



**US Army Corps  
of Engineers®**

# ENGINEERING AND CONSTRUCTION BULLETIN

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**Subject: Procurement of Construction Phase Support Services**

**Applicability: Directive**

1. References:

- a. Brooks Architect-Engineer Act; Public Law 92-582, as amended; 40 United States Code (U.S.C.)
- b. FAR Subpart 36.6 Architect-Engineer Services
- c. EP 715-1-7 Architect Engineer Contracting
- d. ER 1110-1-8152, Professional Registration

2. Purpose: To reinforce command wide policy respecting the procurement of construction phase support services.

3. There appears to be inconsistent interpretation of the applicability of reference 1a. to the procurement of construction phase support services across the command. Contracting Officers procure these services as architect-engineer (A-E) services, as standard services or both. Based on a review of some of these contracts, there does not appear to be any significant difference in the scope of services procured that would justify procuring these requirements other than using Brooks Act procedures.

4. FAR 36.601-4(a) recognizes four categories of services which fall within the definition of A-E services. Three of these categories are typically applicable to construction phase support services procured by USACE: (a)(1) Professional services of an architectural or engineering nature, as defined by applicable State law, which the State law requires to be performed or approved by a registered architect or engineer; (a)(2) professional services of an architectural or engineering nature associated with the design or construction of real property; or (a)(3) other professional services of an architectural or engineering nature or services incidental thereto (including studies, investigations, surveying and mapping, tests, evaluations, consultations, comprehensive planning, program management, conceptual designs, plans and specifications, value engineering, construction phase services, soils engineering, drawing reviews, preparation of operating and maintenance manuals and other related services) that logically or justifiably require performance by registered architects or engineers or their employees.

5. Most states define engineering in terms consistent with the scope of services typically procured by USACE as construction phase support services. The terms "construction" and "construction phase services" are expressly used at FAR 36.601-4(a)(2) and (3). Appendix G at

reference 1.c. provides examples of typical A-E services which include typical construction phase support services.

6. FAR 36.601-3(c) states that when the contract statement of work includes both architect-engineer services and other services, the contracting officer shall follow the procedures in this subpart if the statement of work, substantially or to a dominant extent, specifies performance or approval by a registered or licensed architect or engineer. If the statement of work does not specify such performance or approval, the contracting officer shall follow the procedures in Parts 13, 14, or 15. At issue is whether the performance work statement includes A-E services to a substantial or dominant extent. This is not the same standard as a majority of the work standard.

7. Typical SOW's for USACE construction phase support services include services typically performed by USACE construction management staff (project engineers, office engineers, engineering technicians and construction representatives) that all at some level interpret contract requirements/technical provisions and form judgments respecting the construction contractor's performance. These include assessments and judgments relating to contractor designs, shop drawing submittals, materials and methods, compliance with contract plans and specifications, earnings, entitlement to contract modifications, etc. USACE construction management staff report to the Resident or Area Engineer who are required to be registered professionals pursuant to Reference 1.d. We should not expect anything less of our construction phase support services contractor staff who should report to a registered professional within the firm we have contracted with.

8. USACE requirements professionals, in this case the District Chief of Construction or its equivalent, should evaluate construction phase support services SOW's and advise the Contracting Officer if the services desired are in effect A-E services. If any of the services desired include services that require assessments and judgments similar to those described in 7. above, they should be considered A-E services. A non-A-E services contract would only be appropriate if the services are limited in scope to consist only of work that does not require assessing and judging contract compliance. Examples include construction materials control testing and reporting, materials quantity verification, computing quantities and applying appropriate cost factors to determine the estimated construction cost of a project or change order, drafting services and/or NAS schedule reviews. Contracts for services that contemplate a combination of A-E services and non-A-E services should be considered A-E services if the A-E services are a dominant or substantial part of the requirement. To avoid the potential problems with procuring construction phase support services that are a combination of A-E services and non-A-E services, Chiefs of Construction should request two separate acquisitions if there is any question as to what services predominate.

9. Point of contact for this ECB is [Paul Parsonneault](#), 202-761-7423.

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