



**US Army Corps
of Engineers®**

ENGINEERING AND CONSTRUCTION BULLETIN

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Subject: Architect-Engineer Responsibility Management Program (AERMP)

Applicability: Information

1. HQ, USACE Engineering and Construction (E&C) has received and analyzed the FY08 AERMP reports from all MSCs and Centers, which are required by Chapter 7 of [EP 715-1-7](#), Architect-Engineer Contracting. The following observations are made, for your information and use:
 - a. The total amount of A-E liability settlements received in FY08 was \$291,017. The A-E liability settlements received in FY07 was \$3,141,813 and the settlement average for the previous ten years (1998-2007) is \$1,571,900, showing clearly that the FY08 A-E liability settlement performance is only 19% of the previous ten years average.
 - b. Only six (6) cases were settled monetarily in FY08, out of a universe of twenty-eight (28) cases, where 21% were settled and 13 cases were dropped; compared to Thirteen (13) cases being settled in FY07, out of a universe of 43 cases, where 30% were settled and 8 cases were dropped. The total negotiated settlement for the 6 cases was \$291,017, which was only 18% of the \$1,584,000, original computed damages; compared to the 13 cases in FY07 netting the \$3,141,813 negotiated settlement, which was 64% of the original computed damages of \$4,879,864. Clearly, the FY08 management program is a decrease in the negotiated settlement performance; especially in comparison to a decrease of 46% from the overall previous ten year average for negotiated settlements. There are more cases settled with no monetary value to the government and more cases dropped without netting any income, while at the same time accruing a government liability in Investigation and Recovery Costs of \$12,900, which must be determined reasonable under the guidelines of the AERMP. Again, too many cases are simply dropped with no reasonable explanation for the abandonment; and settlements are made with no dollars accruing to the government.
 - c. Specifically, Investigation and Recovery (I&R) Costs were reported for five of the six settled cases and for eight of the thirteen dropped cases. Notwithstanding the amount of I&R for the dropped cases, for the settled cases, four cents in I&R costs were spent for each dollar of A-E settlement and overall for FY08, 8 cents of every dollar of the settlements received was spent on I&R Costs. Since FY97 when the I&R cost data was initially collected, 13 cents in I&R Costs were spent for each dollar of A-E settlement. FY07 I&R Costs to settlement receipts increased by 4% from the FY06 low on I&R Costs to settlement receipts of 7%; but FY08's performance is still a concern since the settlement recovery rate was only 18% of the

original estimated damages. Again, reasonableness in I&R costs are a part of the assessable damages and must continue to be tracked and reported for A-E liability cases and reduced in comparison to the negotiated settlement recovery.

- d. Twenty-two (22) liability cases with damages of \$26,383,352.00 were carried over into FY09, and in reviewing the history, reduction in the backlog of cases is not satisfactory. But, we continue to have an important responsibility to our customers to pursue A-E liability cases in a timely manner and you are strongly urged to initiate ways to reduce the backlog of cases and negotiate for recovery successfully during the performance year that the cases originate.
2. As an overall assessment of the FY08 Reports, greater attention must be paid to the elements and incurrence of I&R Costs and to settling the cases with minimal carry-overs for FY09.
3. Please, keep at the forefront of your AERMP management, the following points that must be considered when reporting:
 - a. All design deficiencies are not A-E liability cases. It is only a case if the A-E firm is liable for the damages and USACE decides to pursue recovery.
 - b. The reports must include I&R Costs, which are part of the total assessable damages. It is also important to track I&R Costs as a measure to accurately determine the effectiveness of the AERMP Program in each command. Also, appropriate justifications **MUST** be given for each case that is dropped.
4. Point of contact for subject ECB is Bunny Greenhouse, 202-761-7169.

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