



**US Army Corps
of Engineers®**

ENGINEERING AND CONSTRUCTION BULLETIN

No. 2009-4

Issuing Office: CECW-CE

Issued: 15 January 2009

Subject: Early Contractor Involvement (ECI) Delivery System

Applicability: Information

1. Procurement Instruction Letter (PIL) 2008-13 (attached) provides command-wide guidance for the procurement of construction requirements using the ECI delivery system for both Military and Civil Works Program requirements.
2. Subsequent to the issuance of PIL 2008-13, HQUSACE withheld approval of some acquisition plans for the procurement of construction requirements using ECI because the plans proposed the use of a locally drafted Special Contract Requirement (SCR). The proposed SCR was a deviation to FAR Clause 52.216-17 within the meaning of FAR 1.401 and would have required publication in the Federal Register. This action does not preclude the use of ECI in strict conformance with the guidance in the PIL and all applicable laws and regulations.
3. Pursuant to paragraph 8. of the PIL, formal acquisition plans must be approved by the Regional PARC with technical review by CECW-CE. An explanation of the planned contract incentive structure is required in section B. Plan of Action, item 4. Acquisition Considerations, Any proposed revisions to FAR Clause 52.216-17, Incentive Price Revision-Successive Targets will require approval by CECT and CECC to ensure there are not deviations that would require higher level approval before implementation. HQUSACE preference is to use the FAR clause as written.
4. In the coming weeks, my staff will be conducting reviews of ongoing ECI projects in collaboration with the Regional PARCs for the purposes of: insuring consistent interpretation and implementation of FAR 52.216-17; identifying best practices; sharing lessons learned; and finalizing training content for a new Prospect Course.
5. Point of contact for this ECB is [Paul Parsonneault](#), 202-761-5533.

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KIM D. DENVER
Director, National Contracting Organization
U.S. Army Corps of Engineers

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JAMES C. DALTON, P.E.
Chief, Engineering and Construction
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Enclosure



DEPARTMENT OF THE ARMY
U.S. ARMY CORPS OF ENGINEERS
DIRECTORATE OF CONTRACTING
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WASHINGTON, D.C. 20314-1000

CECT-P (715e)

OCT 07 2008

MEMORANDUM FOR USACE Commands (ATTN Principal Assistants Responsible For Contracting, Regional Chiefs of Contracting, Center Chiefs of Contracting, and District Chiefs of Contracting)

SUBJECT: Procurement Instruction Letter (PIL) 2008-13, Procurement of Construction Using the Early Contractor Involvement (ECI) Delivery System

1. Applicability. This PIL is issued to provide U.S. Army Corps of Engineers (USACE) specific guidance for Acquisition Planning and Procurement of construction requirements using the ECI delivery system. This PIL has been fully coordinated among the National Contracting Organization (NCO), Principal Assistants Responsible for Contracting (PARCs), CEMP-I, CECW-CE, CECC and HNC-ULC. It is applicable to all Districts and Centers.

2. References:

a. CEMP-I/CEPR-Z memorandum dated September 4, 2007, Subject: Attributes and Use of Acquisition Strategies Characterized by Early Contractor Involvement for Major Construction Programs – GUIDANCE MEMORANDUM

3. Background. Some USACE Districts have procured military construction requirements pursuant to the pilot program authorized by reference 2.a (enclosure 1). USACE districts executing Civil Works construction requirements have requested similar authority. In the past twelve months, USACE has gained experience in executing construction requirements using the ECI delivery system during the pilot phase. The purpose of this PIL is to provide command-wide guidance for the procurement of construction requirements using the ECI delivery system in the post-pilot phase for both Military and Civil Works Program requirements.

4. ECI Delivery System Described. The ECI delivery system is a design-bid-build (DBB) delivery system procured using an options contract. The type of funding must be carefully considered when structuring the base contract which may include only preconstruction services but could include preconstruction services and some construction. P&D funds may be used to fund the base contract for a military construction requirement if the base contract is comprised solely of preconstruction services. Construction funding may be used to fund the base contract for a military construction requirement if the base contract is comprised of preconstruction services and well defined construction requirements provided the construction requirements predominate. GI funds may be used to fund the base contract for a civil works construction requirement if the base contract is comprised solely of preconstruction services when the project has been authorized for construction. Construction funding, or other appropriate funding provided for construction, may be used to fund the base contract for a civil works construction

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requirement irrespective of which services predominate. The option, if exercised, is for construction services and is always procured with military or civil works construction appropriations. The scope of base contract preconstruction services may not be of an architectural or engineering nature and typically includes scheduling and constructability reviews. ECI delivery system requirements are procured by competitive negotiations. ECI differs from traditional DBB in that the construction requirements in the option are not well defined at contract formation and therefore are priced using a fixed-price incentive (successive targets) contract. ECI contractual relationships are similar to traditional DBB in that the Government is responsible for full prescriptive design requirements (either in-house or by A/E contract) and separately contracts for construction services. ECI differs from the design-build (DB) delivery system in that the Government retains control over the design. ECI is similar to the DB delivery system in that it allows the initiation of construction prior to the completion of the design. When properly executed, the ECI delivery system can produce improved schedule performance when compared to other delivery systems which is a common rationale for its use.

