DEPARTMENT OF DEFENSE

AUDIT REPORT

ARCHITECT-ENGINEER CONTRACTING AT
U.S. ARMY ENGINEER DIVISION, EUROPE
FRANKFURT, FEDERAL REPUBLIC OF GERMANY

No. 91-045 February 13, 1991

Office of the
Inspector General

INSPECTOR GENERAL
DEPARTMENT OF DEFENSE
400 ARMY NAVY DRIVE
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February 13, 1991

MEMORANDUM FOR ASSISTANT SECRETARY OF THE ARMY (PROCUREMENT)
CHIEF OF ENGINEERS, U.S. ARMY CORPS OF ENGINEERS

SUBJECT: Report on the Audit of Architect-Engineer Contracting at U.S. Army Engineer Division, Europe (Report No. 91-045)

This is our final report on the Audit of Architect-Engineer Contracting at U.S. Army Engineer Division, Europe, for your information and use. Management comments on a draft of the report were considered in preparing the final report. This is the last in a series of four reports issued as part of our ongoing audit of architect-engineer contracting. The Contract Management Directorate made the audit from March 1989 through February 1990. The audit covered architect-engineer actions reported during fiscal years 1987 and 1988. The overall audit objectives were to evaluate the system for awarding architect-engineer contracts, to determine if statements of work were appropriately definitive to identify specific work to be performed, and to determine if the contractor satisfactorily performed the work specified. We also followed up on the use of advisory audits, the acquisition of certificates of current cost or pricing data and the related statements of reliance, and utilization of postaward audits of architect-engineer contracts as discussed in Finding B. of our Audit Report No. 87-219, "Military Specifications for Commercial Type Construction Items," August 12, 1987. In fiscal years 1987 and 1988, 368 locations in DoD reported 21,770 architect-engineer contracts (valued at or over $25,000 each) totaling $4.8 billion. The U.S. Army Engineer Division, Europe, reported 580 direct architect-engineer contracts (valued at or over $25,000 each) totaling $65.4 million. This report discusses one of four European sites covered by this audit.

The audit showed that the system for awarding architect-engineer contracts at the U.S. Army Engineer Division, Europe, was generally effective when all functions were accomplished by in-house personnel. When personnel external to the Engineer Division, Europe, were involved, there was a significantly increased potential for conflict of interest and illegal acts to occur. Our review disclosed that the statements of work were generally appropriately worded for routine, repetitive requirements. For new, unfamiliar requirements, the statements were frequently revised several times during the negotiation process and before the award. We did not evaluate whether the work was satisfactorily performed because the audit indicated various internal control problems. We therefore concentrated our efforts on what we believed to be the more significant

deficiencies resulting from these problems. We found that the U.S. Army Engineer Division, Europe, for our sample contracts over $500,000, was properly obtaining advisory audits and certificates of current cost or pricing data, including defective pricing clauses in the contracts, and including a statement of reliance on certified cost or pricing data in the negotiation memorandums. During the audit, the Engineer Division, Europe, implemented or initiated several actions to correct some of the problems identified by this audit. These actions include mandatory training for contracting officer's representatives, a 100-percent procurement and technical review of contracts, development of standard operating procedures for the contracting officer's representatives, changes to the project manager's guide to disallow recommendations by in-house project managers, and stressing the need for separation of duties at local engineering activities. The results of the audit are summarized in the following paragraphs, and the details, audit recommendations, and management comments are in Part II of this report.

The audit determined that engineers involved in the preaward and administration of architect-engineer contracts were performing many of the contracting functions without proper separation of duties, supervision, or documentation. Contractors were being selected based on recommendations and not in accordance with established architect-engineer selection procedures. Consequently, there was a high potential for conflict of interest and illegal acts to occur and the best qualified contractor may not have been selected, as provided for by the Brook's Architect-Engineers Act. We recommended that the Assistant Secretary of the Army (Procurement) direct all Army activities operating in Europe to establish additional internal controls and comply with established internal controls over the engineers at the local engineering activities. We also recommended that the Chief of Engineers, U.S. Army Corps of Engineers, direct U.S. Army Engineer Division, Europe, to establish and comply with internal controls for the functions performed at Engineer Division, Europe, (page 9).

The audit also determined that the Architect-Engineer Contract Administration Support System was not being used to obtain contract history and performance data for potential contractors. Without the use of the data, the U.S. Army Engineer Division, Europe, may have selected contractors who had a history of bad performance and all other qualified contractors may not have been considered. We recommended that the Chief of Engineers, U.S. Army Corps of Engineers, direct the U.S. Army Engineer Division, Europe, to use this system as required. We also recommended that the Chief of Engineers, U.S. Army Corps of Engineers, establish a time phase plan and provide assistance to ensure that the Contract Administrative Support System can be fully utilized by the U.S. Army Engineer Division, Europe, (page 27).

The audit identified internal control weaknesses as defined by Public Law 97-255, Office of Management and Budget Circular A-123, and DoD Directive 5010.38. Internal control standards, including separation of duties, supervision, and documentation were not being applied when engineers were involved in the preaward and administration of architect-engineer contracts. Additionally, the selection of contractors was not always in compliance with established architect-engineer selection procedures. These internal control weaknesses resulted in a high potential for conflict of interest and illegal acts to occur. Also, the best qualified contractor may not have been selected, as provided for by the Brook's Architect-Engineers Act. A copy of this final report will be provided to the senior official responsible for internal controls within the Office of the Secretary of the Army. Implementation of Recommendations A.1. and A.2. of this report will correct the weaknesses. We could not determine the monetary benefits to be realized by implementing the recommendations because Architect-Engineer contracts are not awarded on the basis of price competition.

We provided a draft of this report to the Assistant Secretary of the Army (Financial Management) and the Chief of Engineers, U.S. Army Corps of Engineers, on July 12, 1990. We received comments from the Deputy Assistant Secretary of the Army (Procurement), the Chief of Engineers, and the Commander in Chief, U.S. Army Europe, and Seventh Army. These comments are summarized below, and the complete texts of the responses are in Appendixes C through E.

The Director, Procurement Policy, Office of the Deputy Assistant Secretary of the Army (Procurement) concurred with draft report Recommendations A.1.a. through A.1.j. but did not provide details of actions taken or planned or any dates when these actions would be completed. The Director also requested us to readdress the recommendations. As a result, we are requesting the Principal Assistant Responsible for Contracting, U.S. Army Contracting Center, Europe, to provide dates and details of actions taken in response to final report Recommendations A.1.a. through A.1.j.

The Chief of Engineers, U.S. Army Corps of Engineers, concurred with our draft report Recommendations A.2.a. through A.2.k., B.1. and B.2. with one exception. The Chief of Engineers nonconcurred with draft report Recommendation A.2.e. to synopsize all requirements for architect-engineer services when nonlocal firms are being considered. The Chief of Engineers believed that the procedures were sufficient and that there was no of evidence where adequate competition was not obtained. Since we did not identify any adverse effect, we have deleted Recommendation A.2.e. Draft report Recommendations A.2.f. through A.2.k were renumbered as final report Recommendations A.2.e. through A.2.j., respectively, to reflect this change. Additional comments are also required for the details of actions undertaken in response to Recommendations A.2.f. and A.2.g.

The Commander in Chief, U.S. Army Europe, and Seventh Army also provided comments because the implementation of our recommendations would also affect other Army activities in Europe. The Commander in Chief stated that he concurred with the recommendations and that he was already coordinating with the U.S. Army Engineer Division, Europe, on corrective actions.

DoD Directive 7650.3 requires that all audit recommendations be resolved promptly. Final comments must be provided to us on Recommendations A.1.a. through A.1.h., A.2.f. and A.2.g. within 60 days of the date of this memorandum. We also ask that your comments indicate concurrence or nonconcurrence with the internal control weaknesses described above. The monetary benefits from implementing the report recommendations were not readily identifiable because architect-engineer contracts were not awarded on a price competition basis. A summary of other potential benefits resulting from the implementation of these recommendations is included as Appendix C.

The courtesies extended to the audit staff are appreciated. If you have any questions on this audit, please contact Mr. Paul Granetto, Program Director, at (703) 693-0573 (AUTOVON 223-0573) or Mr. Wayne Million, Project Manager, at (703) 693-0593 (AUTOVON 223-0593). Audit Team members are listed in Appendix G, and the planned distribution of this report is listed in Appendix H.

Edward R. Jones
Deputy Assistant Inspector General
for Auditing

Enclosure

cc:
Secretary of the Army
Headquarters, U.S. Army, Europe
U.S. Army Engineer Division, Europe

REPORT ON THE AUDIT OF
ARCHITECT-ENGINEER CONTRACTING AT
U.S. ARMY ENGINEER DIVISION, EUROPE

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Prepared by:
Contract Management Directorate
Project No. 9CD-0032

REPORT ON THE AUDIT OF ARCHITECT-ENGINEER CONTRACTING AT U.S. ARMY ENGINEER DIVISION, EUROPE

PART I - INTRODUCTION

Background

The Brooks Architect-Engineers Act, Public Law 92-582, "Selection of Architects and Engineers," sets forth the basic statutory framework for Federal agencies to use when contracting for architectural and engineering services. The Act requires the head of an agency to determine an order of preference for selecting the best qualified firms and then to negotiate a fair and reasonable price with the top ranked firm.

The Act defines architectural and engineering services as including "those professional services of an architectural or engineering nature as well as incidental services that members of these professions and those in their employ may logically or justifiably perform." Federal Acquisition Regulation (FAR), section 36.102 (as amended by Federal Acquisition Circular 84-23), further defines architect-engineer (A-E) services as:

> (a) Professional services of an architectural or engineering nature associated with research, development, design, construction, alteration, or repair of real property that are required by virtue of law to be performed by a registered or licensed architect or engineer; or
> (b) Such other professional services as determined by the contracting officer, which uniquely or to a substantial or dominant extent logically require performance by a registered or licensed architect or engineer; and
> (c) Incidental services that members of the architect or engineer professions or those in their employ may logically or justifiably perform in conjunction with professional architect-engineer services acquired by Pub. L[aw] 92-582 procedures.

The FAR establishes the primary codification and publication of uniform policies and procedures for all acquisitions by executive agencies. The Defense Federal Acquisition Regulation Supplement (DFARS) contains the guidance and direction that DoD contracting personnel should use when they award and administer DoD contracts.

The DFARS implements the FAR and provides supplementary policies and procedures that are unique to DoD. The Military Departments, the Army Corps of Engineers, and the Naval Facilities Engineering

Command further supplement the FAR and DFARS with their own acquisition regulations. Noncompliance with these policies and procedures constitutes a circumvention of established internal controls.

The process for selecting an A-E firm for a Government contract differs materially from that of other Government contracts in which price or cost is a determining factor. To qualify for selection, an A-E firm must submit its qualifications using Standard Forms 254, "Architect-Engineer and Related Services Questionnaire," and 255, "Architect-Engineer and Related Services Questionnaire for Specific Project." These qualifications are then evaluated against the established selection criteria and compared with other A-E firms. This process is designed to result in the selection of the firm best qualified to perform the required services. Following is an outline of the steps as they should occur in the A-E selection process for contracts expected to exceed $10,000.

