Certification.

As required by the Sudan Accountability and Divestment Act of 2007 (Pub. L. 110-174), each offeror must certify that it does not conduct restricted business operations in Sudan.

25.702-3 Remedies.Upon the determination of a false certification under subsection [25.702-2](#)—

(a) The contracting officer may terminate the contract;

(b) The suspending official may suspend the contractor in accordance with the procedures in [Subpart 9.4](#); and(c) The debarring official may debar the contractor for a period not to exceed 3 years in accordance with the procedures in [Subpart 9.4](#).**25.702-4 Waiver.**

(a) The President may waive the requirement of subsection [25.702-2](#) on a case-by-case basis if the President determines and certifies in writing to the appropriate congressional committees that it is in the national interest to do so.

(b) An agency seeking waiver of the requirement shall submit the request through the Administrator of the Office of Federal Procurement Policy.

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Subpart 25.11—Solicitation Provisions and Contract Clauses

25.1101 Acquisition of supplies.

The following provisions and clauses apply to the acquisition of supplies and the acquisition of services involving the furnishing of supplies.

(a)(1) Insert the clause at 52.225-1, Buy American Act—Supplies, in solicitations and contracts with a value exceeding the micro-purchase threshold but not exceeding \$25,000; and in solicitations and contracts with a value exceeding \$25,000, if none of the clauses prescribed in paragraphs (b) and (c) of this section apply, except if—

(i) The solicitation is restricted to domestic end products in accordance with Subpart 6.3;

(ii) The acquisition is for supplies for use within the United States and an exception to the Buy American Act applies (e.g., nonavailability, public interest, or information technology that is a commercial item); or

(iii) The acquisition is for supplies for use outside the United States.

(2) Insert the provision at 52.225-2, Buy American Act Certificate, in solicitations containing the clause at 52.225-1.

(b)

(1)

(i) Insert the clause at 52.225-3, Buy American Act—Free Trade Agreements—Israeli Trade Act, in solicitations and contracts if—

(A) The acquisition is for supplies, or for services involving the furnishing of supplies, for use within the United States, and the acquisition value is \$25,000 or more, but is less than \$194,000;

(B) The acquisition is not for information technology that is a commercial item, using fiscal year 2004 or subsequent fiscal year funds; and

(C) No exception in 25.401 applies. For acquisitions of agencies not subject to the Israeli Trade Act (see 25.406), see agency regulations.

(ii) If the acquisition value is \$25,000 or more but is less than \$50,000, use the clause with its Alternate I.

(iii) If the acquisition value is \$50,000 or more but is less than \$67,826, use the clause with its Alternate II.

(2)(i) Insert the provision at 52.225-4, Buy American Act—Free Trade Agreements—Israeli Trade Act Certificate, in solicitations containing the clause at 52.225-3.

(ii) If the acquisition value is \$25,000 or more but is less than \$50,000, use the provision with its Alternate I.

(iii) If the acquisition value is \$50,000 or more but is less than \$67,826, use the provision with its Alternate II.

(c)(1) Insert the clause at 52.225-5, Trade Agreements, in solicitations and contracts valued at \$194,000 or more, if the acquisition is covered by the WTO GPA (see Subpart 25.4) and the agency has determined that the restrictions of the Buy American Act are not applicable to U.S.-made end products. If the agency has not made such a determination, the contracting officer must follow agency procedures.

(2) Insert the provision at 52.225-6, Trade Agreements Certificate, in solicitations containing the clause at 52.225-5.

(d) Insert the provision at 52.225-7, Waiver of Buy American Act for Civil Aircraft and Related Articles, in solicitations for civil aircraft and related articles (see 25.407), if the acquisition value is less than \$194,000.

(e) Insert the clause at 52.225-8, Duty-Free Entry, in solicitations and contracts for supplies that may be imported into the United States and for which duty-free entry may be obtained in accordance with 25.903(a), if the value of the acquisition—

(1) Exceeds the simplified acquisition threshold; or

(2) Does not exceed the simplified acquisition threshold, but the savings from waiving the duty is anticipated to be more than the administrative cost of waiving the duty. When used for acquisitions that do not exceed the simplified acquisition threshold, the contracting officer may modify paragraphs (c)(1) and (j)(2) of the clause to reduce the dollar figure.

