



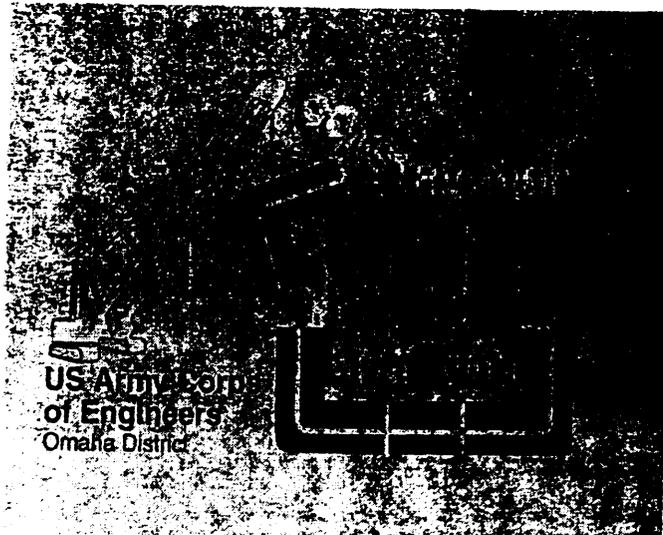
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**US Army Corps
of Engineers**
Omaha District

Contract Management

Cost Reimbursement

FUNDAMENTALS AND GUIDELINES



Construction Division
Contract Administration Branch

DEPARTMENT OF THE ARMY
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Memorandum
No. 415-1-8

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Construction
COST-REIMBURSEMENT FUNDAMENTALS AND GUIDELINES

1. Purpose. Recognizing the need to have standards governing Omaha District, Construction Division, administration of cost-reimbursement contracts and delivery orders, this memorandum sets fundamentals and guidelines for a successful mission. Major emphasis is placed on hazardous, toxic waste, and radioactive (HTRW) projects.
2. Applicability. This memorandum is applicable to all elements within the Construction Division with responsibilities relating to cost-reimbursement contract management as it pertains to HTRW type work.
3. References.
 - a. EP 415-1-266, Resident Engineer Management Guide for Hazardous, Toxic, and Radioactive Waste Projects.
 - b. USACE Prospect Training Manual, Cost Reimbursement Construction Contracts Guide, FY 93.
 - c. DM 415-1-4, Contract Administration.
 - d. DM 415-1-6, Cost Reimbursement Contract Management.
 - e. DM 415-1-7, Internal Procedures for Processing Information for DD Form 1354, Transfer and Acceptance of Military Real Property, 31 July 1995.
 - f. Construction Management Manual, Omaha District.
 - g. Cost Reimbursement Contracting by John Cibinic, Jr., and Ralph C. Nash, Jr., Government Contracts Program, George Washington University.
4. Background. The Omaha District, Construction Division, has unsurpassed cost-reimbursement contract administration experience within the U.S. Army Corps of Engineers. Within the District and various area offices are: area engineers, resident engineers, project engineers, office engineers and technicians, on-site construction representatives, program analysts, and contract administrators who have successfully completed numerous cost-reimbursement contracts. Highly educated and trained employees are required to successfully

execute cost contracts within the HTRW program. The need for District-wide fundamentals and guidelines has become essential to transmit knowledge in this era of change. Thus, the purpose of this memorandum is to set Construction Division standards and guidelines for administration of HTRW cost-reimbursement contracts.

5. Use of Cost-Reimbursement Contracts.

a. The Federal Acquisition Regulation (FAR) provides that cost-reimbursement contracts are suitable for use when uncertainties involved in contract performance do not permit costs to be estimated with sufficient accuracy to use any type of fixed price contract. Construction Division supports the use of cost-reimbursement contracts where a project scope cannot be fully developed because of uncertainties. HTRW sites lend themselves to the use of cost contracts. The use of these cost contracts gives the Government flexibility to administer contracts where changes occur almost on a daily basis. To administer cost-type contracts, however, requires substantial training and a basic change of philosophy from traditional fixed-price contract management. Cost contracts should not be used as a tool to meet project obligation goals as a quick and easy way to award a project, nor should they be used *carte blanche*, without discussion first, if a fixed-price contract would suffice. Furthermore, they should not be used for small dollar projects. The scope of work for a cost-reimbursement contract or delivery order does not have to be prepared to final design; however, design must be sufficient in detail for a "constructable project." If the scope is too "tight," then some of the flexibility may be lost. In other words, a final design is not required in order to award a cost contract; however, before start of actual remedial action physical work, a complete design for any work authorized to be performed is a must. Construction Division believes that a fixed-fee contract is the preferred method versus award or incentive fee types.

b. *"The cost-reimbursement contract is suitable for use when the uncertainties included in contract performance are of such magnitude that cost of performance cannot be estimated with sufficient reasonableness to permit use of a firm-fixed-price contract. In addition, it is essential that: (1) the contractor's cost accounting system is adequate for the determination of costs applicable to the contract, and (2) appropriate surveillance by Government personnel during performance will give reasonable assurance that inefficient or wasteful methods are not being used. (FAR 16.301-2 and 16.301-3)"* (See reference b on page 1: USACE Prospect Training Manual, Cost Reimbursement Construction Contracts Guide, FY 93.)

6. Government-Construction Contractor Relationships.

a. *"Successful management of cost-reimbursement construction contracts requires an understanding and appreciation of the special relationship which exists between the Government and the contractor. . . a strong fiduciary relationship exists between the Government and the contractor under cost-reimbursement contracts. That special relationship alone translates into*

a team arrangement between the Government and the contractor. Therefore, the development and successful implementation of management procedures must evolve from a joint effort, founded on the principle that Government and contractor interests and resources are similar under a cost-reimbursement contract. The common objective of the Government and contractor team must be: (1) execution of the work in conformance with specified requirements, (2) completion of the work on schedule, and (3) completion of the work at the most economical cost. In order to successfully accomplish these objectives, the joint Corps/contractor team must function in an environment of cooperation; free of adversary relationships. The Government, through its Contracting Officer, functions as the team chairman and retains responsibility and authority for management, control, and directive actions as necessary." (See reference b on page 1: USACE Prospect Training Manual, Cost Reimbursement Construction Contracts Guide, FY 93.

b. "The working relationship between the parties to a cost-type contract will vary from contract to contract. The nature of the work and the relative expertise of the parties will often determine the degree of Government participation. The personalities of the parties' representatives who are responsible for performing and supervising the work may also influence the nature of the working relationship. A particularly strong and dominant Government project manager working with a contractor who seeks to please the customer may take control of the job for the Government. On the other hand, an unusually strong willed contractor may resist Government management. The unique risk-allocation provisions of cost type contracts give the parties a greater opportunity to cooperate during performance than is possible in fixed price contracts." (See reference g on page 1: Cost Reimbursement Contracting by John Cibinic, Jr., and Ralph C. Nash, Jr., Government Contracts Program, George Washington University.)

7. Government-Customer Relationships. Construction Division personnel must be sensitive to "customer care" on all projects; not only cost-reimbursement, HTRW projects. However, HTRW projects require increased customer partnering and sensitivity. The customer must be informed at all times of the project status as far as cost and schedule are concerned as well as any other issues such as regulatory or other technical concerns. Construction Division field offices must be aware of any interagency agreements which may state certain limitations of property purchases or any other matter. The customer must be part of the project team.

8. Government-Architect/Engineer (A-E) Contractor Relationships. Effective and timely contract management of the A-E contract is critical to successful remedial action. Timely problem resolution and response to questions and problems raised during remedial action is the responsibility of the engineering technical manager. There may be numerous people contacted by the engineering technical manager in order to obtain necessary facts and obtain the analysis and recommended corrective action. In any event, failure in technical problem solving, either in content or timeliness, will cause remedial action execution to fail. Therefore, A-E relationships and technical manager relationships are of great importance, and should be

integrated into the construction partnering initiatives. Engineering effort associated with remedial design designated contract work is the responsibility of the Engineering Division COR. Engineering effort in support of remedial action designated contract work; i.e., engineering support for construction issues, is the responsibility of the Construction Division COR. This includes responsibility for technical direction, cost control and voucher review and payment.