- Proposed projects, including the selection criteria to be used in the evaluation, are publicly announced.

- Interested A-E firms submit a Standard Form 254 (unless one has been submitted within the last year) and a Standard Form 255.

- Using the selection criteria stated in the public announcement, an evaluation board reviews the forms from all A-E firms and recommends at least three firms for further consideration.

- Recommended firms are given additional information and are invited to make presentations and attend interviews.

- Based on the interviews and other information, a second evaluation board ranks at least the top three firms on the basis of their capabilities.

- An A-E Selection Official reviews the evaluation board's recommendations and, upon approval, invites the top ranked firm to submit a proposal to be used as a basis for negotiations.

- A contract is awarded after successful negotiations. If negotiations with the top ranked firm are not successful, the next firm in preference order is invited to submit a proposal, until the contract is awarded. If negotiations are unsuccessful with all firms in succession, the selestion board may add additional firms.

These procedures preclude the Government from engaging in competitive price negotiations for the procurement of A-E services and relieve architects and engineers of the burden of

competing on a price or cost basis. The Competition in Contracting Act of 1984 (CICA) requires contracting officers to use competitive procedures to the maximum extent possible when awarding Government contracts. CICA states that the selection of sources for A-E contracts in accordance with the provisions of Public Law 92-582 is automatically considered a competitive procedure.

Objectives and Scope

Our announced objectives were to evaluate the system for awarding A-E contracts, to determine if statements of work were appropriately definitive, to identify specific work to be performed, and to determine if the contractor satisfactorily performed the work specified. We also announced that we would follow up on the use of advisory audits, the acquisition of certificates of current cost or pricing data and the related statements of reliance, and utilization of postaward audits of A-E contracts, as discussed in Finding B. of our Audit Report No. 87-219, "Military Specifications for Commercial Type Construction Items," August 12, 1987.

Our initial objectives included a requirement to evaluate the work performed by the contractor to determine if the work was satisfactorily performed. We disclosed significant internal control deficiencies and concentrated our efforts on the more obvious, and in our opinion, the more significant problems involving internal controls. As a result, we did not evaluate the work accomplished by the contractor to determine if the work was satisfactorily performed. Details concerning the internal control deficiencies are discussed in Part II of this report.

DoD contracting actions over $25,000 are reported on an Individual Contract Action Report, DD Form 350, and are accumulated in a data base by the Washington Headquarters Services, Directorate for Information Operations and Reports. A Federal Supply Class (FSC) code identifies the type of service. For the audit, we considered all FSC codes beginning with R1 (Architect & Engineer Construction) or R2 (Architects & Engineers Services - General). For fiscal years 1987 and 1988, this data base contained 21,770 A-E contracts*/ amounting to $4.8 billion reported by 368 locations. We selected audit sites by grouping locations into geographic clusters and selecting a random stratified sample by cluster. The European cluster (including

*/ "Contracts" in this report (unless otherwise identified) will have the same meaning as prescribed in FAR 2.101: "[Any] mutually binding legal relationship obligating the seller to furnish the supplies or services (including construction) and the buyer to pay for them."

the European portion of Atlantic Division, Naval Facilities Engineering Command) consists of the following four sites:

- U.S. Army Engineer Division, Europe, Frankfurt, Federal Republic of Germany;

- Ramstein Air Base, Federal Republic of Germany;

- Detachment 1, Space Combat Operations Staff, Copenhagen, Denmark; and

- Officer In Charge of Construction - Mediterranean, Madrid, Spain.

We have already issued final reports for the other three sites.

During fiscal years 1987 and 1988, the U.S. Army Engineer Division, Europe (EUD), awarded 292 different A-E contract numbers (excluding "indirect contracts" - those contracts issued through the host nation Governments). These contract awards consisted of 580 related contracts (consisting of basic awards, modifications, and delivery orders) of $25,000 or more and totaled $65.4 million. Our audit included a random selection of 19 of the 292 different A-E contract numbers. Seven of the nineteen contracts were indefinite delivery type (IDT) basic awards. The remaining 12 were basic contracts totaling $5.1 million. We also reviewed all related contracts processed against the original contracts during the same period (see chart and notes below). This review represented 96 contracts for A-E services valued at $9.9 million. Details concerning these 19 contracts are as follows, and a list of these contracts is in Appendix A.

	Actions	Dollar Value
IDT Awards	7	N/A
Orders/Mods ≥ $25,000	32	$1,632,000
Orders/Mods < $25,000	21	137,000
Admin. Mods	7	0
"Basic" Contracts	12	$5,144,000
Mods ≥ $25,000	5	603,000
Mods < $25,000	2	12,000
Admin. Mods	2	0
Prenegotiated Options	8	2,399,000
Total	96	$9,927,000

Notes:

Orders - contracts against an IDT award.
Mods - contracts for modification of a contract.
Options - contracts exercising options previously negotiated and agreed to in an earlier related contract.
Admin. Mods - administrative changes to a contract for which no fee was involved.
N/A - not applicable.

In addition to reviewing the 96 contracts identified above, we also reviewed contracts totaling over $500,000 to follow up on Finding B. of our Audit Report No. 87-219, "Military Specifications for Commercial Type Construction Items," August 12, 1987. When we started our audit at EUD, there was a universe of 13 direct contracts for A-E services greater than or equal to $500,000, which were awarded after August 12, 1987. The EUD Internal Audit Office reviewed 5 of the 13 contracts and found that EUD had complied with our recommendations, 1 contract was under investigation, and 1 contract could not be located by EUD; therefore, these 7 contracts were not included in our review. For the remaining six contracts, we found that EUD was properly obtaining advisory audits and certificates of current cost or pricing data; properly including defective pricing clauses in the contracts; and properly including a statement of reliance on certified cost or pricing data in the negotiation memorandums. See Appendix B for a listing of these contracts.

We used the policy and guidance stated in the FAR, DFARS, DoD, Army, and Corps of Engineers regulations, the Army Federal Acquisition Regulation Supplement, the Engineer Federal Acquisition Regulation Supplement, and EUD and local regulations to determine if the award and administration of A-E contracts were implemented in accordance with the intent of the Brooks Act. We also interviewed contract, engineer, contractor, internal audit and investigative personnel to further evaluate internal controls.

This economy and efficiency audit was made at U.S. Army Engineer Division, Europe, between March 1989 and February 1990 and was conducted in accordance with auditing standards issued by the Comptroller General of the United States as implemented by the Inspector General, DoD. Accordingly, we included such tests of the internal controls as were considered necessary.

Internal Controls

Additional internal controls needed to be implemented, and existing internal controls needed to be followed. We found internal control weaknesses that involved separation of duties; supervision; execution of transactions and events; documentation; and noncompliance with regulatory requirements for the award, administration, and completion of A-E contracts. The more significant internal control problems primarily involved the non-EUD technical support personnel, which the contracting officer relied on. Implementation of the recommendations in Finding A. will correct the internal control weaknesses identified.

Prior Audit Coverage

The Inspector General, DoD, Report No. 90-084, "Architect-Engineer Contracting at Ramstein Air Base," June 14, 1990, showed that the process for awarding A-E contracts at Ramstein Air Base was conducive to potentially illegal acts. The audit identified internal control weaknesses as defined by Public Law 97-255, Office of Management and Budget Circular A-123, and DoD Directive 5010.38. The report recommended establishing additional internal controls and complying with existing internal controls. The Air Force generally concurred with the recommendations in the draft report. For three recommendations, the Air Force nonconcurred but offered alternatives to the specific recommendations. These alternatives were considered adequate, and the recommendations were reworded in the final report. The Air Force also nonconcurred with a recommendation that the contracting officer's representatives (COR's) be officially appointed for specific projects. This was the topic of Audit Report No. 91-030, "Justification for Use of Time-and-Materials Contracts." As a result, the recommendation was withdrawn from the final report on Ramstein Air Base. The report on Time-and-Materials contracts resulted in planned changes to the DFARS, Parts 201, 202, and 252, on the appointment authority and responsibilities of COR's.

The Inspector General, DoD, Report No. 91-001, "Architect-Engineer Contracting at Detachment 1, Space Combat Operations Staff, Copenhagen, Denmark," October 4, 1990, showed that the process for awarding architect-engineer contracts at Detachment 1 was conducive to potentially illegal acts. During the audit, we made various recommendations for improving the internal controls governing the A-E contract award and administration process.

Before completion of the audit, management at Detachment 1 fully implemented all of our recommendations, and no formal recommendations were made in the report.

The Inspector General, DoD, Report No. 91-015, "Architect-Engineer Contracting at the Officer in Charge of Construction, Naval Facilities Engineering Command Contracts, Mediterrarean, Madrid, Spain," November 30, 1990, did not identify any problem areas or internal control weaknesses in the process of awarding A-E contracts by the Officer in Charge of Construction, Mediterranean (OICC-MED). The report commended the OICC-MED for a good job on strengthening and implementing internal controls in the A-E contract award and administration process.

Finding B. of Inspector General, DoD, Report No. 87-219, "Military Specifications for Commercial Type Construction Items," August 12, 1987, identified problems in the use of advisory audits, the acquisition of certified cost or pricing data, and the inclusion of statements of reliance on certified cost or pricing data in negotiations. The report recommended that the FAR be fully implemented and that a greater number of A-E contracts be incorporated into annual postaward auditing plans. Management concurred with the recommendation to comply with the FAR. This action was considered responsive. The Defense Contract Audit Agency (DCAA) performed additional defective pricing reviews to determine the risk involved. As a result of these reviews, DCAA stated that the risk on A-E contracts was no greater than the risk on other DoD contracts and elected not to include any additional audits beyond its normal scheduled reviews.

Other Matters of Interest

The U.S. Army Engineer Division, Europe, is the major construction and design activity for U.S. Forces in Western Europe and Turkey and as such is responsible for all A-E contracting for major construction in Europe. EUD issues contracts for over 21 different customers. The major customers include the U.S. Army, Europe, which consists of 37 Directorates of Engineering and Housing; the U.S. Air Force, Europe; NATO; the Department of Defense Dependent Schools; nonappropriated fund activities; the National Security Agency; and the Troop Support Agency. However, the U.S. Air Force at Ramstein Air Base has authority to award A-E contracts for minor repair and renovation in the Federal Republic of Germany, west of the Rhine river.

In addition to U.S. laws and regulations, EUD must comply with various international agreements and host country laws and policies, which differ from country to country, and may supersede or supplement U.S. laws, regulations, and policies. EUD has at least 20 separate agreements with at least 9 different host nations. These agreements generally require that when certain

criteria are met, EUD forwards the contract requirements for design and construction work to the applicable host nation government department, ministry, or agency to issue and administer the contracts (commonly referred to as "indirect contracting"). More than 80 percent of EUD's contracts are through "indirect contracting."

