

MEMORANDUM OF AGREEMENT  
BETWEEN  
THE U.S. ARMY COMMUNITY AND FAMILY SUPPORT CENTER  
AND  
THE U.S. ARMY CORPS OF ENGINEERS

SUBJECT: Memorandum of Agreement (MOA) for Support of the Army Nonappropriated Fund Construction Program

1. PURPOSE AND AUTHORITY. The purpose of this agreement is to establish responsibilities and procedures under which the U.S. Army Corps of Engineers (USACE) and the U.S. Army Community and Family Support Center (CFSC) will execute design and construction of Army Nonappropriated Fund Construction Projects (NAFCP). Under this Memorandum of Agreement (MOA), the USACE will serve as an agent of the CFSC in executing the design and construction for NAFCP transferred to and accepted for execution by the USACE. This agreement replaces the Memorandum of Understanding Between the CFSC and the USACE, effective 2 December 1988, and Amendment 1, effective 30 January 1991. Supplements to this agreement by overseas (OCONUS) Commands are authorized as agreeable to both parties. The authority for USACE assistance to the CFSC is authorized by AR 10-5, AR 215-4, and AFARS 1.9001. This agreement does not address or alter the roles of USACE elements assigned oversight, review or other responsibilities by Army regulations.

2. SCOPE. This agreement covers all NAFCP selected by the CFSC for assignment to the USACE for execution of design and/or construction and that:

a. The CFSC objective is to receive a quality product at the lowest reasonable cost by making maximum use of local design practices, local construction materials and methods, commercial/industry standards, and by complying with all applicable laws and regulations.

b. The CFSC goal is to deliver completed facilities within 30 months from initial planning. Allowing for the normal programming/approval cycle, the USACE Command will plan to complete the design and award the construction contract within 12 months from the date of the Code 2 directive, and/or beneficial occupancy within 24 months, unless otherwise approved by the CFSC.

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c. All USACE design and construction for NAFCP, where no appropriated funds are involved, will be advertised and awarded according to AR 215-4 using Nonappropriated Fund (NAF) forms and clauses. Protests will follow the USACE contracting procedures.

d. The NAFCP must comply with applicable Federal laws and regulations except as follows:

(1) Synopsis of NAF contract actions is not mandatory (See AR 215-4, para 4-6).

(2) The Brooks Act pertaining to Federal Information Processing (FIP) Resources and the Federal Information Resources Management Regulation (FIRMR) do not apply.

(3) The Small Business Act and related restrictions do not apply (See AR 215-4, para 1-16).

(4) Audits are not required and should be conducted only as necessary to assure sound pricing.

(5) The Contract Disputes Act of 1978 does not apply to NAF contracts. NAF contract disputes procedures set forth in AR 215-4, Chapter 7, Section II, apply.

(6) The Competition in Contracting Act does not apply (See AR 215-4, para 1-11).

(7) The Procurement Integrity Act does not apply.

(8) Fiscal constraints applicable to appropriated funds do not apply.

(9) The Brooks Act requirements for Architect and Engineer contracting do not apply (See AR 215-4, para 5-15).

e. The USACE Command involvement with a NAFCP will begin upon receipt of a limited Code 1 directive from the Headquarters USACE (CEMP-MD) at the programming stage. Upon receipt of this directive and funds certification from the CFSC, the USACE Command will appoint a Project Manager (PM) to interface with the CFSC designated point of contact (POC). The PM, with appropriate technical assistance will, together with the Project Validation Assessment (PVA) contractor and the Directorate of Engineering and Housing (DEH), do a visual inspection of the site, identify any geographic or topographic abnormalities that may affect site development costs, and review the engineering requirements for both the site and the building to validate the cost estimate used in preparation of the DD Form 1391. The total project costs,

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including design, will be developed using commercial/industry standards for the geographic area of the project supplemented by Federal design/construction codes about energy, environmental, fire and life safety, and statutory criteria binding to NAFCP. The DEH is responsible for preparation of the DD Form 1391 and for completion of studies and site preparation requirements. The CFSC is responsible for submission and approval of the DD Form 1391. The approved DD Form 1391 establishes the project scope and cost. In addition, selection of the Architect-Engineer (A-E) firm will be made according to AR 215-4.