9. Other Government Oversight (EPA, State, County, etc.) Relationships. It is important that the oversight community is made an integral part of the project planning and execution process. When situations arise where differing conditions are encountered or changes are necessary, these parties must be brought into the decision process or, at least, their concurrence and commitment must be obtained. At the same time, it must be communicated clearly to these parties the importance of timely decision making, and that they must develop a sense of urgency as it relates to these decisions and their impact on the remedial action. Internally, the Omaha District project team must identify which organization (PPM, ED, CD) provides the communication.

10. Omaha District Organization, Management Philosophy, Roles and Responsibilities.

a. Every organization within the Omaha District must clearly understand their roles and relationships as they exist with a cost contract. The roles for remediation or removal actions under HTRW contracts/delivery orders are similar to the roles in traditional work. That is, after project award, Construction Division is tasked with administering the contract and is given COR and normally ACO authority. Adequate and timely communication must exist between the job site personnel and the District office personnel on these HTRW projects. In other words, open communications are required to execute HTRW remediation work.

b. The area/resident engineer (COR) makes decisions relating to construction and contract administration issues. Construction Division must rely on District personnel to provide assistance on technical and administrative/funding issues when needed. The field offices must recognize the need for District personnel to be informed of the project status for their project/program requirements. The communication lines must be open for both the field and the District to trust each other to make decisions which will benefit the project and the customer, rather than an organization or employee. All District headquarters staff are there to support the needs of the field office in execution of the mission.

11. Construction Division, District, Area, Resident/Project Office's Roles and Responsibilities.

a. Construction Division will provide construction/contract management functions similar to our traditional fixed price work. Omaha District, Construction Division, consists of a Quality Assurance Branch and a Contract Administration Branch. The QA Branch provides construction management support primarily through Construction Division project engineers and technical engineers specializing in construction problem solving. The Contract Administration Branch

provides support for contract administration and funding issues from pre-award through final payment and fiscal closeout. Managerial accounting and MIS support is also based primarily in this branch. Special support staff at the District Construction Division are project engineers who specialize as an interface with the District.

b. The area office provides contract administration and cost control support as well as some technical support. The resident office provides the day to day construction management support including its quality assurance role. It must be emphasized that the role of the Corps' on site representative is substantially different than fixed-price work. On cost projects the Government takes a more active role in decision making and project management, versus the traditional fixed price construction quality management role. With this in mind, the field office must have the latitude and responsibility to make timely on site decisions. Furthermore, the field must have ready access to a responsive District team to successfully address the more complex and risky problems associated with HTRW and cost contracts. The Construction Division District project engineer is responsible for making sure that the team is responsive to the field's questions and needs. It is extremely important that all members of the team understand Construction Division structure and roles and responsibilities.

c. It is Construction Division policy to institute operating procedures via the Construction Management Manual, Contract Administration Manual, Resident Engineer Manual, CA guidance memorandums and other procedures and policy guides to facilitate consistent application of standards and guidelines.

12. Construction Division Resources.

a. Construction Division, within the Omaha District, is composed of the division office located within the Omaha District headquarters and four remote area offices, each with its own boundaries. Therefore, program and project managers, technical managers, and others with a need to know, should check with a Construction Division representative to verify the appropriate project assignments within Construction Division organizational structure.

b. Other divisions in the District must have an understanding of the type of resources it takes to administer cost-type contracts. It is understood that the complicated and uncertain world of funding projects makes forecasting award dates difficult. There must be a coordinated effort between divisions of the Omaha District before promises of start dates are made to customers. Construction Division requires substantial up front effort to staff and train employees on both HTRW and cost-reimbursement contract administration. Many potential job sites are not near established area/resident offices, thus requiring PCS or TDY personnel. Once a potential project is identified, the HTRW program manager must contact the Construction Division HTRW program coordinator to allow Construction Division to forecast resources. Again communication between divisions is a must.

1 Dec 96

13. Teamwork/Planning. In order for a cost contract to be successful, a team approach attitude is essential. This includes Corps-contractor relationships as well as a Corps-customer relationship and internal Corps partnering as well. The use of cost contracts allows the Government to be extremely successful in completing a project on schedule and under budget if all can work together. The customer must be educated on the benefits and risks of cost-reimbursement contracting.

14. Traits of a Good Contractor. Traditionally, construction contracts have been awarded based on the low bidder of fixed-price solicitations. In the arena of HTRW cost-reimbursement projects, the contractor is selected based on other factors besides price, with the understanding that the overall cost will ultimately be the most economical. The following characteristics must be evident in a proposal in order to select the most qualified contractor. The ability to monitor, control, and forecast projects costs is of the utmost importance due to the nature of cost-reimbursement contracting. The contractor must have an organization in place which has the experience in managing personnel, materials, and equipment in the construction industry. The contractor must have within the organization a strong program/project manager from which he/she can draw resources. The program/project manager must be familiar with Government contracting and understand his or her own corporate structure and resourcing availability.

a. The contractor's resources consist of:

- (1) Qualified field construction supervisors.
- (2) Accounting expertise in monitoring, forecasting, and controlling project costs.
- (3) Technical support including regulatory, chemistry, and safety.
- (4) Government contract administration experience.
- (5) Procurement and property expertise.
- (6) Design capabilities.

b. The contractor must take an active role in the management of the project with the key project team members. Teamwork and partnering must be evident, along with the willingness to provide the management support and reporting required by the Corps or our customers. Construction Division must be involved in the review of the solicitation to ensure the Request for Proposal (RFP) contains the above criteria. Construction Division must also participate in the source selection committee as a key member.

15. Contract Documents. The field office must have a complete set of contract and delivery order documents. These consist of:

a. Basic Contract.

(1) Portions of the contractor's proposal documents; i.e., teaming subcontractors and prime contract management structure, etc.

(2) The contract.

(3) Contract Management Procedures (CMPs)/Standard Operating Procedures (SOP).

b. Delivery Order.

(1) Scope of work (delivery order or contract).

(2) Final proposal as negotiated including pricing schedule or the Work Breakdown Structure (WBS).

(3) Price negotiation memorandum.

(4) Delivery order DD 1155.

(5) Contractor work plans.

(6) Chemical Sampling and Analysis Plan (CSAP).

(7) Health and Safety Plan (HSAP).

(8) Site history documents (if relevant).

(9) Inter-Agency Agreements.

(10) Memorandum of Agreements (District interface).

(11) COR assignment letter.

(12) ACO assignment letter.

(13) Consent packages, including the subcontract, if pre-approved by Contracting Officer (CO).

(14) All previous correspondence sent by CO to the contractor.

16. Discussion of Key Critical Documents.

a. Contract Management Procedures (CMPs). CMPs define the contractor's business procedures and processes. Items such as the contractor's overtime and relocation policies as well as their Management Information System (MIS) and indirect rates are presented along with a host of others. Construction Division must be involved in the negotiations of the CMPs for the basic contract. These practices will impact contractor's schedule and cost of the project as well as the contract administration functions. Site specific agreements may be made. Again the field must also be involved in these. There are certain business functions that require consistency if multiple CORs are involved. Invoice submission/review/payment, along with procurement (subcontract consent), and contract/delivery order closeout procedures should be included in the CMPs.

(1) Once the CMPs are executed, Standard Operating Procedures (SOPs) shall be developed between individual CORs and the contractor to further define but not change CMP procedures on a site/project basis. It is understood that only the Contracting Officer can modify the CMPs. Construction Division must be allowed input into the negotiations/discussions of any CMP modifications. Once the contract is awarded, it is the responsibility of Contracting Division to incorporate current CMPs into the contract and provide distribution to contract holders. Subsequent modifications to contract CMPs shall be processed through Construction, Engineering, and Program and Project Management CORs prior to execution by the CO. SOPs will be developed and changed by the individual CORs based on fundamentals and guidelines presented in this memorandum.