International agreements and host country laws may also require the use of local nationals to work as U.S. Government employees in specific work areas. These local nationals have different employee benefits, work schedules, holidays, pay structures, etc.

We contacted the Resource Management Office at EUD, concerning internal management control evaluations performed on the contracting activity. We were informed that no internal management control evaluations were performed in 1988 or 1989. Additionally, an internal management control evaluation is not scheduled for A-E design until 1992. At nine of the local engineering activities, which use EUD for contracting support, the EUD internal audit office had performed audits of specific functions related to A-E contract award and administration.

During the audit, we discussed with operating personnel the problems identified in Part II of this report. Before completion of this audit, EUD personnel informed us that several of these problems had been corrected or were in the process of being corrected. The contracts in our sample included awards made during fiscal years 1987 and 1988, and our audit was started during fiscal year 1989. After our audit, EUD:

- initiated mandatory training seminars for COR's,
- developed standard operating procedures for the COR's at the local engineering activities,
- stressed the need for separation of duties at the local engineering activities for the A-E preaward and administration functions,
- initiated 100 percent procurement and technical reviews on contracts by EUD personnel, and
- changed the Project Manager's Guide to disallow recommendations of A-E firms by EUD project managers.

Since the audit, EUD has expanded these procedures and is instituting other corrective actions to provide additional controls in the A-E contract preaward and administration process.

PART II - FINDINGS AND RECOMMENDATIONS

A. Internal Controls for Architect-Engineer Contracts

FINDING

Engineers at local engineering activities*/ performed contract preaward and administration procedures for architect-engineer contracts without proper separation of duties, supervision, execution of transactions and events, or documentation. Also, personnel at the U.S. Army Engineer Division, Europe, placed an inordinate amount of weight on individual engineer recommendations to select specific architect-engineer contractors. A review of contracts at the U.S. Army Engineer Division, Europe, revealed an existence of inadequate internal controls and failure to comply with requirements of Federal, DoD, and Service regulations and instructions. As a result, there is a potential for conflict of interest and illegal acts to occur between contractors and U.S. Army Engineer Division, Europe, or local engineering activity personnel. Additionally, architect-engineer contractors were selected based primarily on personal recommendations and not in accordance with the Federal Acquisition Regulation architect-engineer selection procedures.

DISCUSSION OF DETAILS

Background. At the U.S. Army Engineer Division, Europe (EUD), various groups of employees are involved in the architect-engineer (A-E) contract award and administration process. The Contracting Officers assigned to the Acquisition Branch, Contracting Division, are responsible for the contracts; however, most of the preaward and administration functions are accomplished by others. Within EUD there are at least three branches of the Engineering Division involved in the A-E contract award and administration process: the Project Management Branch (including the A-E Contract Support Section), the Planning Branch, and the Technical Engineering Branch.

Many of EUD's customers are located at activities throughout Europe. These activities identify A-E requirements and then contact the applicable local engineering activity. The local engineering activity then contacts EUD to provide the contracting mechanism to accomplish the A-E requirements. When this occurs, engineering personnel at the local engineering activity perform most of the A-E contract preaward and administrative functions as

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*/ "Local engineering activities" for purposes of this report, refers to activities such as Directorates of Engineering and Housing, V Corps, VII Corps, and Armed Forces Recreation Center Garmisch, which provide local engineering and "intermediate" contract support to the various U.S. Forces communities.

COR's. Although the COR's are performing contracting functions on EUD contracts, they are, in most cases, only in the chain of command for contracts and do not report to the EUD, the Corps of Engineers, and, in some cases, the Department of the Army. The engineers do, however, report to their respective agency for all other purposes. EUD's recourse for problems with the local engineering activities in the A-E contracting process is to take away their COR authority.

Many of the requirements are for repair, renovation, and minor construction. The use of Indefinite Delivery Type (IDT) contracts has been promoted for these type requirements. IDT contracts are those contracts where the A-E firm is already selected and where the labor rates, labor burden rates, and other costs are already negotiated. Delivery orders are placed against the initial contract to satisfy the identified requirement.

Details of Audit. Our audit excluded all "indirect contracts," which are those contracts issued through host nation governments. Of 292 different "direct" contracts that EUD awarded during FY's 1987 and 1988, we randomly selected 19 for review. We included all related contracts processed against the original contracts during the same period. This resulted in a review of 96 contracts for A-E services valued at $9,927,000. See Appendix A for a list of the contracts reviewed.

Establishing Internal Controls. Internal controls are those integral parts of an overall management system that should provide reasonable assurance that the resources allocated to, and functions performed by, an activity are adequately safeguarded and protected against fraud, waste, or mismanagement. To obtain this assurance, an activity must comply with certain internal control standards. DoD Directive 5010.38, "Internal Management Control Program," identifies six specific standards that should be included in internal control programs. These standards include, but are not limited to, separation of duties, execution of transactions and events, and supervision.

One of the primary standards in internal controls is the separation of duties. This standard generally requires that key duties and responsibilities in authorizing, processing, recording, and reviewing transactions not be vested in one individual. In our opinion, major duties and responsibilities should be systematically assigned to different individuals, and whenever possible, to different functional areas. Sufficient separation of duties provides an effective system of checks and balances to reduce the risk of error, waste, and wrongful acts and increases the probability of detection, should they occur.

The Internal Management Control Program requires that "Transactions and other significant events shall be authorized and executed only by persons acting within the scope of their authority." This standard is the primary control to ensure that only valid authorized transactions or events are accomplished. It also requires that authorization be clearly communicated to each employee and should include the specific conditions and terms of the authorization. Conformance with the authorization means that the employee is complying with the directives established by management.

A third standard of internal controls is supervision. This standard requires that adequate supervision, which includes qualified and continuous oversight, be provided to ensure that internal control objectives are achieved. Furthermore, operating-level staff must be provided necessary guidance, training, and review. Duties, responsibilities, and accountabilities must be clearly delineated and communicated for each functional process. Work must be reviewed and approved to the extent necessary to ensure that critical objectives are accomplished and that errors, waste, and wrongful acts are minimized.

Internal reviews and audits provide an additional internal control that ensures that functions are accomplished in compliance with requirements. From March 1988 through April 1989, the EUD Internal Audit Office issued at least nine reports covering the A-E preaward and administrative functions accomplished at field locations, including eight U.S. Army Directorates of Engineering and Housing (DEH) areas and one Facilities Engineers Station, which utilizes EUD for A-E contract support. All of these reviews included an analysis of internal controls. While two of these reviews concluded that internal controls were adequate, the remaining seven reports identified various weaknesses. The Internal Audit Office identified problems with separation of duties in three reports, inadequate documentation in six reports, and circumvention of procedures for payment approval in three reports. Various other circumvented procedures were identified throughout the reports. At three locations, the reports identified potentially illegal acts, which were turned over to the U.S. Army Criminal Investigation Division for further investigation.

Our review of A-E contracts disclosed conditions similar to those identified by the Internal Audit Office when the contract was an IDT award, and many of the A-E contract preaward and administration functions were performed by personnel at a local engineering activity. The following example highlights our concern regarding the absence of effective separation of duties at a local engineering activity. On contract DACA90-86-D-0090, order number 0003, one engineer at the Directorate of Engineering

and Housing, Berlin, prepared the statement of work, prepared the Government estimate, prepared the revised Government estimate, issued the request for proposal, acted as the sole Government negotiator, prepared the price negotiation memorandum, prepared the transmittal memorandum forwarding the award package to EUD, acted as the COR, signed the receiving reports, and approved the invoices.

Allowing one or two individuals a major role in so many functions without proper internal controls promotes a potential for unethical and illegal acts and impedes proper control over the contracts. Generally, local engineering activities contain only a small engineering staff, most of whom are local nationals supervised by U.S. personnel. Personnel at the Directorate of Engineering and Housing, Rheinberg, stated that they no longer use EUD for A-E contracts but use indirect contracting because there are not enough qualified people at their facility to administer an EUD indefinite delivery type contract. Indirect contracts are awarded and administered by the applicable German Government agency and, as such, require only minimal support.

In general, we concluded that local engineering activity personnel desire to maintain as much control as possible over the A-E design process. However, personnel at the local engineering activity do not have adequate contract training compared to a contract specialist at EUD. Since May 1988, the EUD has provided the COR's with training in project management and COR duties. However, an EUD section chief expressed concern about local nationals performing contracting functions, such as contractor selection, negotiation, and project management or COR functions.

A contractor we interviewed stated:

> The real problem with the U.S. process is that there are a handful of German nationals performing a function that they have worked at for many years. They know the system and the language which results in a lack of close supervision. This group has the ability to exercise almost complete control over . . . design, review, approval, and supervision.

Another A-E contractor we interviewed stated that they were led to believe that, to get a contract, they would have to use a specific subcontractor. This A-E contractor agreed to use the subcontractor and was selected by the board for the award. Since there was no indication in the file that the subcontractor possessed additional special capabilities that were required by the contract, there was at least an appearance of improper activity.

Selection Board Appointments. Selection boards at EUD are required to have a chairman and two members. When applicable, the using agency is invited to send a representative as an additional member of the boards. An EUD member of the boards must be a GS/GM-13 or higher. Although appointment letters do not identify specific people to serve on the boards, the letters designate the positions to be represented, and the persons assigned to those positions serve on the boards. Some individuals assigned to serve on the selection board have been in their positions since 1972, and continue to serve by virtue of the positions they hold. For instance, two individuals served as board members on 16 and 11 of the 19 final selection boards in our sample, respectively.

Selection board appointment letters should also be current. Of the 46 selection boards reviewed as part of the audit, 5 were composed of members appointed at least 25 months before the date of the selection board, and 25 were composed of members appointed at least 13 months before the date of the selection board. Only 16 boards were composed of members appointed within 12 months of the date of the selection board. We believe that to provide appropriate control over board members, appointments must be documented at least annually.

Statement of Work. The Statement of Work is the basis for which all remaining A-E contracting functions are accomplished. Statements of Work are referred to by EUD as a Schedule of Services (SOS). It establishes the Government's requirements, the required A-E services, and the performance schedules. It also provides the criteria on which the A-E firm will be evaluated and selected. At the Army Engineer Division, Europe, the Statements of Work did not establish this control. In addition, the Statements of Work were not developed on a timely basis. For the 12 basic contracts, 9 had Statements of Work that were not completed until after the contractor had been selected. EUD, in effect, selected contractors without knowing the specific requirements. For the seven IDT contracts, the Statements of Work were prepared timely; however, these Statements of Work were for general requirements, the specifics of which were to be determined by each "order."

Authorship of the Statement of Work provides an internal control to identify who is responsible when problems arise or when revisions are required. For the 96 contracts in our sample, 69 required a Statement of Work. Of these 69, the contract files contained 65 initial and 26 revised Statements of Work. Only 3 of the 91 Statements of Work were signed, and there was no documentation to indicate who, if anyone, reviewed or approved the Statement of Work. When the contractor submits the final design, an approval of the Community Commander is required; but, we believe a supervisory level of review should also be required, at a level of at least the Director of Engineering and Housing or equivalent for the community involved.

