

CHAPTER G-1

IMPLEMENTATION AND MAINTENANCE OF ARCHITECT-ENGINEER (A-E) RESPONSIBILITY MANAGEMENT PROGRAM (AERMP)

1. Purpose. To define responsibilities and procedures within Engineering Division for implementation and maintenance of the AERMP.
2. Applicability. This policy applies to all Engineering Division elements involved in A-E responsibility actions for design deficiency.

3. References.

- a. FAR 32.6, 32.606, 32.608, 32.610, 32.613, 32.614
- b. FAR 33.2, 33.211
- c. FAR 36.608, 36.609-1, 36.609-2
- d. FAR 52.236-22, 52.236-23
- e. AR 37-1, Chapter 15, Receivables and Debt Management
- f. ER 715-1-10, Architect-Engineer Responsibility Management Program (AERMP)
- g. EC 715-1-86, Architect-Engineer Performance Evaluation
- h. EP 415-345-2, Automated Management and Program Reporting System (AMPRS) Data

Dictionary

- i. [DC 715-1-3, Standard Operating Procedures for Architect-Engineer Responsibility Management Program](#).

4. Responsibilities.

- a. A-E Responsibility Administrator (AERA). The Assistant Chief, Engineering Division, shall be responsible for the overall administration of the AERMP.

- b. A-E Responsibility Coordinator (AERC). A Senior Engineer in the Engineering Division will be assigned the responsibility to manage the Architect-Engineer Responsibility Management Program and shall be designated as the AERC to be responsible for the daily monitoring and coordination of the AERMP. The AERC shall coordinate the preparation of cases for review by the Architect-Engineer Responsibility Review Board (AERRB) and action by the Contracting Officer, and the preparation of monthly District reports, quarterly reports to Division (CESAD), and provide assistance to Office of Counsel in preparation of Findings of Fact and Rule 4 documentation when necessary.

- c. A-E Responsibility Review Board (AERRB). The designated A-E contract COR shall also serve as the COR for the AERMP. This individual is officially assigned A-E project COR authority by the District Contracting Officer (CO).

5. Policies.

- a. Design within Funding Limitations. It is the responsibility of the A-E to design within funding

limitations, as required by FAR 36.609-1. Failure by an A-E to perform satisfactorily in this area may result in damage to the Government. If so, the liability of the A-E shall be considered and acted upon in accordance with the provisions of ER 715-1-10. The contract file will be appropriately documented, in accordance with FAR 36.609-1, if the A-E fails to meet the construction cost limitation and is not required to redesign the project.

b. Discovery and Investigation of Design Deficiency. The information in this policy generally refers to design deficiencies remedied by construction changes. This policy also applies to all other deficiencies of an A-E in performance of a contract that result in damages to the Government. Individuals in Cost Engineering, Design, Engineering Management, Geotechnical and HTRW Branches shall report any such deficiencies to the AERC for further investigation. The AERC will research all pertinent contract and design data to include, but not limited to, scopes of work, user requests, changes in scope, design review comments, and design analyses. The AERC will also coordinate with Project Management Division, Engineering Management Branch, Engineering Management and Support Section, who will task senior engineers in Engineering Division when necessary. Examples of damages include design errors requiring resubmittals, failure to obtain required permits and redesigns due to failure to design within funding limitations.

c. Technical and Administrative Support. The AERC shall investigate, pursue, and monitor all A-E responsibility cases. AERC shall prepare written documentation of backup data so A-E responsibility actions can be reviewed by AERRB. The AERC shall initiate notification letters, demand letters, acceptance letters, and appropriate reports to Division (CESAD). Coordination with Office of Counsel shall be as appropriate, including preparation of documentation for Contracting Officer final decisions.

6. Procedures.

a. A-E Responsibility Notification.

(1) Design Phase. The notification of a possible design error or omission found during the design phase will be made by the AERC through the Project Manager. This notification will be a letter initiated by the AERC and signed by the Contracting Officer's Representative (COR). The letter shall notify the A-E of the design deficiencies which will require a resubmittal of the project and of potential A-E responsibilities. As a general rule, the A-E shall be notified of design deficiencies by the AERC immediately when there is a possibility for A-E responsibility and shall be requested to provide design corrections as necessary. In the event that the A-E cannot respond in a suitable time frame or fails to respond, the District has the option to pursue in-house design if necessary. The A-E will be formally notified of potential liability for the cost of the redesign. A-E notifications of potential A-E liability shall be preferably done by letter with a technically and contractually clear explanation as to why the A-E may be liable for damages. Notification by telephone may be necessary in some cases; however, it is discouraged for complicated cases where a thorough explanation is warranted. If no action is taken against the A-E to recover the review or redesign costs, a statement shall be prepared and included in the contract file, as per FAR 36.609-1.