(2) *"During the selection process, subjects will be discussed which will have a direct impact on the cognizant Corps field office organization, staffing, and management plans. It is important, therefore, that senior Corps field office employees participate in the discussion of the contractor's organization and management plans, phased staffing plan, mobilization and preparatory construction, community life support facilities, definitive outline of standard operating procedures, etc."* (See reference b on page 1: USACE Prospect Training Manual, Cost Reimbursement Construction Contracts Guide, FY 93.)

b. Government Scope of Services/RFP. This serves as a source to establish baseline original scope for the contractor's proposal. Changes made during negotiations should be annotated via an alterations page. The RFP documents shall be distributed to Construction Division in accordance with the following distribution:

Office	Scope of Work	Record of Negotiations
CEMRO-CD-CA	1	1
CEMRO-CD-CM	0	0
CEMRO-CD-QC	0	0
CEMRO-CD-QR	3	3
AREA OFFICE	2	2
RESIDENT OFFICE	4	4

(1) It is essential that the area office review the RFP prior to distribution to the contractor. Construction Division must be involved in review of the scope of services in the RFP to provide input on: constructibility, schedule or phases, development of WADS or work breakdown structure, Government estimate development, pre-award CWE and job setup, and resource management.

(2) The RFP must communicate the Government requirements to the contractor. Before the RFP can be developed, the tools the field office uses to manage a cost-reimbursement construction contract must be understood. For example, work breakdown structures must be developed and integrated into the scope of services to serve as a blueprint for cost control management through the construction phase of the project.

(3) Acquisition management is also critical when developing an RFP. The determination level of proposal; i.e., basic contract, delivery order, or modifications must be fully coordinated prior to issuance to the RFP. Certain business functions in this arena are the responsibility of the CO, and some the COR. The project execution plan (PEP) should be referred to. RFPs for modifications or technical direction during construction are the responsibility of the construction COR. This includes issuance and numbering of modifications. Once a contract is awarded, and after NTP, modification numbering will be controlled via Contract Management System (CMS). (See reference d on page 1: DM 415-1-6, Cost Reimbursement Contract Management, paragraph b, Planning, for a thorough list of items.)

c. Contractor Work Plans. These documents are submitted after contract/Delivery Order (DO) award (project specific) and must be reviewed at the area/resident office. These documents explain the contractor's methodology and approach to the project including phasing and scheduling as it relates to the finalized scope. These documents should be reviewed by the field prior to COR approval.

d. Cost and Schedule Final Proposal. This document serves as the baseline for cost and schedule. The area office must be provided this source document which establishes the negotiated estimated cost and original schedule baseline, along with other negotiation documents.

17. Pre-Award Activities.

a. Planning/Pre-Award. Planning is essential for successful management of cost-reimbursement contracting. Key Construction Division personnel being involved in the planning phase is a must. Key personnel within Construction Division include technical manager, funds manager, and the resident/office engineer. Representation by an individual responsible for cost control management in the field office is imperative during the planning process. It is extremely important that the Construction Division HTRW program coordinator be informed of potential projects and be notified when pre-award activities begin. It is fundamental that the pre-award, award and original baseline current working estimates for a bid or negotiated construction contract be prepared and disseminated by the agent responsible for construction supervision and administration; i.e., Construction Division. Development of off-line pre-award spreadsheets by other offices once the bid or negotiated construction contract is known are counterproductive to efficient and effective construction contract administration and customer communication. Therefore, PMs and TMs must utilize the certified construction pre-award CWE for coordination with customers and higher authority to obtain their approval of the pre-award CWE and obtain subsequent initial funding. Construction Division will rely upon the "Bid Opening Data Sheet" containing pre-award project criteria from the PM/TM for integration into the construction contract or delivery order job set up for developing the pre-award CWE.

b. Pre-Award Negotiation. Construction Division is a critical member of the negotiation team for all remedial action contract actions. For negotiated contracts or delivery orders, the field office engineer or construction representative should be involved in the pre-negotiation objectives, technical analysis of RFPs, and the negotiation with the understanding that Contracting Division is responsible for the process. Construction Division must also be provided a copy of the Government Estimate and the contractor's proposal in sufficient time prior to negotiations so the above preparatory activities can be performed.

c. Pre-Award Contract/DO Setup. Prior to award of the contract/DO, the project criteria must be integrated with the contract/DO scope. This is called job setup; i.e., setting up the job for managerial and financial accounting purposes. As such, the acquisition team involving the PM and the engineering TM must provide project scope and line item funding criteria to construction contract administration personnel for establishment of the construction pre-award CWE. This is critical in order to budget the job, record earnings, pay the contractor, administer modifications and WADS, and close out the job.

d. Pre-Award Funding. The PM then relies on this integrated and team developed pre-award CWE to request the appropriate funding from the customer covering a mutually agreed baseline CWE. Once funding is received, an award CWE is then established by Contract Administration Branch, and award is authorized to Contracting Division. Once an award is made, the award CWE is converted to the original baseline CWE. All this is transferred officially on CMS along with the WAD pay items. In summary, the PM provides the criteria, Cost Engineering determines the estimated cost of each line item, the TM provides the scope of work including the WAD structure and Work Breakdown Structure (WBS), and Construction Division does the actual job setup utilizing the negotiated estimated cost and fee for each project line item. This is performed utilizing CMS. Contracting Division is notified of appropriate award criteria and appropriation data for the award document via memorandum from Construction Division.

18. Use of Standard Operating Procedures (SOPs) Joint Contractor/COR Standard Operating Procedures (Delivery Order/Project Level).

a. SOPs are developed at a level below the CMPs. That is, the SOPs consist of procedures for a specific work site, location or area and shall be developed with each cost-reimbursement contractor. These SOPs shall neither preempt nor conflict with the CMPs, rather supplement or further define procedures for the individual field functions. As previously stated, there are certain business functions that must be consistent between individual CORs and should be stated in the CMPs. These are invoice submittal, review, and payment; procurement (subcontract consent); and closeout. If the field COR has unique requirements on other business procedures, these should be identified between the field COR and the local contractor PM. The content and the actual drafter of these procedures shall be agreed upon. When a contract involves one COR, the contractor and the COR should determine the appropriate content of the SOPs and the actual drafter of the documents. On contracts with multiple CORs, the designated contract manager is responsible to make sure the SOPs are developed and executed.

b. *"A complete and concise standard operating procedures (SOP) document is an important element of the Corps/contractor team management concept for cost-reimbursement construction contracts. It must be realized that Corps and contractor staffing may be assigned to a project from the 'four corners' of the world with little or no experience in working together as a management team. Therefore, the SOP takes on an added importance as the reference source for standard operating policy and procedures under which the contract work will be accomplished. Except for standard operating procedures established by regulation and prescribed for inclusion in the SOP, the contractor should be allowed flexibility in developing the SOP on the basis of the firm's policies and experience. Because of variances in requirements, nature of the work, location, etc., the SOP must be tailored to suit the requirements of a particular contract and the work to be accomplished."* (See reference b: USACE Prospect Training Manual, Cost Reimbursement Construction Contracts Guide, FY 93.)