The Statement of Work must clearly and accurately express the Government's requirements. It is used to prepare the independent Government estimate, as well the contractor's proposal, which is the basis for negotiations. Federal Acquisition Regulation (FAR) 36.605, "Government Cost Estimate for Architect-Engineer Work," requires that the independent Government estimate shall be detailed, as if the Government were submitting a proposal. If engineering personnel have difficulties costing out the Statement of Work or if the independent Government estimate is somewhat different from the contractor's proposal, then this may indicate the Statement of Work requires clarification. As such, the independent Government estimate represents a quality control for the Statement of Work. For the 69 contracts in our sample requiring a Statement of Work, there were 15 that required at least one revision.

Also in our sample of 96 contracts, there were 101 independent Government estimates of which 30 were revisions. Twenty of the independent Government estimates were revised as a result of changes or omissions in the Statements of Work, and seven independent Government estimates appeared to be revised simply to be "above the A-E's proposal." The remaining three independent Government estimates were the result of changes agreed to during negotiations. The Chief of A-E Support Branch stated that most large discrepancies between the estimate and the proposal are usually due to a misunderstanding of wording in the Statement of Work between the Government and the A-E firm.

Negotiations. Negotiations should be performed by the contracting officer assisted, as needed, by technical experts. These advisory services may include internal and external audit assistance, A-E technical assistance, legal assistance, or any other assistance the contracting officer may require to complete negotiations. At EUD, engineering personnel, trained in negotiation and contracting functions, conduct most of the contract negotiations. The training generally consists of a minimum of five 1-week courses of basic and advanced contract management, contract law, cost and pricing, and negotiations. Since March 1988, engineering personnel at the local engineering activities have received training relative to A-E contracting. This training consisted of a 2-day seminar on COR training for A-E IDT contracts sponsored by EUD. Although this training is valuable, it does not approach the level of training obtained by the EUD engineering personnel in the contracting area.

Negotiations were performed solely at local engineering activities by personnel without adequate training. The presence of more than one Government employee in negotiations with the contractor is an added internal control measure. At a minimum, one Government negotiator should be from the contracting office or have sufficient training in negotiations and contracting matters to appropriately protect the interest of the Government

and the contracting officer. We believe this training should be equivalent to the 5 weeks of training required of the EUD engineering personnel involved in negotiations. Of the 72 price negotiation memorandums prepared for the 96 contracts in our sample, 26 indicated that negotiations were performed solely by 1 engineer. Nineteen of the twenty-six price negotiation memorandums were negotiated at a local engineering activity by personnel without adequate training.

Of the 72 price negotiation memorandums prepared, 30 (3 prepared by EUD and 27 prepared by local engineering activities) indicated that the contractor's proposal was accepted without negotiations, 38 (25 prepared by EUD and 13 prepared by the local engineering activities) indicated that the negotiations resulted in a revised proposal, and the remaining 4, all prepared by EUD, stated that a revised proposal was submitted. These four revisions were minor in nature and no substantial negotiations took place.

Following Established Internal Controls. The FAR, Defense Federal Acquisition Regulation Supplement (DFARS), Service regulations and directives, and installation instructions provide policies and procedures that establish controls to protect resources against abuse, waste, or mismanagement. Circumvention of these controls creates risks and provides an opportunity for illegal acts to occur. We reviewed contract files and related data to determine if these policies and procedures were being followed and properly implemented. At EUD and the local engineering activities, the A-E contract award and the administration process were not effectively implemented.

FAR 1.602, "Contracting Officers," states that:

> Contracting officers are responsible for ensuring performance of all necessary actions for effective contracting, ensuring compliance with the terms of the contract, and safeguarding the interests of the United States in its contractual relationships.

Based on the above requirements, contracting officers must ensure that all necessary actions are accomplished according to the applicable laws, regulations, and other guidance. If these actions are performed in other functional areas, the contracting officer must receive adequate documentation to support the accomplishment of the actions. The documentation must be complete and organized in a manner that the contracting officer can reconstruct the action being documented. Thus, the contracting officer ensures that established requirements are accomplished and that internal controls are not circumvented. The following sections discuss controls that were circumvented.

Maintenance of Engineer and Related Services Questionnaires. The Government requires a Standard Form 254 (SF 254), "Architect-Engineer and Related Services Questionnaire," from any firm interested in providing architect-engineer or related services. In addition, FAR 36.702, "Forms for Use in Contracting for Architect-Engineer Services," subparagraph (b)(2), requires the submission of a Standard Form 255 (SF 255), "Architect-Engineer and Related Services Questionnaire for Specific Project," when the award is expected to exceed the small purchase limitation. The SF 255 is used to identify specific qualifications and to identify outside key consultants or associates for the specific projects under consideration. These forms are used as a basis for screening firms before requesting additional data or selecting firms for discussions. The SF's 254 were available for all 19 contracts in our sample; however, SF's 255 were available for only 8 of these contracts. The Chief of the A-E Support Branch informed us that SF's 255 are requested by EUD only for "unique or large projects" and in some cases, firms are requested to "tailor their SF 254." This procedure is contrary to FAR requirements and, in our opinion, is an attempt to circumvent already established and well thought out internal control procedures.

Recommendations for A-E Contractor Selection. FAR 36.602-1, "Selection Criteria," requires that:

> (a) Agencies shall evaluate each potential contractor in terms of its-
> (1) Professional qualifications . . .;
> (2) Specialized experience and technical competence . . .;
> (3) Capacity to accomplish the work in the required time;
> (4) Past performance . . .;
> (5) Location in the general geographical area of the project . . .;
> (6) Acceptability under other appropriate evaluation criteria.

At EUD, the "Project Management Guide," May 1987 (in effect during the period of our review) suggests that the project managers recommend a preferred contractor. The EUD "Standard Operating Procedures for Indefinite Delivery Type Contracts For UMC's/Communities," also suggests that the requester recommend one or more firms to the selection board. Seven of the nineteen contracts in our sample contained recommendations for specific contractors; four were prepared by EUD staff and three were prepared by Directorates of Engineering and Housing staff. In six of the seven instances, the recommendation was accepted. For the remaining award, the recommendation was not received until after the selection was made; however, the recommended contractor ultimately became the subcontractor even though the

firm was not listed as a subcontractor on the prime contractor's proposal. The project manager for this contract offered no explanation as to how or why the prime contractor selected a new subcontractor. Additionally, the name of the recommended contractor also appeared as a subcontractor on the initial independent Government estimate prepared by the project manager for this proposal; the project manager, however, could not explain this action. Also, no record was found in the contract file of any contracting officer's written approval for the use of a new subcontractor, as required by FAR clause 52.244-4, "Subcontractors and Outside Associates and Consultants," which was included in the contract.

The Chief of Engineering, who is almost always the chairman of the final selection board, stated that a recommendation by a using activity carries a lot of weight. He also stated that, in some cases, he has sent a list of selected contractors back to the preselection boards to have the list expanded to include the recommended firm. For contract DACA90-88-D-0008, the A-E selection board files, which support the A-E selection board actions, indicated a cutoff point that would have excluded a "recommended" contractor. The selection board report, however, included the recommended contractor. In an interview with a member of the selection board, the member could not understand how the number of selected firms changed. His only explanation was that the selection board reports are signed "in blank" by the members and then the data are typed and later attached.

One of the interviewed A-E contractors did not believe a firm could receive an EUD contract for a Directorate of Engineering and Housing activity without having a sponsor at that activity to recommend the contractor to the EUD selection board. This firm believed that the sponsor recommendation was always accepted. EUD personnel maintained that a recommended firm is not always included on the list forwarded to the final selection board.

Actions such as these demonstrate the validity of the complaints we received from two of the contractors we interviewed, who could not get a contract at a Directorate of Engineering and Housing location unless they were able to obtain a "sponsor" at that location. We interviewed one contractor who believed that in some cases "the contractor is preselected prior to the release of the announcement. EUD simply goes through the motions." The contractor also stated that this same situation is present at the Directorates of Engineering and Housing. In our opinion, the person who makes the recommendation is performing the selection process and is therefore giving the appearance of conflict of interest.

Selection Interviews. Interviews are required of the top firms being considered in order to select the best qualified firm. FAR 36.602-3, "Evaluation Board Functions," states that:

> . . . an evaluation board shall . . . Hold discussions with at least three of the most highly qualified firms regarding concepts and the relative utility of alternative methods of furnishing the required services, when the prospective architect-engineer contract is estimated to exceed $10,000.

These requirements were specifically added by amendment to the Brook's Architect-Engineers Act. Excerpts from the Legislative History, House of Representatives Report No. 92-1188, provide (beginning in paragraph 4 of the section entitled, "Explanation of Amendments," page 8):

> This new language assures as extensive an evaluation of alternative approaches and design concepts as is possible without requiring actual design work to be performed by the firms that are interested in obtaining the design contract. . . . Such discussions also give small firms and young A/Es who are just beginning their work a better opportunity to demonstrate new and innovative approaches without being overwhelmed by the requirement to produce costly preliminary designs and other similar work.

Of the 23 selection boards included in our sample, none included the mandatory discussions regarding anticipated concepts and the relative utility of alternative methods of approach for furnishing the required services. Management personnel at EUD stated that before May 1988, they did not hold discussions "because of time zone and language problems." For the 19 contracts in our sample, there were 102 contractors recommended to the final selection boards. Only 18 of these contractors did not have an office in Europe. Since EUD personnel work "flex" hours ending as late as 6 p.m., there is more than sufficient time to have phone interviews with CONUS contractors. As for language problems, FAR 36.602-2 requires that evaluation boards (commonly called selection boards by the Army) shall be "composed of members who, collectively, have experience in architecture, engineering, construction, and Government and related acquisition matters." FAR 1.602 further states that contracting officers can request and consider the advice of various types of specialists, which could include members with local language expertise. Many of the engineers involved in the A-E award and administration process are local nationals, who generally speak several languages.

When we interviewed selected contractors, we asked about the use of these required discussions. Only one of the contractors could recall an interview. This particular contract involved an extremely complex requirement.

Since May 1988, EUD generally made telephone calls in an attempt to comply with the intent of the FAR discussion requirements, to ask the following four questions:

> QUESTION NO. 1 - Is your firm still interested in performing the services required for this project?
> QUESTION NO. 2 - Is the staff, including individuals, subcontractors and/or consultants as proposed in your submittal for this project still available to perform the work for this project?
> QUESTION NO. 3 - Has your firm received any recent DoD awards other than those identified in your submittal for this project?
> QUESTION NO. 4 - Has your firm received any recent awards other than the DoD projects identified in your submittal which could impact the ability of your firm to complete this project in an efficient and timely manner?

These questions provide the selection boards with an assurance that the firm's application is complete and up to date, and that the firm is still interested. However, these questions do not give the top ranked firms an opportunity to provide their approach for furnishing the required services.

Price Negotiation Memorandums. FAR 15.808, "Price Negotiation Memorandum," requires that the contracting officer prepare a price negotiation memorandum at the conclusion of each negotiation of an initial or revised price. The FAR and the Engineer Federal Acquisition Regulation Supplement (EFARS) establish various minimum requirements to be included in the price negotiation memorandums.