(2) Construction Phase. When a potential design error or omission is discovered during the construction phase, the field office involved will contact the A-E for assistance in correcting the error. As a general rule, the A-E shall be notified of design deficiencies immediately when there is a possibility for A-E responsibility and shall be requested to provide design corrections as necessary. In the event that the A-E cannot respond in a suitable time frame or fails to respond, the District has the option to pursue in-house

design if necessary. The A-E will be formally notified of potential liability for the cost of the redesign. After correction of the deficiencies the field office will complete the A-E Liability Form (Appendix A) and Administrative Cost for Pursuit of A-E Liability (Field Office) Form (Appendix B) as prescribed by Construction Division Standard Operating Procedure No. II-18. These documents will be forwarded to the AERC and shall be used as the basis for the Letter of Intent. This notification letter will be initiated by the AERC and signed by the COR. The letter shall notify the A-E of design deficiencies and potential A-E responsibilities and request that the A-E submit any facts in defense of the design for consideration by the AERRB. The A-E shall be informed if the construction change is expected to include damages to the Government. The notifications of potential A-E liability shall include the information provided by the field office and any explanation as to why the A-E may be liable for damages. After completion of the notification phase the AERC will prepare a cover sheet (Appendix C) with attached documentation and enter the data pertaining to the action into the data base for Modifications with Design Error/Omissions (Appendix D).

b. Evaluation of A-E Responsibility. After the receipt of the A-E response to the Letter of Notification or if no response has been received by the suspense date, an investigation will be initiated by the AERC.

(1) Technical Evaluation. In the pursuit of the technical evaluation the AERC shall task through Engineering Management and Support Section, Engineering Management Branch, the applicable disciplines within Engineering Division to investigate the design deficiencies. The AERC will task the A-E project manager to investigate and report on the contractual requirements.

(2) Determination of Damages. All potentially recoverable costs to the Government resulting from an A-E's design error(s) or omission(s) shall be included in the assessment of damages. Damage computations shall contain accurate and fully supportable direct and indirect cost, and administrative cost as supported by cost ledgers and labor reports. The AERC will prepare an estimate of damages based on the Government estimate and input from Cost Engineering Branch. The estimate will contain the AERC's signature and preparation date and signature and date that the AERA approved with footnotes describing source of documents from which the data was obtained.

(3) Documentation for AERRB Action. A report shall be formulated by the AERC for presentation to the AERRB which will describe the result of the evaluation. This report shall provide a definitive discussion of Construction Division's position, the A-E response and the AERC evaluation. This determination of A-E liability shall be prepared in the format provided in Appendix E.

c. Preparation of Documentation for AERRB Action.

(1) The AERC shall submit a Memorandum to the AERA documenting the Government's position, the A-E's response, and the amount of damages incurred by the Government.

(2) The AERA shall review the documentation, make comments, and forward the package to the package to the AERC.

(3) The AERC will either forward the package to the AERRB for comments or will schedule a meeting to discuss the action documented.

d. Review by the A-E Responsibility Review Board (AERRB). After the AERRB has reviewed the

Determination of A-E Liability report. The AERRB shall document their findings and make a recommendation regarding A-E responsibility action to the Contracting Officer. The recommendation will include a monetary amount if there is a decision to further pursue A-E responsibility.

e. Action by the Contracting Officer. The Contracting Officer may act on the AERRB's recommendation to initiate a Demand Letter, drop the liability action, or postpone liability action. In any case, the action shall be recorded by a suitable statement in the contract file and in the Modifications with Design Error/Omissions database. The AERC may be tasked to perform any of the following actions as well as other actions which may be determined necessary:

(1) Demand Letter. The AERC shall initiate the demand letter at the request of the Contracting Officer. The letter shall state the performance deficiencies, the AERRB's reasons for recommending pursuit of A-E responsibility, a detailed breakdown of the damages assessed, a request for payment of damage and the A-E's right to appeal the decision. A sample format is attached in Appendix F. The letter will be coordinated with Resource Management Office to obtain a formal billing that will be included with the letter and so that an account receivable is posted in the financial records as required by AR 37-1, Chapter 15.

(2) Settlement. The AERC shall initiate the acceptance letter at the request of the Contracting Officer which shall acknowledge receipt of the A-E's payment. The letter will be signed by the Contracting Officer. All recuperated funds will be processed in accordance with AR 37-1, Chapter 15.

(3) Claim Dropped. If the Contracting Officer requests that a claim be dropped (i.e., the A-E's position is accepted), the AERC will initiate a letter which will notify the A-E that the Government will no longer pursue damage recovery. The letter will be signed by the Contracting Officer. The letter will be coordinated with Resource Management Office and processed in accordance with AR 37-1, Chapter 15.

f. A-E Contract Completion/Closeout. An A-E contract shall not be closed out until the A-E's performance has been reviewed and the Contracting Officer has taken action on all deficiencies. If action is taken to recover damages, the matter must be fully resolved prior to contract closeout. At contract closeout the data base entries for design error and omission will be completed by the AERC.

g. Reporting Requirements. Once the demand letter has been issued, the case becomes active and is then reported to Division (CESAD) on quarterly status reports by the AERC in accordance with ER 715-1-10. The report will be coordinated with the AERA and transmitted under the signature of the Chief, Engineering Division. If a case is settled prior to the issuance of a Demand Letter, the case will also be reported to Division (CESAD) with a statement to that effect so that they are informed of the A-E responsibility settlement. In addition to the submittal requirements of the ER, copies will be provided to A-E project manager, Office of Counsel, Contracting Division, and Construction Division.

h. Costing. The AERC, in coordination with Engineering Management Branch, shall established procedures for tasking and tracking costs associated with administration of the AE Responsibility Program as well and pursuit of individual cases. When responsibility is determined, funds recovered shall be used to reimburse expenditures up to the level of costs in pursuit of the case.

7. Policy Revision. This policy shall be reviewed, revised, and reissued by the AERA, AERC, or Chief of Engineering by 31 December 1995. All previous Engineering Division policies issued by Savannah

District are rescinded as of this date.