1 Dec 96

c. Sample Checklist of Items Possibly Included as Standard Operating Procedure (SOP):

- (1) Project history.
- (2) Correspondence procedures.
- (3) Project management plan--detailed functional responsibilities and authorities.
- (4) Subcontracts (extent and procedures).
- (5) Organization charts (include subcontractors).
- (6) Relationships with the using agency.
- (7) Staffing procedures (phased).
- (8) Personnel administration.
- (9) Mobilization-work force.
- (10) Preparatory construction.
- (11) Mobilization and construction plant and equipment.
- (12) Operation, maintenance, and records, and construction plant and equipment.
- (13) Contract drawings, distribution control, and files.
- (14) Shop drawings approval, distribution, and files.
- (15) As-built drawings.
- (16) Operations and maintenance manuals.
- (17) Construction scheduling, Network Analysis System (NAS), and/or Critical Path Method (CPM).
- (18) Construction quality management.
- (19) Operation of materials-testing laboratory and records.
- (20) Construction photographs.
- (21) Management Information Systems (MIS).
- (22) Work Authorization Document (WAD) system, cost management, and control.
- (23) Procurement and subcontracting.
- (24) Property administration.
- (25) Financial management.
- (26) Accounting.
- (27) Contract audit and internal review.
- (28) Contract changes and supplemental agreements.
- (29) Contractor and subcontractor claims.
- (30) Security.
- (31) Safety.
- (32) Turnover procedures.
- (33) Operation and maintenance training.
- (30) Final closeout.

NOTE: This list should be supplemented and revised to suit the requirements of a particular contract.

19. Construction Quality Management.

a. Omaha District, Construction Division, believes in a full-time site presence by a Corps of Engineers' representative on HTRW, cost-reimbursable projects. It is imperative that this representative have the necessary training and support staff in order to execute the mission. The role of the on-site representative is considerably different than on fixed-price contracts. The site representative must be involved in cost and scheduling, and making project resourcing decisions with the contractor and the rest of the project team. The contractor must have a fixed-price mentality as far as resourcing and managing the project. This mentality means that a cost-reimbursement project needs to be managed as efficiently as a fixed-price job. Since the Government bears the primary risk on a cost-reimbursement contract, quality mistakes (both rework from unacceptable quality and excessive quality standards) and associated costs for tear out and rework will be paid for by the Government. Safety and quality assurance remain a critical CQM function.

b. Field project personnel must have technical support which they can utilize. A project chemist and industrial hygienist, along with a regulatory specialist, are normally required. Construction Division recognizes that the TM and PM fulfill a role as well. The construction representative during the remediation phase of a contract/DO must keep the other team players aware of the status of the project. A periodic executive summary report is a good tool to keep all team members informed and to feel ownership of the project as well. It is imperative that the on-site representatives be provided the necessary training and support staff in order to execute the mission.

c. Because of the nature of cost contracts, the construction on-site representative will be required to provide "technical direction" to the contractor. The contract clause on work oversight gives the Government authority to issue technical direction. *"This authorizes Government technical personnel to issue instructions and directions specifying the precise methods contractors should employ to accomplish the work contemplated under the contract."* (See reference b on page 1: USACE Prospect Training Manual, Cost Reimbursement Construction Contracts Guide, FY 93.)

d. Construction activities do not start until after a contractor work plan is approved and a mobilization plan is approved addressing such things as equipment delivery, schedule, staffing, etc. The procedure and timing for submittal of these plans need to be clearly understood between the contractor and the Corps construction representative. Still, recognizing the nature of cost-reimbursement work, conditions will not always be as planned, then technical direction comes into play as a means of corrective action. The way it is supposed to work, the contractor provides recommendations based upon his expertise, then the COR reviews and subsequently approves and issues technical direction. Corps Construction Division personnel are intimately involved in decisions on the job involving the use of equipment, materials, and labor to complete

1 Dec 96

the remedial action; however, they rely on the contractor to plan and develop the proposed methodology.

e. Technical direction shall be documented and cost and schedule impacts identified by the contractor. The contractor should regularly segregate costs and schedule impacts resulting from technical direction from cost or schedule impacts relating to contractor efficiency or effectiveness. All cost and schedule impacts are also incorporated into the regular cost and comparison reports. Construction Division personnel are not to issue out-of-scope direction or make independent technical decisions in which the PM/TM should be involved under the guise of issuing technical direction. The same holds true for any single team member, i.e., independent, uncoordinated technical direction is generally not acceptable. It is imperative that the CE team members have an understanding that uncoordinated actions affecting the contractor may not be in the Government's best interest and undermine the authority of the COR; the COR is the Government individual with authority to provide technical direction. When both remedial design and remedial actions are underway the players must be aware that independent actions may impact other activities. The TM, Engineering Division COR and the Construction Division COR must coordinate funding, decision making and subsequent directions to the contractor. Further CORs should not usurp another's authority. For example, an Engineering Division COR should not issue a delivery order modification to the contractor which affects construction remediation work. Nor should Construction Division issue a modification affecting the remedial design. (Refer to Changes/Modifications for further discussion of technical direction and changes.)

(1) *"The use of cost-reimbursement contracting does not alter the requirements for quality assurance by the Government and quality control by the contractor. The rights of the Government to inspect, test, accept, and reject are adequately defined in the appropriate Contract Clauses of the contract. Procedures for the Government's and the contractor's role are defined in ER 1180-1-6, Construction Quality Management, in the FAR Clauses, and in the contract documents.*

(2) *Under cost-reimbursement contracting, the contractor is reimbursed for actual allowable costs involved in fulfilling the terms of the contract. Even though the contractor is required to provide the management and organization necessary to obtain quality, he does not contractually bear the risk inherent in its accomplishment. Maximum emphasis, therefore, must be placed upon the prevention of faulty work so as to avoid the necessity for corrective measures after the work has been placed, the cost of which will be on the Government's account. This concept does not preclude the tear out, if such is necessary for the proper function of the facility, but it does place the emphasis on good quality management procedures on both the contractor and the Government. Prevention of nonconforming construction is what the contractor and Government forces must achieve. The three step QC/QA inspection approach (preparatory,*

initial, follow-up, and final inspections as outlined in the referenced ER) will be implemented by the prime, as well as all subcontractors.

(3) When appropriate, the contractor will be required to follow firm-fixed-price procurement procedures for all subcontract solicitations. Since this procedure places the risk of contract compliance upon the successful subcontractor, the contractor must incorporate in the invitation for bids (IFB) or Request for Proposal (RFP) those clauses which explain the contractor's role in quality assurance and the subcontractor's role in the control of quality. As required by the appropriate contract clauses and special contract clauses of the contract, the contractor is responsible for organizing and developing a system of control necessary to procure and install materials and equipment in strict compliance with contract requirements. Organization and operating procedures concepts are contained in the special provisions of the contract and in the referenced ER. The contractor carries the quality assurance role for subcontracts which he awards. This simply says that he must incorporate into his subcontracts those clauses necessary to hold the subcontractor responsible for organization and quality control procedures which ensure materials, equipment, and installation are in compliance with contractual requirements. In his quality assurance role, the contractor must assure himself that the subcontractor is, in fact, complying with the terms of the contract. The rights of the Government as contained in the contract clauses must be protected through the incorporation of an inspection, testing, and monitoring system which will assure, to the maximum extent possible, that the contractor is, in fact, performing in compliance with the contract. This must be accomplished through periodic critical inspections of the work against other contract requirements and the contractor's attitude towards compliance.

(4) Under cost-reimbursement contracting, there should be minimal problems in obtaining proper organization and attitude towards providing quality work. Costs associated with the system are allowable costs and create no cost risk for the contractor. Those organizational determinations and operational concepts described in earlier paragraphs will only be effective if proper roles are established. Under the role of control, the contractor cannot assume a pure inspection posture which attempts control through criticism of completed work. This posture denies the existence of control.

(5) The control role connotes the following concepts: (1) Contractor management must know and understand contractual requirements before procuring materials and/or installing work; (2) Contractor must order materials and equipment which comply with contract requirements or notify the Government of any proposed deviation which must be approved before procurement is initiated; (3) Contractor may recommend visits to the site of manufacturing. Government must approve these requests before reimbursement can be allowed; (4) Contractor must verify that materials and equipment delivered and to be incorporated into the completed work, in fact, do comply with contract requirements and approved shop drawings and materials. He must also confirm that all certificates, spare parts lists, O&M manuals, and other required documents are

1 Dec 96

on-hand and cataloged; (5) Contractor must predetermine storage and protection requirements and make the appropriate arrangements; (6) Contractor must comply with all clauses in the contract related to Government furnished property as regards records, security, and other matters for all materials and equipment delivered to the site for incorporation into the contract and for which payment has been made; (7) Once a definable feature of work is ready for installation, and when there is a change in the crew structure after start of work, the contractor must perform an initial inspection to communicate quality requirements to each new workman and to obtain from each a demonstration of their capability to perform; (8) As work progresses, the contractor must monitor the work to determine the effectiveness of his foremen in continuing to obtain the specified quality from crews under their direction.