We found the following violations of either the FAR, DFARS, or EFARS concerning data that should have been in the 72 price negotiation memorandums in our sample (32 prepared by EUD and 40 prepared by the local engineering activity). We would not normally consider these violations to be serious internal control deficiencies by themselves. However, these deficiencies, in conjunction with numerous other internal control deficiencies, led us to conclude that internal controls were generally lax.

FAR 15.808(a)(8) states that an explanation of variances between the Defense Contract Audit Agency (DCAA) audit and the contractor's proposal should also be included in the price negotiation memorandum. Of the 14 contracts where audits were made, all negotiated by EUD, 3 price negotiation memorandums did not have an explanation of the differences between the audit and the proposal.

EFARS 15.808(c)(1)(f), in effect for our sample contracts, stipulates that the A-E contractor be told that his proposal is subject to approval by a contracting officer, since a contracting

officer is not usually present during negotiations. Five of the forty price negotiation memorandums prepared by local engineering activities neglected to state this in the price negotiation memorandum.

On contracts where future construction is probable, FAR 36.606, "Negotiations," subparagraph (c), requires that the A-E contractor be told that he is not eligible for the subsequent construction project (except as provided in FAR 36.209, "Construction Contracts with Architect-Engineer Firms"). In 3 of the 59 price negotiation memorandums examined in which future construction was probable, the price negotiation memorandum did not state that the A-E contractor was informed that the firm could not perform the subsequent construction.

In addition to the problems previously identified, price negotiation memorandums prepared at local engineering activities were generally not as informative as those prepared at EUD and also did not include several other requirements. For example, EFARS 15.808(c)(1)(d), in effect during the period of our review, states that the price negotiation memorandum must contain "discussions of the contract, general and specific clauses." The following four clauses are specific to A-E contracts and must be discussed during negotiations and documented in the price negotiation memorandum.

According to FAR 36.609-2, the Government must ensure that the A-E contractor is aware of the responsibility and potential liability under the contract. In 48 of the 72 price negotiation memorandums in our sample, there was no indication that discussion of FAR 52.236-23, "Responsibilities of the Architect-Engineer Contractor," was held. None of the 40 price negotiation memorandums prepared by a local engineering activity complied with this requirement.

The A-E contractor must also be informed of his rights and duties concerning changes to the contract. There was no indication of discussion of FAR 52.243-1, "Changes - Fixed-Price," (alternative III) in 47 of the 72 price negotiation memorandums reviewed. Again, none of the 40 price negotiation memorandums prepared by a local engineering activity included any statement concerning this requirement.

FAR 36.609-1 prescribes the use of FAR 52.236-22, "Design Within Funding Limitations," which requires the contractor to accomplish the design within the construction fund limitation that was agreed upon during negotiations. Of the 72 price negotiation memorandums in our sample, there were 39 where construction was imminent. Of these 39 price negotiation memorandums, 29 did not include a statement that the discussion of this clause was held. Of the 39, there were 22 price negotiation memorandums attributable to local engineering activities, none of these 22 indicated that the discussions were held.

FAR 44.204(d) requires that FAR 52.244-4, "Subcontractors and Outside Associates and Consultants" is included in fixed-price A-E contracts. Eleven of the nineteen contracts reviewed at EUD used subcontractors. This clause was included in all 19 contracts; however, documentation was not included in any of the 72 price negotiation memorandums to indicate that the clause had been discussed during negotiations.

Release of Claims. FAR 32.111(d)(1) requires that contracting officers include FAR 52.232-10, "Payments under Fixed-Price Architect-Engineer Contracts," in fixed-price architect-engineer contracts. This clause prescribes that:

> Before final payment under the contract, . . . and as a condition thereto, the Contractor shall execute and deliver to the Contracting Officer a release of all claims against the Government arising under or by virtue of this contract.

FAR 52.232-10 provides a control that precludes any subsequent unforeseen claims, so that the contract can be properly closed. For the 96 contracts in our sample, 36 contracts were completed and final payment had been processed. Ten of these completed contracts had been processed by EUD personnel and twenty-six by the local engineering activity. For two of the EUD contracts and six of the local engineering activity contracts, a release of claims had not been executed.

Performance Evaluations. FAR 36.604 requires that a Performance Evaluation (Architect-Engineer), SF 1421, be prepared for each A-E contract of more than $25,000 and that a performance evaluation report "shall be prepared after final acceptance of the work or after contract termination, as appropriate." Further, DFARS 236.604(a)(2) requires that a separate A-E performance report be prepared after completion of the actual construction of the A-E project. Headquarters, Corps of Engineers, guidance requires both of these evaluation reports. U.S. Army Engineer Division, Europe, Pamphlet (EUDP) 1180-1-3 states that for direct A-E contracts, the COR will "Ensure that the Performance Evaluations (SF 1421 . . .) are initiated and processed within 30 days of completion of the Architect-Engineer services." U.S. Army Engineer Division, Europe Regulation (EUDR) 1180-1-20, dated April 1987, further requires that "an evaluation will be prepared for all delivery orders. These delivery order evaluations will then be used to prepare an overall evaluation for the IDT contract."

The performance reports shall be prepared after final acceptance of the work or after contract termination, as appropriate. These reports provide a control to ensure that the contractor is notified regarding the acceptability of his work. Additionally,

the performance reports can be used as a means to evaluate the contractor's past performance during the contractor selection process on future solicitations by DoD contracting offices. FAR 36.604(c) requires that the performance "report shall be included in the contract file." In addition to maintaining a copy of the performance report in the contract file, DFARS 236.604(c) requires that a copy of the performance report be forwarded to a central data base maintained at the U.S. Army Engineer Division, North Pacific, Portland, Oregon.

For the items in our sample, 6 of the 12 basic contracts were complete and only 2 of the 6 had a performance evaluation. Additionally, there were 37 contracts in our sample that were orders placed against a basic IDT contract. Of these, 30 were completed and only 6 had performance evaluations: 3 were attributable to EUD personnel and 3 to local engineering activity personnel. Therefore, the control to ensure that subsequent awards appropriately consider past performance on DoD contracts cannot be accomplished.

RECOMMENDATIONS, MANAGEMENT COMMENTS, AND AUDIT RESPONSE

The Army nonconcurred with our draft report Recommendation A.2.e. and provided appropriate justification. Therefore, we have deleted this recommendation from our final report, and accordingly, draft report Recommendations A.2.f. through A.2.k. have been renumbered Recommendations A.2.e. through A.2.j. in the final report. The complete texts of management comments are in Appendixes C, D, and E.

Recommendation 1. We recommend that the Commander U.S. Army Contracting Center, Europe, direct all Army activities operating in Europe to establish procedures to:

a. Maintain appropriate separation of duties for contract award and administration of architect-engineer contracts.

b. Require the preparer to sign and date the statement of work and require the Director of Engineering and Housing, or the equivalent, to indicate approval of the statement of work by signature and date.

c. Require the presence of more than one Government representative at negotiations and require that one of these representatives is adequately trained in the negotiation and contracting process.

d. Comply with Federal Acquisition Regulation 36.602-3, "Evaluation Board Functions," subpart (b) and select architect-engineer firms in accordance with announced evaluation criteria and discontinue the practice of favoring architect-engineer firms based on specific recommendations.

e. Document the price negotiation memorandum to explain the variances between the Defense Contract Audit Agency's audit and the contractor's proposal; to show that the architect-engineer contractor was informed that his proposal is subject to approval by a contracting officer and that the architect-engineer contractor is not eligible for the subsequent construction project (except as provided in Federal Acquisition Regulation 36.209); and to show that Federal Acquisition Regulation clauses 52.236-22, "Design Within Funding Limitations," 52.236-23, "Responsibility of the Architect-Engineer Contractor," 52.243-1, "Changes--Fixed-Price," and 52.244-4, "Subcontractors and Outside Associates and Consultants" at a minimum, were discussed with the contractor.

f. Comply with Federal Acquisition Regulation 52.232-10, "Payments Under Fixed-Price Architect-Engineer Contracts," which requires the Contractor to execute a release of claims prior to final payment.

g. Prepare performance evaluations on completion of each contract in accordance with Federal Acquisition Regulation 36.604, "Performance Evaluation," and forward it to the Department of Defense central data base, as required by the Defense Federal Acquisition Regulation Supplement 236.604(c), "Distribution and Use of Performance Reports."

h. Report and track the resolution of the material deficiencies identified in this report, as required by the Department of Defense Directive 5010.38, "Internal Management Control Program."

Management Comments. The Director, Procurement Policy, Office of the Assistant Secretary of the Army (Research Development and Acquisition) concurred in draft Recommendations A.1.a. through A.1.h. The Director also stated that these recommendations should be directed to the Principal Assistant Responsible for Contracting (PARC) at the U.S. Army Contracting Center, Europe.

Audit Response. The Director's comments are responsive; however, he did not provide a description of the corrective actions taken or planned, the completion dates of actions already taken, or the estimated dates for completion of planned actions. As requested by the Army, we have addressed these recommendations to the U.S. Army Contracting Center, Europe. As required by DoD Directive 7650.3, we request that comments to the final report provide the additional information.

Recommendation 2. We recommend that the Chief of Engineers, U.S. Army Corps of Engineers, direct the U.S. Army Engineer Division, Europe, to establish procedures to:

Recommendation 2.a. Provide for the rotation of board members from successive selection boards and issue appointment letters for periods not to exceed 1 year.

Management Comments. The Deputy Assistant Secretary of the Army (Procurement) concurred, stating that "A memorandum will be written to CEEUD [Corp of Engineers - European Division] by 1 Nov 90 [November 1, 1990] requesting that this recommendation be implemented."

Recommendation 2.b. Require that the statement of work be signed and dated by the preparer, and that supervisory personnel review, approve, date, and sign the document.

Management Comments. The Deputy Assistant Secretary of the Army (Procurement) concurred, stating that "A policy memorandum will be issued by HQUSACE [Headquarters US Army Chief of Engineers] with this direction to all FOA [Field Office Activities]. Planned issue date: 31 Jan 91."

Recommendation 2.c. Require the presence of more than one Government representative at negotiations and require that one of these representatives is adequately trained in the negotiation and contracting process.

Management Comments. The Deputy Assistant Secretary of the Army (Procurement) concurred, stating that "This requirement will be included in the Standard Operating Procedures (SOP) for indefinite delivery type (IDT) contracts, where delivery orders are negotiated at installations not in the organizational structure of EUD. The SOP revision is scheduled for 1 Nov 90."

Recommendation 2.d. Comply with Federal Acquisition Regulation 36.702(b)(2) to require the submission of a Standard Form 255, "Architect-Engineer and Related Services Questionnaire for Specific Projects," when the award is expected to exceed the small purchase limitation.

Management Comments. The Deputy Assistant Secretary of the Army (Procurement) concurred, stating that "CEEUD implemented this recommendation in an internal memorandum dated 27 Jun 90."