f. Upon notification of approval of the NAFCP from the CFSC, a full Code 1 directive will be issued from CEMP-MD to the USACE Command. This directive authorizes the PM, with appropriate technical assistance to negotiate, but not award the A-E contract. Additionally, the PM will prepare the USACE budget for execution of the NAFCP using detailed estimates from appropriate USACE elements and information from the CFSC POC for the services required. This budget is to be independent of the rates previously used from Appendix A during the planning and programming stage for preparation of DD Form 1391, will include all costs based upon the latest guidance for preparing a CWE, and will usually be greater or less than the programmed target rate. This budget will be used to prepare the Support Agreement (SA) and will be approved by the CFSC before Code 2 authority is released. The funds certification from the CFSC to the USACE Command will always be made according to the approved SA for the work requested and specified in subsequent directives from CEMP-MD. It is further understood and agreed that the CFSC is responsible for the prompt payment of all actual costs and the USACE is responsible to bill for all actual costs that are allocable to the NAFCP.

g. Upon receipt of a Code 2 directive from CEMP-MD, the PM will:

(1) Develop jointly with the CFSC POC a Project Management Plan (PMP) within the time specified in the directive. The PMP will combine appropriate elements of the PMP, the acquisition plan, the major milestone schedule (MMS), and the approved budget into a single document. The PMP should be brief (normally about 5-10 pages). The MMS will include all major project milestone events up to and including fiscal completion. The approved PMP will guide execution decisions made by the USACE Command and by the CFSC. Data from the approved budget and MMS will be promptly entered in the Automated Management and Progress Reporting System (AMPRS) data base.

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(2) Determine what basic information on the NAFCP is available from the DEH, the USACE Command and other USACE activities. Standard NAFCP designs will be used to the maximum practicable extent.

(3) Provide the DEH with the approved MMS. Also, review the DEH efforts to ensure the environmental documentation, hazardous waste survey, asbestos survey, lead based paint survey, historical site survey, etc., as applicable, have been or are in the process of being accomplished within the approved MMS.

(4) Review the DEH schedules for any demolition or site clearance requirements for compliance with the approved MMS. The Clean Site Policy requires the DEH to demolish any structures associated with the project down to six inches below grade. The "Guidance for Construction Site Clearance" developed by the USACE is also applicable to NAFCP, and requires the DEH to identify and remove any hazardous or contaminated waste, and unexploded ordnance.

(5) With appropriate technical assistance revalidate the DD Form 1391 scope of work and cost estimate to ensure that it is complete and the quantities and unit costs are realistic.

(6) Authorize award of the A-E contract and 35% design.

(7) Monitor completion of the 35% design and make a written request for Code 6 authorization from the CFSC POC at the appropriate time.

h. Upon receipt of the Code 6 directive from CEMP-MD and funds certification from the CFSC, the PM will:

(1) Authorize design to be completed.

(2) Ensure the contract documents are prepared for either the Invitation for Bid (IFB) or the Request for Proposal (RFP) process approved in the PMP.

(3) Authorize advertisement at the appropriate time.

(4) For design/build projects that the CFSC elected to complete the definitive design and RFP package, the PM will review, with appropriate technical assistance, the RFP package for technical sufficiency, solicit and evaluate offerors' proposals.

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(5) Make a written request to the CFSC POC for Code 9 authorization at the appropriate time.

i. Upon receipt of a Code 9 directive from CEMP-MD and funds certification from the CFSC, the PM will:

(1) Issue authorization to open bids/proposals.

(2) With appropriate technical assistance, conduct negotiations (as necessary) and award the construction contract.

(3) For design/build projects, authorize award of the contract to the best offeror.

(4) Request and receive additional funds certification before award is made if the actual award Current Working Estimate (CWE) exceeds the funds certification previously provided.

(5) Monitor the administration of the contract through completion and fiscal close-out.

### 3. INTERAGENCY COMMUNICATIONS.

a. All official project related correspondence affecting project scope, cost, or schedule will be between the USACE Command (or designated PM) and the CFSC POC. The only exception applies to contractor payment requests approved by the Contracting Officer or his authorized representative.

b. A Project Management Executive Summary for each NAFCP will be provided to the CFSC POC, the Major Army Command (MACOM) and to CEMP-MD by the 15th day of each month for the preceding month, until the construction contract is fiscally complete. Any event that causes the CWE or the approved MMS to be revised will be addressed by the PM as a significant issue.

c. Issues that cannot be resolved between the CFSC POC and the PM will be forwarded through appropriate command channels and resolved at the lowest possible level. Issues that must be elevated to headquarters level will be addressed to the attention of CEMP-MD for resolution.

### 4. DEFINITIONS. (See Appendix B)

### 5. RESPONSIBILITIES.

a. The CFSC will:

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(1) Provide the USACE with design criteria and guidance and/or consultation for all aspects of the NAFCP.

(2) Provide the USACE with a POC through which all project related actions including method of procurement will be coordinated/approved by the CFSC.

(3) Ensure the sufficiency of project documentation including DD Forms 1391s and all funding to execute the project.

(4) Ensure the USACE Command assigned to execute a NAFCP using an RFP package prepared by the CFSC is provided the opportunity and funding to do technical and constructability reviews before solicitation.