5. Incentive Contract Option. The construction option utilizes a FAR 16.403-2 Fixed-Price Incentive (Successive Targets) contract because available cost or pricing information is insufficient to permit the negotiation of a realistic fixed price before award. However, sufficient information must be available to permit negotiation of an initial target cost, profit and ceiling price at award. As a matter of policy, there must be a reasonable assurance that additional reliable information will be available at an early point in the contract performance to permit negotiation of a firm fixed price contract.

6. Appropriate Use of ECI. ECI is generally only appropriate when other delivery systems will not achieve project objectives. Typically this is the result of the availability of appropriate funding for the base contract combined with inflexible schedule performance requirements and incomplete construction requirements definition (which are therefore scoped in the option). ECI can be extremely resource intensive after contract award and is not appropriate when other delivery systems have a reasonable probability of success meeting customer technical, schedule and budget requirements. ECI can enhance USACE design, project controls, contracting and construction management technical competencies.

7. Training. Before Districts/Centers procure construction requirements using the ECI delivery system outside of the current pilot program, key District/Center personnel must receive training by subject matter experts (SME's) assigned by CECW-CE. Training will be requested through HNC-ULC. The key district/center personnel must include representation from the contracting, resource management, engineering, and construction functions. Training will be provided at the district/center. Evidence of training will be maintained by HNC-ULC. A list of SME's is available from CECW-CE and identified in the Technical Excellence Network (TEN) under the Construction Management Community of Practice. ECI Prospect training will be available March 1, 2009.

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8. Acquisition Planning. A formal acquisition plan approved by the Regional PARC is required for any acquisition contemplating ECI regardless of its value. CECW-CE will review and approve the technical aspects of the plan as part of the PARC staffing review process. The acquisition plan must address the following legal sufficiency requirements: First, a Fixed Price Incentive (Successive Targets) contract is appropriate and the requirements at FAR 16.403(b) are met; Second, any revisions to 52.216-17, Incentive Price Revision –Successive targets clause must be reviewed at Headquarters by the Directorate of Contracting and Office of the Chief Counsel to ensure that they are not deviations that would require approval before implementation; Third, the Contractor must have an adequate accounting system as prescribed by FAR 16.403-2(c)(1). Use of an Earned Value Management System meeting the intent of DFARS SUBPART 234.2 might also be required depending on the contract value; Fourth, the District/Center must ensure that there is adequate price competition pursuant to FAR 15.304(c)(1). Because of the lack of definition in the requirements when using this acquisition method, pursuant to FAR 15.404-1(c) (3) a cost realism analysis or other appropriate price reasonableness analysis of the proposal is required; Fifth, FAR 16.403(2) (a) (1) (i) requires the Government to negotiate the ceiling price of the successive target line items. It is recommended that the Districts/Centers allow offerors to propose the ceiling price; Sixth, the Districts/Centers must ensure, through reliance on the expertise of its Contracting, Engineering and Construction offices, that the scope of work in the solicitation includes enough detail for offerors to compete intelligently and on a relatively equal basis; Seventh, Districts/Centers must draft the scope of services for the base contract preconstruction services to ensure that the scope of work is not required to be procured using A-E selection procedures described in FAR 36.6. In addition, the clauses in the base contract and option must match the type of work that predominates in each, in accordance with FAR Part 36.101(c) (2). Districts/Centers are strongly encouraged to structure the base contract so that construction predominates. If construction does not predominate the base contract and instead preconstruction services predominate in the base contract, the District must include service clauses for the base contract and construction clauses for the optional construction work; finally, the Districts/Centers must ensure that the correct type of funding is used for the base contract and option as described in paragraph 4.

9. Any questions or clarifications should be addressed to your Regional PARC: Ms. Beverly Y. Thomas - PARC Atlanta, Ms. Maureen Q. Weller – PARC Dallas, Ms. Cathy A. Bella – PARC Winchester or Ms. Robin A. Baldwin – Chief, Contracting Policy Division.



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