Recommendation 2.e. Comply with Federal Acquisition Regulation 36.602-3, "Evaluation board functions," subparagraph (b), and select architect-engineer firms in accordance with established and announced evaluation criteria and discontinue the practice of favoring architect-engineer firms based on specific recommendations.

Management Comments. The Deputy Assistant Secretary of the Army (Procurement) concurred, stating that "CEEUD has discontinued the practice of giving undue weight to recommendations of installations in selection actions for IDT

contracts for O&M work. The revision for the SOP for IDT contracts, scheduled for 1 Nov 90, will delete the provision that installations can make such recommendations."

Recommendation 2.f. Comply with Federal Acquisition Regulation 36.602-3 "Evaluation board functions," subparagraph (c) and hold legitimate discussions with at least three of the most highly qualified firms regarding concepts and relative utility of alternative methods of furnishing the required services.

Management Comments. The Deputy Assistant Secretary of the Army (Procurement) concurred but did not provide any additional comments.

Audit Response. The Deputy Assistant Secretary's comments did not provide a description of the corrective actions taken or planned, the completion dates of actions already taken, or the estimated dates for completion of planned actions. As required by DoD Directive 7650.3, we request that comments to the final report provide the additional information.

Recommendation 2.g. Document the price negotiation memorandum to explain the variances between the Defense Contract Audit Agency's audit and the contractor's proposal; to show that the architect-engineer contractor was informed that his proposal is subject to approval by a contracting officer and that the architect-engineer contractor is not eligible for the subsequent construction project (except as provided in Federal Acquisition Regulation 36.209); and to show that Federal Acquisition Regulation clauses 52.236-22, "Design Within Funding Limitations," 52.236-23, "Responsibility of the Architect-Engineer Contractor," 52.243-1, "Changes--Fixed-Price," and 52.244-4, "Subcontractors and Outside Associates and Consultants" at a minimum, were discussed with the contractor.

Management Comments. The Deputy Assistant Secretary of the Army (Procurement) concurred, stating that "On IDT contracts, the discussion of the contract clauses takes place in the negotiation of the basic contract since they are general in nature and apply to all delivery orders."

Audit Response. The Deputy Assistant Secretary's comments did not provide a description of the corrective actions taken or planned, the completion dates of actions already taken, or the estimated dates for completion of planned actions. As required by DoD Directive 7650.3, we request that comments to the final report provide the additional information.

Recommendation 2.h. Comply with Federal Acquisition Regulation clause 52.232-10, "Payments under Fixed-Price Architect-Engineer Contracts," which requires the Contractor to execute a release of claims prior to final payment.

Management Comments. The Deputy Assistant Secretary of the Army (procurement) concurred, stating that "Procedures currently in place at CEEUD require that a release of claims be obtained from the A-E prior to contract closeout."

Recommendation 2.i. Prepare performance evaluations on completion of each contract in accordance with Federal Acquisition Regulation 36.604, "Performance evaluation," and forward it to the Department of Defense central data base as required by Defense Federal Acquisition Regulation Supplement 236.604(c), "Distribution and Use of Performance Reports."

Management Comments. The Deputy Assistant Secretary of the Army (Procurement) concurred, stating that "CEEUD has procedures in place for this action."

Recommendation 2.j. Report and track the resolution of the material deficiencies identified in this report, as required by Department of Defense Directive 5010.38.

Management Comments. The Deputy Assistant Secretary of the Army (Procurement) concurred, stating that "A memorandum will be written to CEEUD by 1 Nov 90 [November 1, 1990] on items to be included in the internal controls system as a result of the subject report."

B. Architect-Engineer Contract Administration Support System

FINDING

The U.S. Army Engineer Division, Europe, had not used the Architect-Engineer Contract Administration Support System to obtain contract history and performance data on potential architect-engineer contractors. The Division claimed that access to the Architect-Engineer Contract Administration Support System was too difficult from an overseas location and that it was only relevant to CONUS. As a result, there is a potential for selecting a contractor with an established history of poor performance.

DISCUSSION OF DETAILS

Background. The Architect-Engineer Contract Administration Support System (ACASS) is an automated system operated and maintained by the U.S. Army Corps of Engineers, North Pacific Division, Portland, Oregon (COE Portland). The Corps of Engineers designed this system to enable management to assess and fairly evaluate architect-engineer (A-E) firms who applied for, or were interested in, A-E contracts with the Government. Preselection and final selection officials use the system to analyze factors required by the selection process. ACASS provides a central point to gather information included on a firm's qualification data (SF 254 data), a firm's volume of work with the Government, and a firm's past performance evaluations on Government contracts (SF 1421 data). A review of ACASS before preparing an announcement provides an indicator as to the number of firms that might possess the needed expertise. Review of ACASS before the final selection process discloses the firm's past performance, not only with the selecting contracting office, but also with other contracting offices within the Army, the Navy, and the Air Force. In addition, ACASS will indicate the extent of other awards to DoD activities.

Details of Audit. The U.S. Army Engineer Division, Europe (EUD), is the primary contracting office for A-E and construction contracts in Europe. Although EUD has recognized that the "ACASS is extremely useful in CONUS" and has provided performance evaluations to ACASS, EUD has avoided using ACASS in the selection process. In May 1988, EUD requested an exemption from EUD's input into and use of ACASS, through the Model Division Initiative Program, from Headquarters, U.S. Army Corps of Engineers. EUD contends that the contract award information is not required to be used for overseas contracts and accordingly, the EUD "award information contained in ACASS is totally useless and if used for A-E selections, is in violation of guidance provided by the Assistant Secretary of Defense." However, we do not agree with the EUD interpretation of the Assistant Secretary of Defense (ASD) guidance. The ASD guidance only provides that

awards to overseas contractors for projects outside the United States need not be considered for contract awards for purposes of equitable distribution. This guidance does not exclude U.S. contractors from being considered for projects overseas nor does it exclude U.S. contractors, who have performed overseas projects, from being considered for U.S. project awards.

EUD further contends that:

> A large majority, possibly as much as 90%, of the A-E contracts awarded by USAEDE are awarded to small local German, Turkish, Italian, etc. firms for IDT and other contracts. The performance information currently in ACASS and new information being provided on these non-US firms is totally useless. These local firms do not apply for work with the US outside Europe and thus do not need to be in ACASS.

To date, Headquarters, Corps of Engineers, has not granted this exemption; however, it has granted a verbal exemption for reporting the award of Indirect Contracts or performance evaluations prepared on Indirect Contracts to ACASS. Since no DoD activity is involved in either the award or the administration of these contracts, it seems reasonable to exclude this data from ACASS.

The Chief of A-E Contract Support Branch also stated that ACASS was not being used at EUD because of transmission problems and that the system is relevant to CONUS. Part of the transmission problem was due to an ACASS maintenance period, which fell between 9 a.m. and 11 a.m., Frankfurt time. When we discussed this problem with COE Portland, it was already aware of the complaint by EUD and had agreed to change the scheduled maintenance period to provide better support for EUD.

We used our random sample of EUD contracts to evaluate the use of ACASS by EUD. Our sample of 19 contracts included 19 different prime contractors. (Note: two contracts were to the same firm; however, one was to the parent company and the other was to one of its branch offices.) (See Appendix A for a list of contracts and contractors.) We obtained ACASS data for a total of 24 contractors: 13 individual firms; 3 branch offices for which we also examined the 3 respective parent offices; and 3 joint ventures (2 had separate ACASS data for each firm and 1 had ACASS data for the consolidated joint venture).

Contrary to EUD's belief that ACASS contains no applicable contractor data; a query of ACASS for the 24 contractors disclosed that all but 1 contractor had reported data to ACASS and the following chart summarizes that information obtained on the 23 contractors in the system.

	Number of Contractors
Award Data:	
ACASS Contained:	
EUD contract award data	17
Other DoD award data	11
Other COE contract award data	13
CONUS contract award data	14
Navy or Air Force European award data	2
Contractor Qualification Data:	
ACASS Contained SF 254 data	14
Performance Evaluation Data:	
ACASS Contained:	
SF 1421 data	16
SF 1421 data from EUD	9
SF 1421 data from other COE	8
SF 1421 data from Navy or Air Force	2
Negative remarks concerning performance	8

As shown above, ACASS contained award data by CONUS and other Corps of Engineer activities for over half of the contractors queried. Additionally, 2 of the 24 contractors also had award data supplied by Navy or Air Force activities in Europe. Although EUD believes that the ACASS award data are "totally useless," the contrary is demonstrated by the amount of information entered into ACASS for other DoD activities. Also, the system contained a significant amount of performance data about the EUD contractors. ACASS contained performance data from other COE activities for 8 of the 24 contractors and contained performance data from the Navy or the Air Force for 2 contractors. We noted one item of particular significance. For eight of the contractors, ACASS also contained negative comments, which could have had an effect on the EUD selection process.

On February 24, 1989, the EUD Internal Audit Office issued Audit Report EUD 89-1. The report identified multiple data bases at EUD being used in lieu of the ACASS data base. The report recommended the discontinuance of one of these data bases and determined that the ACASS data were useful to EUD as well as EUD's input to other DoD activities. As a result of the report, personnel from COE Portland visited EUD to demonstrate the use of, provide training in, and resolve any remaining problems with ACASS. The visit resulted in the previously discussed change, to the ACASS maintenance schedule. Although the system's access was resolved, EUD has been unsuccessful in its attempt to produce a hard copy report.

RECOMMENDATIONS, MANAGEMENT COMMENTS AND AUDIT RESPONSE

Recommendation 1. We recommend that the Chief of Engineers, U.S. Army Corps of Engineers, direct the U.S. Army Engineer Division, Europe, to obtain and use the Architect-Engineer Contract Administration Support System data in the architect-engineer selection process to ensure that all available information is considered when making an architect-engineer selection.

Management Comments. The Deputy Assistant Secretay of the Army (Procurement) concurred, stating that he has already requested coordination between the U.S. Army Engineer Division, Europe, and the Contract Administrative Support System to accomplish this requirement. Additionally, the Chief of Engineers has requested the Contract Administrative Support System personnel to assist in providing interim support until the automated system is operational by December 1, 1990.

Recommendation 2. We recommend that the Chief of Engineers, U.S. Army Corps of Engineers, establish a time phase plan and the needed assistance to enable the U.S. Army Engineer Division, Europe, to use and obtain information from the Architect-Engineer Contract Administration Support System.

Management Comments. The Chief of Engineers concurred and stated that it is expected that Chief of Engineers, European Division (CEEUD) will be able to start using the ACASS data for selection actions by December 1, 1990.