(6) Government's Quality Assurance - Preliminary Stage: (1) Quality Assurance (QA) personnel must have a clear understanding of construction quality requirements before any discussions with the contractor or examination of work is performed; (2) QA personnel must know the contractor's plan of operation and organizational procedures to obtain quality; (3) QA personnel responsibility assignments and authority to act must be clearly defined.

(7) During Construction: (1) Conferences between Quality Assurance (QA) and Quality Control (QC) personnel must be held on a regularly scheduled basis and on special occasions, if required, to emphasize controls and effectiveness of operations, to prevent deficiencies, and to discuss inter-relationships between QA and QC inspections on various contractor operations; (2) Be present during selected Quality Control meetings which the contractor schedules; (3) Make continuous critical analyses of work as it is being placed to determine contract compliance. Discuss any non-compliance with the Contracting Officer and determine immediate action to be taken. If work is to be torn out and replaced, it must be done promptly in order that costs to replace do not continue to grow; (4) QA personnel must assure proper calibration of the contractor's testing equipment and verify the proper application of testing procedures. He will recommend frequency and location of Government testing to further confirm the adequacy of contractor testing procedures; (5) QA personnel confirm the adequacy of submittal controls by the contractor and his operational control of documentation on materials and equipment delivered. They will confirm the location of storage and the quantity of material delivered, but not installed, for which payment is requested; (6) QA personnel will relate all work being performed at the job site to the contractor's schedule and maintain a dialogue with the contractor on related scheduled work activities. When the contractor is delayed on any work activity, he will record the facts and present them to the Contracting Officer for proper incorporation into the schedule. He will study the scope of all WADs and work orders, ascertain job conditions at issuance of the NTP for the work, and participate in the development of NAS logic to incorporate the directed work into the contractor's schedule. Once an NTP is issued to the contractor for all directed work which affects the schedule, QA personnel must make certain the schedule is changed and work continues to be monitored based on the revised schedule.

(8) *MIS Reports*. The reports generated by the MIS must be factual records of the contractor's daily quality control activities and resulting actions. As such, the contractor should stress major components of the report as follows: (1) Contractor or subcontractor operations during the reporting period and their respective areas of responsibility; (2) Phase or phases of construction underway during the reporting period; (3) Monitoring of materials and equipment upon arrival at the job site for compliance with submittal approvals, damage during transit, and proper storage; (4) Type, number, and locations of inspections and tests; (5) Results of inspection, including nature of deficiencies observed and corrective actions taken or not taken; (6) Report of test performance, including those specified, with results of the tests, including failures and remedial action to be taken; (7) Offsite surveillance activities; (8) Job safety; (9) Construction equipment rented, contractor or Government usage hours available, and working, repair, or standby time." (See reference b on page 1: USACE Prospect Training Manual, Cost Reimbursement Construction Contracts Guide, FY 93.)

20. Cost and Schedule Control, Monitoring, and Forecasting.

a. It is of the utmost importance that the initial overall contract RFP identify the need for a contractor with capabilities to excel in performance of this activity, and further that the selection committee identify this as an important criteria and select a contractor accordingly. Construction Division believes that cost and schedule control, monitoring, and forecasting is of the utmost importance in the management of cost-reimbursement contracts. The field office contract manager administers the contractor's control of the construction contract cost and schedule. Job setup is a critical task which establishes the cost and schedule management baseline. It is critical that the Government and contractor each set up the job baseline for scope, dollars, and schedule as agreed at the time of award. Government job setup is discussed in the paragraph entitled "Pre-award." The contractor job setup procedure is discussed in the CMPs and at the contractor home office visit and/or other conferences. The Government's job setup goes only down to the WAD or pay item level. The Government defined WAD level should fit cost control needs, i.e., the level of detail should be only as required by the Government to control contractor costs and/or segregate appropriated project costs. The contractor's accounting and job setup will include the full spectrum of the WBS and to the full detail necessary. Construction Division personnel will rely upon the contractor's accounting to the maximum extent possible for managing costs. When there exists only one COR for a given contract/contractor, the construction COR has a broad range of flexibility in how they designate and allocate WADs and subsequent work orders. However, when multiple CORs are using a contract that involves multiple area offices for administration, then to the extent possible, individual construction CORs should strive to be consistent in their application of WAD categories, and degree of work document authorizations.

b. *"The discussion of cost-reimbursement contract administration (cost control) centers on the principal contract clauses (Limitation of Cost) which give the cost-reimbursement contract*

its unique character. The most difficult and important responsibility faced by the parties in administering cost-reimbursement contracts is that of monitoring and controlling the funding (costs). [Emphasis added]. Legal and practical considerations require that both parties continually focus on contract funding (costs) and its relationship to performance." (See reference g on page 1: Cost Reimbursement Contracting: John Cibinic, Jr., and Ralph C. Nash, Jr., Government Contracts Program, George Washington University.)

c. Construction Division practice is that the requirement under the Limitation of Cost clause in the contract for notification to the CO at the 75 percent threshold applies to each individual WAD, not the overall contract instrument. However, it is also understood that the COR should be fully aware of the status of the contractor's utilization of obligated funds and should not rely upon this requirement to supplement the responsibility for the Government's cost monitoring and control.

21. Reporting.

a. The contractor should provide accurate and timely cost and schedule reports on a near real time basis consistent with their approved system and the contract CMPs. Most HTRW remedial action projects require timely and accurate cost data in order to make timely decisions. This may require the contractor to have an on-site cost tracking system that acts as a shadow system to their main frame accounting system. Specific format requirements for reporting as well as frequency of reporting will be defined and discussed in the home office visit and applicable SOPs. If individual CORs require supplemental reporting, or more detailed analysis, the COR may request it from the contractor on an as-needed basis. Reformatting existing reports requirements should be avoided.

b. *"The maintenance of accurate and timely records of actual and estimated costs are critical. Timely identification of and reporting of potential overruns provide the parties the opportunity to take alternative courses of action. After the fact recognition and notification of overruns precludes cost saving changes in work statements and results in delays while additional funding is sought or cancellation of the project is considered."* (See reference g on page 1: Cost Reimbursement Contracting by John Cibinic, Jr., and Ralph C. Nash, Jr., Government Contracts Program, George Washington University.)

c. *"Under firm-fixed price contracts, Corps emphasis on management and control turns to quality and time management performance. The contractor's primary management emphasis is on cost control since his profit margin relates directly to his total actual costs. The Corps management and control emphasis changes dramatically when a cost-reimbursement contract is used. Corps management must become involved in cost control, in a very detailed sense, in order to successfully control costs, within budget, under cost-reimbursement contracts. Unless the particular contract form includes fee incentive for control of costs, the contractor may be*

expected to assume minimal management responsibility for control of costs. *Effective cost control measures must be implemented concurrent with the first obligation or expenditure under a cost-reimbursement contract.*

d. *Like cost, time management becomes a shared responsibility between the contractor and the Government, with the Government assuming the risk of an on-time completion and absorbing the impacts of late delivery. Because of this the Government assumes a role which closely monitors the schedule and makes decisions on technical direction based not only on costs but on impact of time extension. This micro-management goes as far as expediting approvals on shop drawings to assure on-time or even early completion.*" (See reference b on page 1. USACE Prospect Training Manual, Cost Reimbursement Construction Contracts Guide, FY 93.) (See reference d on page 1: DM 15-1-6, Cost Reimbursement Contract Management, for details in WAD management.)