(f) Insert the provision at 52.225-18, Place of Manufacture, in solicitations that are predominantly for the acquisition of manufactured end products, as defined in the provision at 52.225-18 (i.e., the estimated value of the manufactured end products exceeds the estimated value of other items to be acquired as a result of the solicitation).

25.1102 Acquisition of construction.

When using funds other than those appropriated under the American Recovery and Reinvestment Act of 2009 (Pub. L. 111-5) (Recovery Act), follow the prescriptions in paragraphs (a) through (d) of this section. Otherwise, follow the prescription in paragraph (e).

(a) Insert the clause at 52.225-9, Buy American Act—Construction Materials, in solicitations and contracts for construction that is performed in the United States valued at less than \$7,443,000.

(1) List in paragraph (b)(2) of the clause all foreign construction material excepted from the requirements of the Buy American Act.

(2) If the head of the agency determines that a higher percentage is appropriate, substitute the higher evaluation percentage in paragraph (b)(3)(i) of the clause.

(b)(1) Insert the provision at 52.225-10, Notice of Buy American Act Requirement—Construction Materials, in solicitations containing the clause at 52.225-9.

(2) If insufficient time is available to process a determination regarding the inapplicability of the Buy American Act before receipt of offers, use the provision with its Alternate I.

(c) Insert the clause at 52.225-11, Buy American Act—Construction Materials under Trade Agreements, in solicitations and contracts for construction that is performed in the United States valued at \$7,443,000 or more.

(1) List in paragraph (b)(3) of the clause all foreign construction material excepted from the requirements of the Buy American Act, other than designated country construction material.

(2) If the head of the agency determines that a higher percentage is appropriate, substitute the higher evaluation percentage in paragraph (b)(4)(i) of the clause.

(3) For acquisitions valued at \$7,443,000 or more, but less than \$8,817,449, use the clause with its Alternate I. List in paragraph (b)(3) of the clause all foreign construction material excepted from the requirements of the Buy American Act, unless the excepted foreign construction material is from a designated country other than Bahrain, Mexico, and Oman.

(d)(1) Insert the provision at 52.225-12, Notice of Buy American Act Requirement—Construction Materials under Trade Agreements, in solicitations containing the clause at 52.225-11.

(2) If insufficient time is available to process a determination regarding the inapplicability of the Buy American Act before receipt of offers, use the provision with its Alternate I.

(3) For acquisitions valued at \$7,443,000 or more, but less than \$8,817,449, use the clause with its Alternate II.

(e)(1) When using funds appropriated under the Recovery Act for construction, use provisions and clauses 52.225-21, 52.225-22, 52.225-23, or 52.225-24 (with appropriate Alternates) in lieu of the provisions and clauses 52.225-9, 52.225-10, 52.225-11, or 52.225-12 (with appropriate Alternates), respectively, that would be applicable as prescribed in paragraphs (a) through (d) of this section if Recovery Act funds were not used.

(2) When using clause 52.225-23, list foreign construction material in paragraph (b)(3) of the clause as follows:

(i) *Basic clause*. List all foreign construction materials excepted from the Buy American Act or section 1605 of the Recovery Act, other than Recovery Act designated country construction material.

(ii) *Alternate I*. List in paragraph (b)(3) of the clause all foreign construction material excepted from the Buy American Act or section 1605 of the Recovery Act, unless the excepted foreign construction material is from a Recovery Act designated country other than Bahrain, Mexico, or Oman.

25.1103 Other provisions and clauses.

(a) *Restrictions on certain foreign purchases*. Insert the clause at 52.225-13, Restrictions on Certain Foreign Purchases, in solicitations and contracts, unless an exception applies.

(b) *Translations*. Insert the clause at 52.225-14, Inconsistency Between English Version and Translation of Contract, in solicitations and contracts if anticipating translation into another language.

(c) *Foreign currency offers*. Insert the provision at 52.225-17, Evaluation of Foreign Currency Offers, in solicitations that permit the use of other than a specified currency. Insert in the provision the source of the rate to be used in the evaluation of offers.

(d) The contracting officer shall include in each solicitation for the acquisition of products or services (other than commercial items procured under Part 12) the provision at 52.225-20, Prohibition on Conducting Restricted Business Operations in Sudan—Certification.

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