CONTRACTS REVIEWED AT
U.S. ARMY ENGINEER DIVISION, EUROPE

Contract Number	Order/ Mod [1]	Contractor	Dollar Amount (000)
DACA90-84-C-0180	(Basic)	HDR International, Inc.	$178
DACA90-84-C-0180	04	HDR International, Inc.	$167
DACA90-84-C-0180	06	HDR International, Inc.	$70
DACA90-84-C-0180	07	HDR International, Inc.	$21
DACA90-88-D-0042	(Basic)[2]	Hygienetics, Inc.	N/A[3]
DACA90-88-D-0042	01	Hygienetics, Inc.	$0
DACA90-88-D-0042	02	Hygienetics, Inc.	-$2
DACA90-88-D-0042	0001	Hygienetics, Inc.	$134
DACA90-87-C-0059	(Basic)	Spero Daltas & Assoc., Inc.	$59
DACA90-87-C-0059	01	Spero Daltas & Assoc., Inc.	$103
DACA90-88-C-0017	(Basic)	Laubmann-Reed & Assoc., Inc.	$301
DACA90-88-C-0017	01	Laubmann-Reed & Assoc., Inc.	$175
DACA90-87-C-0084	(Basic)	MMM Design Group, Int. Ltd.	$59
DACA90-87-C-0084	01	MMM Design Group, Int. Ltd.	-$9
DACA90-86-D-0053	(Basic)[2]	E.T. Hoffman	N/A[3]
DACA90-86-D-0053	01	E.T. Hoffman	-$2
DACA90-86-D-0053	02	E.T. Hoffman	$0
DACA90-86-D-0053	03	E.T. Hoffman	$0
DACA90-86-D-0053	0001	E.T. Hoffman	$16
DACA90-86-D-0053	000101	E.T. Hoffman	$9
DACA90-86-D-0053	0002	E.T. Hoffman	$39
DACA90-86-D-0053	000201	E.T. Hoffman	$14
DACA90-86-D-0053	0003	E.T. Hoffman	$29
DACA90-86-D-0053	000301	E.T. Hoffman	$25
DACA90-86-D-0053	0004	E.T. Hoffman	$35
DACA90-86-D-0053	000401	E.T. Hoffman	$9
DACA90-86-D-0053	0005	E.T. Hoffman	$50
DACA90-86-D-0053	0006	E.T. Hoffman	$45
DACA90-86-D-0053	000601	E.T. Hoffman	$3
DACA90-86-D-0053	0007	E.T. Hoffman	$51
DACA90-86-D-0053	0008	E.T. Hoffman	$58

See footnotes on last page of Appendix.

CONTRACTS REVIEWED AT U.S. ARMY ENGINEER DIVISION, EUROPE (continued)

Contract Number	Order/ Mod [1]	Contractor	Dollar Amount (000)
DACA90-86-D-0100	(Basic)[2]	Knight Wendling AG	N/A[3]
DACA90-86-D-0100	01	Knight Wendling AG	-$2
DACA90-86-D-0100	02	Knight Wendling AG	$0
DACA90-86-D-0100	0001	Knight Wendling AG	$3
DACA90-86-D-0100	0002	Knight Wendling AG	$14
DACA90-86-D-0100	000201	Knight Wendling AG	$18
DACA90-86-D-0100	0003	Knight Wendling AG	$40
DACA90-86-C-0047	(Basic)	Louis Berger GmbH	$106
DACA90-86-C-0047	01	Louis Berger GmbH	-$71
DACA90-87-C-0131	(Basic)	Higginbotham & Assoc., P.C.	$186
DACA90-88-D-0008	(Basic)[2]	Holmes & Narver-Burton Cohen	N/A[3]
DACA90-88-D-0008	01	Holmes & Narver-Burton Cohen	-$2
DACA90-88-D-0008	0001	Holmes & Narver-Burton Cohen	$141
DACA90-86-C-0167	(Basic)	Bartholomew & Assoc., Inc.	$706
DACA90-86-C-0167	01	Bartholomew & Assoc., Inc.	$0
DACA90-86-C-0167	02	Bartholomew & Assoc., Inc.	$452
DACA90-86-C-0167	03	Bartholomew & Assoc., Inc.	$178
DACA90-87-C-0008	(Basic)	Robert M. Houston, GmbH	$42
DACA90-86-D-0142	(Basic)[2]	Dipl.-ing Laubach & Partner	N/A[3]
DACA90-86-D-0142	01	Dipl.-ing Laubach & Partner	-$2
DACA90-86-D-0142	02	Dipl.-ing Laubach & Partner	$0
DACA90-86-D-0142	03	Dipl.-ing Laubach & Partner	$2
DACA90-86-D-0142	0001	Dipl.-ing Laubach & Partner	$22
DACA90-86-D-0142	0002	Dipl.-ing Laubach & Partner	$35
DACA90-86-D-0142	0003	Dipl.-ing Laubach & Partner	$41
DACA90-86-D-0142	0004	Dipl.-ing Laubach & Partner	$12
DACA90-86-D-0142	0005	Dipl.-ing Laubach & Partner	$36
DACA90-86-D-0142	0006	Dipl.-ing Laubach & Partner	$43
DACA90-86-D-0142	0007	Dipl.-ing Laubach & Partner	$33
DACA90-86-D-0142	0008	Dipl.-ing Laubach & Partner	$31
DACA90-86-D-0142	0009	Dipl.-ing Laubach & Partner	$62
DACA90-86-D-0142	0010	Dipl.-ing Laubach & Partner	$40
DACA90-86-D-0142	0011	Dipl.-ing Laubach & Partner	$76
DACA90-86-D-0142	0012	Dipl.-ing Laubach & Partner	$41
DACA90-86-D-0142	0013	Dipl.-ing Laubach & Partner	$6

See footnotes on last page.

CONTRACTS REVIEWED AT U.S. ARMY ENGINEER DIVISION, EUROPE
(continued)

Contract Number	Order/ Mod [1]	Contractor	Dollar Amount (000)
DACA90-84-C-0166	(Basic)	Boyle Engineering Corporation	$235
DACA90-84-C-0166	05	Boyle Engineering Corporation	$246
DACA90-88-D-0025	(Basic)[2]	Architekturbuero Wuelleitner	N/A[3]
DACA90-88-D-0025	01	Architekturbuero Wuelleitner	-$2
DACA90-88-D-0025	02	Architekturbuero Wuelleitner	$0
DACA90-88-D-0025	0001	Architekturbuero Wuelleitner	$38
DACA90-88-D-0025	0006	Architekturbuero Wuelleitner	$99
DACA90-88-D-0025	0007	Architekturbuero Wuelleitner	$81
DACA90-86-C-0149	(Basic)	Keller & Gannon	$1,644
DACA90-86-C-0149	01	Keller & Gannon	$0
DACA90-86-C-0149	02	Keller & Gannon	$78
DACA90-86-D-0090	(Basic)[2]	MMM Design Group, GmbH	N/A[3]
DACA90-86-D-0090	02	MMM Design Group, GmbH	$0
DACA90-86-D-0090	03	MMM Design Group, GmbH	$1
DACA90-86-D-0090	0003	MMM Design Group, GmbH	$47
DACA90-86-D-0090	0004	MMM Design Group, GmbH	$34
DACA90-86-D-0090	000401	MMM Design Group, GmbH	$14
DACA90-86-D-0090	0005	MMM Design Group, GmbH	$31
DACA90-86-D-0090	0008	MMM Design Group, GmbH	$74
DACA90-86-D-0090	0009	MMM Design Group, GmbH	$40
DACA90-86-D-0090	0010	MMM Design Group, GmbH	$26
DACA90-86-D-0090	0011	MMM Design Group, GmbH	$26
DACA90-86-D-0090	0012	MMM Design Group, GmbH	$51
DACA90-86-D-0090	001201	MMM Design Group, GmbH	$6
DACA90-87-C-0133	(Basic)	Clark Tribble Harris & Li	$140
DACA90-87-C-0133	01	Clark Tribble Harris & Li	$80
DACA90-87-C-0133	02	Clark Tribble Harris & Li	$145
DACA90-87-C-0023	(Basic)	Falick/Klein, Steffen/Peter[4]	$1,488
DACA90-87-C-0023	01	Falick/Klein, Steffen/Peter	$1,207
DACA90-87-C-0023	02	Falick/Klein, Steffen/Peter	$172

1/ Order and modification numbers.
2/ Indefinite delivery type basic awards.
3/ Not Applicable.
4/ Falick/Klein Partnership, Inc. and Steffen & Peter, joint venture.

CONTRACTS OVER $500,000 REVIEWED AT U.S. ARMY ENGINEER DIVISION, EUROPE

Contract Number	Modification Number	Contractor	Dollar Amount (000)
DACA90-84-C-0170	P00007	Basil, Frank E. Inc.	$655
DACA90-86-C-0032	P00003	Muir Planning Corporation	$1,611
DACA90-87-C-0023	P00001	Falick/Klein Partnership, Steffen & Peter */	$1,207
DACA90-87-C-0043	P00004	Stone, Marraccini & Patterson Steffen & Peter */	$1,360
DACA90-88-C-0074		Laubmann - Reed & Assoc., Inc.	$770
DACA90-88-C-0106		Metcalf Associates	$926

*/ Joint Venture.

DEPARTMENT OF THE ARMY
OFFICE OF THE ASSISTANT SECRETARY
WASHINGTON, DC 20310-0103

21 SEP 1990

MEMORANDUM FOR The Inspector General Department of Defense

ATTENTION: Contract Management Directorate

SUBJECT: Draft Report on the Audit of Architect-Engineer Contracting at U.S. Army Engineer Division, Europe (Project No. 9CD-0032.00)

This is in response to your request for comments contained in memorandum dated 12 July 1990. The Army Corps of Engineers comments on Findings and Recommendations A and B are enclosed. We appreciate the opportunity to review and comment on the report.

George B. Dausman
Deputy Assistant Secretary of the Army
(Procurement)

Enclosure

COMMENTS ON THE FINDINGS AND RECOMMENDATIONS
ADDRESSED TO THE CORPS OF ENGINEERS
PROJECT NO. 9CD-0032.00

FINDING A: Engineers at local engineeering activities performed contract preaward and administration procedures for architect-engineer contracts without proper separation of duties, supervision, execution of transactions and events, or documentation.

RESPONSE: Concur.

RECOMMENDATION A.2.a: Provide for the rotation of board members from successive boards and issue appointment letters for periods not to exceed one year.

RESPONSE: Concur. A memorandum will be written to CEEUD by 1 Nov 90 requesting that this recommendation be implemented. We will require that the chairmanship of selection boards be changed annually, and that membership be rotated among qualified personnel. From the standpoint of continuity of operation, we will suggest that no more than half of board membership be changed annually.

RECOMMENDATION A.2.b: Require that the statement of work be signed and dated by the preparer, and that supervisory personnel review, approve, date, and sign the document.

RESPONSE: Concur. A policy memorandum will be issued by HQUSACE with this direction to all FOA. Planned issue date: 31 Jan 91.

RECOMMENDATION A.2.c: Require the presence of more than one Government representative at negotiations and require that one of these representatives be adequately trained in the negotiation and contracting process.

RESPONSE: Concur. This is standard practice for contracts negotiated in EUD. This requirement will be included in the Standard Operating Procedures (SOP) for indefinite delivery type (IDT) contracts, where delivery orders are negotiated at installations not in the organizational structure of EUD. The SOP revision is scheduled for 1 Nov 90.