22. Property Management Issues.

a. Property is a tangible asset that can be either categorized as real or personal. Real property includes land, structures, buildings, leasehold improvements, natural resources, etc. Personal property is all other property such as office furniture and equipment, ADP software, fixed and floating plant, etc. that is owned by either the contractor or the Government. Under cost-reimbursement contracts, both types of Government property may arise from two general sources: (1) items furnished to the contractor by the Government for performance of the work; and (2) property acquired by the contractor for performance of the work. The Government property clause, FAR 52.245-5, governs the vesting of title of contractor-acquired property in the Government. Personal computers and software have FIP/FIMR requirements if they are purchased.

b. Under cost-reimbursement contracts, the FAR requires that the contractor provide policies and procedures for contractor's use and management of Government property, and reporting, redistributing, and disposing of contractor inventory. These are included in the CMPs, which should also include designated Corps and Contractor property officials. Furthermore, site specific SOPs may need to address the transfer of property as it relates to the individual base or agency where the work is being performed. This includes both Government-furnished property and property acquired by the contractor under the contract. Normally under HTRW projects, there is minimal Government-furnished equipment/property. Some Federal agencies such as the EPA limit the amount of property that can be purchased, which is stated in the Interagency Agreements (IAG).

c. When property is acquired under a cost-reimbursement contract/delivery order, the contractor is responsible for the entire spectrum of property management which consists of: acquisition, receiving, property records, storage, warehousing and stock control, property

1 Dec 96

consumption, utilization and maintenance, physical inventory, and disposition of property, and asset accounting.

d. While real property is by definition non-expendable, personal property acquired by the contractor may be either expendable or non-expendable (non-consumable). For example, personal expendable property may consist of plywood or a plastic tarp to construct a decontamination area. This material will be consumed during the project duration. A non-consumable personal property item may consist of a portable generator, a portable pump, or even a purchased telephone that has a useful life at project completion. It is Construction Division's practice to instruct the contractor to hold purchasing of non-consumable personal property not incorporated into the work to a minimum. In most cases, items should be rented; however, on long duration projects, the contractor shall perform a rent or buy analysis prior to the purchase, and notify the Government according to contract and CMP/SOP provisions.

e. For expendable (consumable) items, the contractor shall keep an inventory log stating the description, quantity received, quantity issued, balance on hand. This works well for inventory type items such as PPE (personal protective equipment). On one-time purchases, the item should be logged, and its final disposal noted; e.g., plywood purchased for construction of a decontamination pad logged and recorded as disposed as special waste. The Government is responsible for having the documentation in the file, that these items were in fact consumed or expendable within the life of the project.

f. For non-expendable items, the contractor is required to account in detail for all items in accordance with the contract/CMPs. On all contracts/delivery orders, the Government representative will address the need for final property documentation. This includes documentation for property integrated into the work (real property), and property excessed and not incorporated into the work (personal property). The development and disposition of real property is reflected in the initial DD Form 1354, Transfer and Acceptance of Military Real Property, in accordance with DM 415-1-7. This document includes all the costs associated with that asset; i.e., construction remediation, engineering design, Government supervision and administration, and Government supervision and review (in-house engineering). If a DD Form 1354 document is not required, as verified with the user, it must be provided in writing to the District Contract Manager with other closing documents. Disposition of property not incorporated into the work shall be coordinated with the user and documentation incorporated into the official file. Non-expendable personal property remaining at the end of the project considered under the Government's ownership must be transferred to an appropriate agency and its receipt properly documented via hand receipt, transfer letter, or other appropriate documentation.

g. In lieu of detailed inventory and property management of non-consumable personal property of low value such as small tools, ladders, shovels, etc., it is suggested that costs of

these items be indirectly costed and recorded by the contractor in a small tools or similar revolving account. The contractor may already have this indirect rate established within his/her approved cost accounting standards.

23. Subcontract Consent.

a. FAR 44.201-2 states the requirements for subcontract consent. In general, the FAR requires Government review and formal consent of prime contractor proposed subcontract actions. It also provides for advance notification procedures, at the discretion of the contract CO, in lieu of prior consent of proposed procurements (when the contractor has a fixed procurement system approved by the cognizant Federal Government CO). Subject to coordination with the CO, it is Construction Division practice to provide prior subcontract consent on procurements over \$100,000, and allow advance subcontract notification on procurements between \$25,000 and \$100,000. Government consent can be issued by the COR; this is recognized as the best organizational level at which to grant consent. Review time by the Government should be minimal in order not to impact the contractor's procurement schedule. Procurements less than \$25,000 do not require consent or formal advance notification; however, advance oral notification to the COR is considered an essential practice. A formal advance notification package shall include the same information as a consent package. Advance notification means the COR must be informed of a pending subcontract action prior to its execution. If the contractor fails to submit a consent package (when required), then the contract action must be ratified after the fact in order for related costs to be allowable.

b. Cost-reimbursement subcontracts are discouraged because of the difficulty administering them and the added risk to the Government. In most instances, in lieu of a cost-reimbursement subcontract, a unit priced or firm-fixed price subcontract can be a better alternative. Before a contractor initiates any activity relating to a cost-reimbursement subcontract, and before formal consent by the COR, written approval by the Contracting Officer is required.

c. In any event, prior to the issuance of a contractor's request for proposal or bids, the Construction Division COR must be involved in the scoping of the proposed work, to review payment clauses, proposing schedules, completion dates, special clauses, drawings, specifications, other terms and conditions, etc. Some consent packages are submitted at the time of initial contract/delivery order negotiation and may be given consent by the Contracting Officer at time of award. In such cases, it is essential that the complete consent package, including the scope of work, plans and specifications, be distributed to the Construction Division COR. It must be emphasized that typically the majority of direct costs on HTRW cost-reimbursement contracts consist of subcontract dollars. It is also important that the Government be involved in the consent of subcontracts, since the subcontract action may cause a significant variance from the approved budget.

1 Dec 96

d. The fact a contractor has an approved purchasing system does not mean the COR may rely solely on the contractor's judgement. The COR should place emphasis on the contractor's ability to scope, solicit, analyze, and award a subcontract to meet the Government's objectives on a specific contract requirement. Complete and current procurement documentation is also critical to the acquisition and the Government's interests. Further reason for COR involvement in the contractor's acquisition process is to encourage competition (i.e., was local and small business solicited); to protect Government's interest concerning degree of risk associated with the subcontract type that will be procured (cost, fixed price, unit price); critique efficiency of subcontract packaging (i.e., large subcontracts with many scope items vs. small packages); review of scope of work, FAR flow down clauses for bidability and constructibility; and assure unique customer requirements are incorporated. Further the COR must verify special requirements and justifications are performed when sole source negotiation or proprietary specifications are used. Further the COR must review competitive negotiation processes for sufficiency when sealed bidding or quotes are not used.

e. Despite the Government's involvement in the review and/or consent of subcontract actions, it is the contractor's responsibility to perform contract acquisition and management of subcontracts in accordance with its subcontract documents and the contract management practices incorporated in the prime contract. Subcontract changes are an integral part of the job. As such, the Construction Division COR must be notified in advance of changes and should receive copies of formal documents. Prior consent or advance notification threshold requirements for subcontract modifications are the same as initial subcontract action thresholds. Ratification of a subcontract award is required when a modification causes a subcontract to exceed the prior consent threshold. These procedures and practices also apply to pre-approved teaming subcontracts. Even though teaming arrangements exist at the formation of the prime contract and have concurrence by the Contracting Officer, the COR still is responsible to review on a case-by-case subcontract basis that the Government's interests for competition vs. teaming, as well as other technical and administrative objectives are met. Teaming arrangements are generally formed to strengthen a prime contractor's competitiveness in an area of importance to the Government, (for example, small business utilization goals). These teaming arrangements represent the best available expertise of those firms competing for the initial contract. After award, there may be instances, however, when the Government, through the COR, may elect to require quotes from currently available sources in lieu of utilizing the teaming contractor. The COR must use good judgment in determining when this may be appropriate by weighing such things as locally available competitive sources against the Government's obligations to support the contractor's teaming arrangements. (See reference d on page 1: DM 415-1-6, Cost Reimbursement Contract Management, for consent approval formats and required documentation.)