RECOMMENDATION A.2.d: Comply with Federal Acquisition Regulation 36.702(b)(2) to require the submission of a Standard Form 255, "Architect-Engineer and Related Services Questionnaire for specific Projects," when the award is expected to exceed the small purchase limitation.

RESPONSE: Concur. CEEUD implemented this recommendation in an internal memorandum dated 27 Jun 90.

RECOMMENDATION A.2.e: Comply with Federal Acquisition Regulation 5.205(c), "General notices and announcements," to synopsize all requirements for architect-engineer services when non-local firms will be considered for awards. Deleted

RESPONSE: Nonconcur. FAR 5.202(a)(12) allows DoD agencies outside the United States, its possessions, or Puerto Rico; an exception to the general requirement to synopsize in the CBD when only local sources will be solicited. FAR 36.602-1(a)(5) allows use of geographical location as one criterion in selection of A-Es, when its application leaves an appropriate number of qualified firms.

This matter has been discussed with the Chief, Contract Administration Branch, CEEUD. The decision on whether to advertise locally or synopsize in the CBD is made on the basis of whether there are a sufficient number of qualified firms in CEEUD's geographical area to ensure adequate competition. Local advertisements are made by posting on the Division bulletin board, bulletin boards in area offices; and, in the case of a contract for installation O&M support, on the installation's bulletin board. Firms in the area that are known to be qualified for the work being advertised are also contacted. Thirty days are allowed for these advertisements.

From the above, the position of the HQUSACE staff is that the present practices for advertising requirements for A-E services in CEEUD are in accordance with acquisition regulations and should not be changed. There were no findings of inadequate competition by the IG DoD for requirements advertised locally.

RECOMMENDATION A.2.f: Comply with Federal Acquisition Regulation 36.602-3, "Evaluation board functions," subparagraph (b), and select architect-engineer firms in accordance with established and announced evaluation criteria and discontinue the practice of favoring architect-engineer firms based on specific recommendations. A.2.e.

RESPONSE: Concur. CEEUD has discontinued the practice of giving undue weight to recommendations of installations in selection actions for IDT contracts for O&M work. The revision for the SOP for IDT contracts, scheduled for 1 Nov 90, will delete the provision that installations can make such recommendations.

A.2.f.

RECOMMENDATION A.2.g: Comply with Federal Acquisition Regulation 36.602-3 "Evaluation board functions," subparagraph (c) and hold legitimate discussions with at least three of the most highly qualified firms regarding concepts and relative utility of alternative methods of furnishing the required services.

RESPONSE: Concur. See paragraph 13.a.

RECOMMENDATION A.2.h: Document the price negotiation memorandum to explain the variances between the Defense Contract Audit Agency's audit and the contractors's proposal; to show that the architect-engineer contractor was informed that his proposal is subject to approval by a contracting officer and that the architect-engineer contractor is not eligible for the subsequent construction contract (except as provided in Federal Acquisition Regulation 36.209); and to show that Federal Acquisition Regulation clauses 52.236-22, "Design Within Funding Limitations," 52.236-23, " Responsibility of the Architect-Engineer Contractor," 52.243-1, "Changes - Fixed Price," and 52.244-4, "Subcontractors and Outside Associates and Consultants" at a minimum, were discussed with the contractor.

A.2.g.

RESPONSE: Concur, with the comment that the references in the above recommendation to the contractor's proposal are taken to mean the cost and pricing data on which the negotiated fee is based. On IDT contracts, the discussion of the contract clauses takes place in the negotiation of the basic contract since they are general in nature and apply to all delivery orders.

RECOMMENDATION A.2.i: Comply with Federal Acquisition Regulation clause 52.232-10, "Payments under Fixed - Price Architect-Engineer Contracts" which requires the Contractor to execute a release of claims prior to final payment.

A.2.h.

RESPONSE: Concur. Procedures currently in place at CEEUD require that a release of claims be obtained from the A-E prior to contract closeout.

RECOMMENDATION 2.A.j: Prepare performance evaluations on completion of each contract in accordance with Federal Acquisition Regulation 36.604, "Performance evaluation," and forward it to the Department of Defense central data base as required by Defense Federal Acquisition Regulation Supplement 236.604(c), "Distribution and Use of Performance Reports."

A.2.i.

RESPONSE: Concur. CEEUD has procedures in place for this action.

RECOMMENDATION A.2.k: Report and track the resolution of the material deficiencies identified in this report, as required by Department of Defense Directive 5010.38. Final Report A.2.j.

RESPONSE: Concur. A memorandum will be written to CEEUD by 1 Nov 90 on items to be included in the internal controls system as a result of the subject report.

FINDING B: The U.S. Army Engineer Division, Europe had not used the Architect-Engineer Contract Administration Support System to obtain contract history and performance data on potential architect-engineer contractors.

REPONSE: Concur

RECOMMENDATION B.1: Direct the U.S. Army Engineer Division, Europe to obtain and use the Architect-Engineer Contract Administration Support System data in the architect-engineer selection process to ensure that all available information is considered when making an architect-engineer selection.

RESPONSE: Concur. Personnel from the Architect-Engineer Contract Administration Support System (ACASS) Center visited CEEUD last fall and found that basic capability exists for communications with the ACASS Center, though there were problems of a hardware/software nature in the engineering office handling A-E selections. We have requested the ACASS Center to write CEEUD by 1 Nov 90, listing the hardware and software needed for electronic communication with ACASS. We also asked the Center to suggest interim measures by which CEEUD can obtain the necessary data for procurement actions until such time as they have their equipment fully operational.

We have agreed with CEEUD not to require the use of ACASS data for selection of firms awarded IDT contracts for O&M work, except as required by DFARS 236.604(c) and 236.201(c)(3). Advertisements for these contracts are made locally. The qualifications, amount of work awarded, and performance evaluations of the firms usually responding are readily available to selection boards. However, the requirements for data input to ACASS for these contracts have not been waived (i.e., contracts awarded and performance evaluations).

RECOMMENDATION B.2: Establish a time phase plan and the needed assistance to enable the U.S. Army Engineer Division, Europe, to use and obtain information from the Architect-Engineer Contract Administration Support System.

RESPONSE: Concur. See the response to the recommendation in paragraph 14 above. We expect CEEUD to start using ACASS data for selection actions by 1 Dec 90. The date for electronic communications between CEEUD and the ACASS Center to be fully operational will depend upon the availability of the hardware and software required. We will request periodic status reports from both the ACASS Center and CEEUD until CEEUD has established routine access/usage of the ACASS database using electronic communications. The first report will be due on 1 Jan 91.

DEPARTMENT OF THE ARMY
OFFICE OF THE ASSISTANT SECRETARY
WASHINGTON, DC 20310-0108

4 JAN 1991

MEMORANDUM FOR THE INSPECTOR GENERAL, DEPARTMENT OF DEFENSE,
ATTN: CONTRACT MANAGEMENT DIRECTORATE
(MR. MILLION)

SUBJECT: Draft Report on the Audit of Architect-Engineer Contracting at U.S. Army Engineer Division, Europe (Project No. 9CD-0032.00)

The Army concurs in your draft findings 1a through 1h. Direction to Army contracting activities is not the responsibility of the Assistant Secretary of the Army (Financial Management) however; instead the Principal Assistant Responsible for Contracting (PARC) at the U.S. Army Contracting Center, Europe (ACCE) has agreed to issue the necessary paperwork.

This response, coupled with the previous Army Corps of Engineers comments forwarded to you on 21 September 1990, should close out this case.

Joseph R. Varady, GS-15
Director, Procurement Policy

DEPARTMENT OF THE ARMY
HEADQUARTERS, UNITED STATES ARMY, EUROPE, and SEVENTH ARMY
APO NEW YORK 09403

REPLY TO ATTENTION OF

30 AUG 1990

AEAGX-IA (36-2b)

MEMORANDUM FOR HQDA(SAIG-PA), WASH DC 20310-1734

SUBJECT: Draft Report on the Audit of Architect-Engineer Contracting at U.S. Army Engineer Division, Europe (USAEDE) (Project No. 9CD-0032.00) (89-D)

1. References:

a. AR 36-2, Processing Internal and External Audit Reports and Followup on Findings and Recommendations.

b. Memorandum, HQDA, SAIG-PA, 23 Jul 90, SAB, forwarding subject draft report.

2. USAREUR generally agrees with the subject DODIG draft report. Although recommendations are not addressed to CINCUSAREUR, the implementation will affect this command. Accordingly, the Office of the Deputy Chief of Staff, Engineer (ODCSENGR), USAREUR, started corrective actions outlined below:

a. The Contract Support Team of Facility Engineering is working with USAEDE, Directorate of Contracting, to revise Standard Operating Procedures for Indefinite Delivery Type contracts to include the recommendations of subject report.

b. ODCSENGR is also funding training seminars to be offered by USAEDE for certification/recertification of Community contracting officers representatives. Programs of instruction for these training seminars are being revised to include the recommendations of subject report.

3. The HQ USAREUR/7A POC is Ms. Willenburg, AV (314-) 370-7906.

FOR THE COMMANDER IN CHIEF:

BRUCE L. WHITE
CPT, AG
Assistant Adjutant General

SUMMARY OF POTENTIAL MONETARY AND OTHER BENEFITS RESULTING FROM AUDIT

Recommendation Reference	Description of Benefit	Amount and/or Type of Benefit
A.1., A.2.	Internal Control to Improve Architect-Engineer Contracts	Undeterminable
B.1., B.2.	Improved Use of Government Resources	Undeterminable

The amount of lost monetary benefits cannot be determined since architect-engineer contracts are not awarded on a price competition basis.

AUDIT TEAM MEMBERS

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FINAL REPORT DISTRIBUTION

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Comptroller of the Department of Defense
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Department of the Army

Commander In Chief, U.S. Army, Europe
Chief of Engineers, U.S. Army Corps of Engineers
Commander, U.S. Army Europe, Contracting Center
Commander, U.S. Army Engineer Division, Europe

Other Defense Activities

U.S. Commander In Chief, Europe
Office of Management and Budget, Office of Federal Procurement Policy
Office of the Assistant Inspector General for Criminal Investigation Policy and Oversight
Office of the Assistant Inspector General for Investigations
Office of the Inspector General, Inspector General Regional Office, Europe

Non-Defense Activities

Office of Management and Budget
U.S. General Accounting Office, NSIAD Technical Information Center
Congressional Committees:
- Senate Subcommittee on Defense, Committee on Appropriations
- Senate Committee on Armed Services
- Senate Committee on Governmental Affairs
- Senate Subcommittee on Military Construction, Committee on Appropriations
- Senate Subcommittee on Military Construction, Committee on Armed Services
- Senate Ranking Minority Member, Committee on Armed Services
- House Committee on Appropriations
- House Subcommittee on Military Construction, Committee on Appropriations
- House Subcommittee on Defense, Committee on Appropriations
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- House Committee on Armed Services
- House Subcommittee on Military Installations and Facilities, Committee on Armed Services
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