24. Small Businesses (SB). It is Omaha District Construction Division's practice to support the Small Business Program. Under the cost-reimbursement arena, the Government is involved in

the business decisions as far as awarding SB subcontracts via the subcontract consent. The prime contractor must actively solicit SB subcontractors. It is normal practice to award a fixed-price subcontract based on price; however, if the SB is within the competitive range, the Government may be asked to consent to a subcontract with an SB who is not the low bidder. Thus the guideline is that SB subcontractors will be utilized to their fullest extent, as long as the pricing is within the competitive range.

25. Invoicing, Payment, and Audit Procedures.

a. Invoicing. *"The fundamental Government obligation under a cost-reimbursement contract is to reimburse the contractor for certain costs it incurs during performance. These costs are referred to as allowable costs and the costs which are not reimbursable are called unallowable costs. The primary contractual provisions describing allowable and unallowable costs are portions of procurement regulations commonly referred to as Cost Principles, which are referenced into the contract. Cost Principles are usually supplemented by Contract Management Procedures which were specifically negotiated for the contract. Contractors who are subject to the Cost Accounting Standards (CAS) must also follow certain accounting methods with respect to the contract. Thus for many contracts, whether or not costs can be reimbursed depends on whether the costs are 'allowable' and whether the contractor has employed required accounting methods to record and report the costs."* (See reference g on page 1, Cost Reimbursement Contracting: John Cibinic, Jr. and Ralph C. Nash, Jr., Government Contracts Program, George Washington University.)

b. Audit support. Contractors have one cognizant Federal audit agency to report to. Usually the Defence Contract Audit Agency (DCAA) is their cognizant auditor. However, the EPA or DOE may be their cognizant auditor. All audit actions must pass through their office. This includes all provisional payments and final payments. The cognizant audit agency is responsible for reviewing the contractor's indirect rates. The actual acceptance of the contractor's indirect rates resides with the Federal Government's ACO for the contractor.

c. Payment. *"A major feature of cost-reimbursement contracts is the fact that payment for all allowable costs of performance is made on a regular basis as the work is performed. This provides a steady flow of funds to contractors to assist them in financing the work under the contract. Such regular payment is the Government's principal contractual obligation under the contract. There are two phases of the payment process: interim payments based on a contractor's incurred costs which the Government may adjust if later audits reveal costs are not allowable, and final payment made when the Government and the contractor agree that the contractual relationship between them has been performed. Final payment has legal consequences as well."* (See reference g on page 1: Cost Reimbursement Contracting by John Cibinic, Jr., and Ralph C. Nash, Jr., Government Contracts Program, George Washington University.)

1 Dec 96

(1) Interim Payment. *"One of the critical differences between cost-reimbursement and fixed price contracts is the relatively low working capital required under cost-reimbursement contracts due to the regular payments based on the contractor's incurred costs."* The FAR clause, Allowable Cost and Payment clause, FAR 52.216-7, allows the contractor to invoice frequently and allows the Government to reimburse the contractor in a reasonable time frame. (See reference g on page 1: Cost Reimbursement Contracting by John Cibinic, Jr., and Ralph C. Nash, Jr., Government Contracts Program, George Washington University.)

(2) It is Omaha District Construction Division's practice to perform an initial review of the invoice package by the field office prior to payment. This field review is primarily of direct costs. This review is at the field level which includes contractor costs such as field labor, home office labor, equipment, subcontracts, field purchases, inventory, and analytical costs as well as other direct costs. These costs must pass two tests in order not to be questioned: is it a justified cost to the project, and is it reasonable? Reasonableness is concerned with, is the cost considered "fair and reasonable" as determined by the COR. A cost must only fail one of the tests for a cost to be questioned. In addition, verification that the costs are in accordance with any advance agreements, have been authorized under a WAD, and/or if the costs are a result of a subcontract, that the contract has a consent (when required). It must be emphasized that the field review is to identify questioned costs.

(3) *"Paragraph (g) of the Allowable Cost and Payment clause permits the Government to audit payment invoices at any time and to make adjustments for prior over-payments if such audit discloses that costs included in the invoice where not allowable. This has the effect of making interim payments provisional. Under certain circumstances, however, even a provisional payment could result in an allowability determination binding on the Government. Government employees must exercise great care in dealing with allowable cost determinations in the payment process. As long as contracting officers process interim vouchers for payment without having decided on the allowability of the claimed costs, the courts have held that it preserves the Government's right to question those costs at a later date..."* (See reference g on page 1: Cost Reimbursement Contracting by John Cibinic, Jr., and Ralph C. Nash, Jr., Government Contracts Program, George Washington University.)

(4) It is Omaha District Construction Division's practice to pay the total invoice costs as submitted, with any questioned costs concurrently recorded by the contractor on a subsidiary ledger for future resolution. However, if the contractor's invoice package is considered defective, payment may be withheld until the COR is satisfied with the documentation. Also, a cost may be withheld from the invoice total or treated as retained percentage, if it is of a substantial nature.

(5) When contract/delivery order costs are approaching the funding level, questioned costs may also be withheld to protect Government interests. Every effort shall be made to review the packages and process the payment in a timely manner to minimize the contractors' account receivables. Fixed fee shall be paid as a percentage of physical completion not as a percentage of costs incurred. The Government has the right to withhold up to 15 percent of the fixed fee as retainage, which shall be exercised only in unusual cases. All allowable direct and indirect costs are not subject to retainage as these are considered to be reimbursed expenses. Award fee or incentive fee will be calculated based on the contract CMPs. It must be stated that fixed fee is the preferred method of fee calculation.

d. Documentation.

(1) Content, distribution and the number of copies of the invoice must be prescribed to the contractor. It is Omaha District Construction Division's practice to require copies of source billing documents as part of the invoice package. These consist of invoices, purchase orders, payrolls, and, in some instances, time sheets as backup to the costs submitted in the invoice.

(2) Distribution should consist of copies of the invoice to the area office for official filing, and a copy to the field office for review. Copies may be required at the Omaha District and to the DCAA. Full backup may not be required for the DCAA on interim billings.

(3) It is Omaha District Construction Division policy not to release detailed invoice package documentation to outside parties (including customers) since they contain proprietary cost and pricing information.

(4) *"Requests for interim payment are made on public voucher forms SF 1034 and SF 1035. The total amount claimed and an indication that interim payment is being requested is inserted in the SF 1034 along with the contractor's identification and contract number. Defense Contract Audit Agency (DCAA) pamphlet 7641.90, April 1986, gives guidance to contractors on the preparation of vouchers. It states that the SF 1034 is to contain a cumulative statement of incurred costs as well as the costs incurred during the period under consideration. A cost element breakdown is included for each of these figures. The contractors requested fee payment for the period as well as the cumulative payment may also be included."* (See reference g on page 1: Cost Reimbursement Contracting by John Cibinic, Jr., and Ralph C. Nash, Jr., Government Contracts Program, George Washington University.)

(5) Each SF Form 1035 shall include segregated costs by WAD, if applicable, and include the budget amount, allocated amount, current incremental billed amount and cumulative amount billed. Along with an SF Form 1034 and 1035, the field representative will prepare a payment document, ENG Form 93 and appropriate finance and accounting feeder report.

DM 415-1-8
1 Dec 96

Where the finance officer is not in the Omaha District (EPA, NAF, etc.), appropriate coordination with finance officer will be performed. (Refer to SOP drafted by CEMRD-AO-O for further instructions.

e. Final Payment.

(1) The first step in the process is to have the contractor submit an invoice stating that it is a final invoice. The contractor then must submit a cost schedule, separating direct costs by the fiscal year they occurred. Certain certifications must be forwarded as well. This data will be forwarded to the area office which in turn will submit it to the DCAA. They will review the direct cost data, and approve it. The contractor has the right to amend his/her final invoice prior to the schedule submission to the DCAA, for an omission or error. Once the direct costs have been reviewed, the invoice will be held until the final indirect rates have been approved by the DCAA. This means the final invoice will be held and not finalized.

(2) On cost delivery orders, final payment can be via another avenue called quick closeout which is allowable under the FAR. This procedure is similar to the above scenario, except that the final indirect rates are "negotiated" and not based on the final indirect rate approval process. This allows smaller delivery orders to be closed out in a timely manner.

(3) At the completion of the job, the contractor should submit all remaining known reimbursable costs based on its completion report and approved provisional or audited overhead rates and the total fee. It is Construction Division's policy to pay all these known costs and fee at time of completion, and not keep any retained percentage. After final audit, adjustments to the contract or delivery order obligation and corresponding final payment will be made. It is the Omaha District practice to close out delivery orders in a timely fashion. Omaha District will pursue closeout diligently.

f. Interim Billing Rates and Final Indirect Cost Rates.

(1) *"Final indirect cost rates are established for all cost reimbursement contractors after each accounting period has been closed, therefore, the final rates are not available for use in interim vouchers. The interim vouchers are prepared using estimated overhead rates established temporarily for interim reimbursement of incurred indirect costs until the final indirect rates are established."* (See reference g on page 1: Cost Reimbursement Contracting by John Cibinic, Jr., and Ralph C. Nash, Jr., Government Contracts Program, George Washington University.)

(2) It is wise to contact the cognizant DCAA office to discuss these estimated rates and to forecast when the final rates may be determined.

26. Changes/Modifications.

a. Many HTRW projects are performed using indefinite delivery contracts. As such, there may be modifications to the umbrella contract as well as modifications to individual delivery orders. The modifications to the umbrella contract are by definition "no cost" changes that are executed only by the Contracting Officer. A typical modification may be to add or change contract management practices (CMPs), incorporate a paying office, change geographic boundaries, exercise option years, etc. Modifications to delivery orders may involve changes to the delivery date or obligation dollar amount in addition to administrative "no cost" changes. In either event, all modifications must be processed to include internal review within Construction Division in accordance with existing established procedures as outlined in DM 415-1-4, Construction Contract Administration. For changes to indefinite delivery umbrella contracts, the Construction Division COR(s) and Construction Division shall review and concur in the proposed change prior to execution by the CO.

b. *"The authorization to use cost reimbursement contracting is normally based, in part upon the fact that definitive plans and detailed definition of scope are not available. Therefore, due to the nature of the work to be performed, change orders are used to a limited extent only. The contract/delivery order scope as prepared for use in the RFP must be general in nature and yet broad enough so that the detailed requirements can be defined and incorporated as the design and work progress. The fee included in the contract is not subject to change as long as the work being defined in the completed design is within the scope of the basic contract statement of work."* (See reference g on page 1: Cost Reimbursement Contracting by John Cibinic, Jr., and Ralph C. Nash, Jr., Government Contracts Program, George Washington University.)

c. Distinguishing technical direction and changes: *"Because instruction and orders issued under the Technical Direction clauses call upon the contractor to perform the work originally contemplated in the scope of work, and thus covered by the fixed fee, such direction does not entitle the contractor to recover any additional fees. On the other hand, when the contractor has been required to perform work beyond that originally contemplated (and not covered by fee), the contractor is entitled to recover additional fees pursuant to the Contract Changes clause. It is because of this question of recovery of additional fees that the distinction between technical direction and changes is an important one."* (See reference g on page 1: Cost Reimbursement Contracting by John Cibinic, Jr., and Ralph C. Nash, Jr., Government Contracts Program, George Washington University.)

d. Changes to contract or delivery order dollar obligation amounts may involve either: (1) contractor efficiency and/or overrun/underrun cost variances or, (2) cost variances caused by scope changes and/or technical direction from the Government. In both cases, a contract/delivery order modification is required to adjust the estimated cost. In the second case, a scope change may be cause for an adjustment in the contractor's fee.

e. Definition of a Fee Bearing Change.

(1) Construction Division believes that in order to determine if a change is fee bearing or not, there are three factors to examine which require an ad hoc analysis of all relevant facts.

(a) Will there be a change in the statement of work as reflected in the RFP?

(b) Will there will be a substantial change in time for performance?

(c) Will there be a substantial change in the contractor's key personnel and level of effort of its management?

(2) Existence or omission of one or more of these factors may be sufficient in and of itself to tip the scale one way or the other. The determination factors cannot be defined any further. Therefore, the Construction Division believes that determinations of fee bearing and non-fee bearing changes are usually best determined by the Construction Division COR.

f. Modifications involving changes in the statement of work should be negotiated and supported by an independent Government estimate. Modifications involving funding adjustments to cover revised estimated costs at completion may be supported by the contractor's cost and comparison report, but approved by the appropriate Construction Division employee. The processing of modifications are otherwise similar to defined procedures in DM 415-1-4, Contract Administration.

27. Closeout.

a. Dealing with the Contractor.

(1) Completion Reporting and Processing. The closeout procedure starts with the resident engineer assuring all provisions of the contract are completed. This includes both administrative and physical work. Completion verification of physical work does not vary significantly from that on a fixed-price contract. Completion verification of administrative work on a cost-reimbursement contract is, however, significantly different. First of all, the prime contractor will have detailed contract closeout procedures in place for subcontracts. These are usually incorporated into the contract under Contractor Management Practices (CMPs). Therefore, the Corps representative must assure that the prime contractor has completed its subcontract closeout actions in accordance with its procedures. Concerning its own self performed work, in addition to purchases and subcontracted work, the contractor is required under the contract to prepare a completion report identifying all final costs under the contract. The Corps representative should take reasonable action to verify the costs are allowable, allocable and reasonable as they relate to performance of the contract, and verify appropriate

closeout action has been completed by the prime. All costs submitted on the contractor's completion report, but questioned by the COR and not reimbursed, must be identified and segregated by both the contractor and the Government. These costs should also be specifically addressed and identified as "questioned costs" in the final audit request (see final audit request below) prepared by the Corps representative. The request is normally prepared by the COR for CO signature.

(2) Final Disposition of Property. Excess property not incorporated into the work, or utilized in completing the work, must also be disposed and appropriately accounted and recorded by the contractor according to its property management procedures (see property management).

b. Dealing within the Government. Like the contractor, the Government has detailed closeout procedures in place. Since these closeout procedures involve numerous offices, a complete detailing of all steps is impractical. Also, procedures may vary slightly from time to time; however, certain fundamentals are consistent and must be considered or performed on all jobs. These include:

(1) DD Form 1354, Transfer and Acceptance of Military Real Property/Deficiency Letter. HTRW remedial action work may or may not require a transfer of real property document prepared by the Corps. The resident engineer is responsible to verify with the local user the need for property transfer documentation. If none is considered required, the resident engineer must communicate this to Contract Administration Branch, (CEMRO-CD-CM) for coordination with other offices responsible for asset accounting of real property. When required, the initial draft of the DD Form 1354 is normally prepared in the engineering function at the beginning of or during construction phase remedial action, and forwarded to the Corps Construction Division field office. The field office may elect to have the prime contractor develop a DD Form 1354 incorporating final contract costs by appropriate category. However, it is incumbent on the resident engineer to assure all design costs (both contracted and in house), and Government supervision and administration costs are incorporated into the total cost identified on the DD Form 1354 prior to transfer to the user. The resident should contact CEMRO-CD-CM for identification of engineering, S&A and other costs associated with the remedial action work. See DM 415-1-7 for details on DD Form 1354 procedures.

(2) Government Contract Completion Notification. This document will vary from district to district, but is essentially a document to certify the completion date of the work.

(3) DD Form 2626, Performance Evaluation (Construction). This is the final performance evaluation document of the construction contractor. One is required to be completed and recorded on the Corps national data base within 60 days of each contract completion. A contract completion for performance evaluation is defined as the completion of