(5) Ensure that the Army and DOD reporting requirements (including cost and scope changes) are obtained before authorization of any design or construction contract awards.

(6) Obtain approvals from the HASC whenever the estimated construction cost is exceeded by 25% or more, and/or scope by 10% or more, from the initial HASC approvals.

(7) Provide written requests and fund certifications to the USACE for the requested services and for the prompt payment of all actual costs allocable to the NAFCP.

(8) Provide a member for evaluation and selection boards when determined appropriate. The member may serve in either voting or nonvoting capacity.

(9) Be the approval authority for designs as they relate to function, aesthetics, business operations and customer service and do technical reviews of USACE designs for selected projects. Also, resolve issues between the Installation, the MACOM and the USACE Command.

(10) Answer all Congressional inquiries except those related to contract execution where the USACE is assigned responsibility.

(11) Provide training on NAF contracting procedures to USACE personnel engaged in executing NAFCP. Training schedules and costs will be as mutually agreed to between the USACE and the CFSC.

b. The USACE will:

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(1) Accept execution responsibility for the NAFCP from the CFSC and provide the necessary planning, design, construction, engineering, contracting and other available support services requested by the CFSC.

(2) Assign a PM at the USACE Command, trained in NAF contracting and operating procedures, who will provide direct interface with the CFSC POC from initiation of planning through construction and fiscal close-out. The PM will have singular project accountability for all execution actions including fiscal control over the funds certified by the CFSC.

(3) Develop jointly with the CFSC POC a PMP within the time specified in the directive.

(4) Ensure that the CFSC POC is provided with timely and complete justification for slippage in the MMS and for cost overruns that increase the CWE.

(5) Ensure that the CFSC POC is notified at least 10 working days before final inspections and all decision meetings that may affect the cost, scope, or schedule of the project.

(6) Ensure all design criteria provided by the CFSC relating to function, aesthetics and operations are included in the project and the project is designed to the approved budget. Additionally, ensure that the design and construction complies with applicable Federal laws and regulations, and applicable environmental, fire and life safety standards.

(7) Assist with planning and predesign functions as requested by the CFSC for the PVA.

(8) Coordinate design reviews at the installation with the installation Facilities Engineer, the User, and the CFSC POC.

(9) Ensure that studies or analyses which are included in the A-E contract are only those required by commercial/industry standards, or those required by applicable laws, regulations and good engineering practices.

(10) Prepare contract documents according to AR-215-4 and the approved PMP. Manage protests arising from any procurement action. Enter into, administer contracts and execute change orders and supplemental agreements. Manage contract disputes and initiate appropriate actions to ensure the successful completion of the NAFCP according to the approved PMP.

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(11) Ensure that all user requested changes during design and construction receive the approval of the Configuration Control Board (CCB) before the commencement of any work or issuance of any procurement action that would incur cost or affect the approved MMS.

(12) Control expenditures from the contract contingency account. The USACE Contracting Officer is authorized to use up to 40% of the certified contingency, normally 5% for design/bid/construction and 2% for design/build, without approval of the CCB for necessary changes to the construction contract. Proposed changes using contingency above the 40% level will be approved by the CCB before issuance. If no response is provided to the Contracting Officer within 10 working days of receipt by the CCB, the Contracting Officer may proceed providing there is a sufficient balance in the remaining contingency fund. The 40% limitation shall not be interpreted to require approval by the CCB of a Contracting Officer's decision under the Disputes Clause of the contract with respect to the merits of a claim submitted by the contractor during performance of the contract.

(13) At beneficial occupancy, provide the CFSC POC with a copy of the DD Form 1354 signed by the DEH.

(14) Assist the DEH with problem enforcement of the warranty provisions of the contract.

## 6. FUNDING.

a. Except for the initial funds certification used for planning and predesign activities, all subsequent funds certifications from the CFSC to the USACE Command will be in the amount required by the approved SA for the services requested and authorized in the directive. The SA will be prepared according to ER 1140-3-1 and provide the level of detail as follows:

### (1) Design

- A-E
- S&R
- EEE

### (2) Construction

- ECC
- Contingency
- S&A
- EDC
- ODC



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b. The SA will be revised by the PM to reflect the actual contract value (design or construction) at the time of award and the funds certified by the CFSC will be revised accordingly.

c. The PM will provide the CFSC POC written justification for any increase to the CWE, for design or construction, four weeks before the projected need, if possible. When it is agreed by the CFSC POC that additional funding is required, the SA will be revised by the PM to reflect the increase. The CFSC will approve the revised SA and provide funds certification for the required amount. Also, the SA and funds certified by the CFSC may be revised any time to reflect significant changes in the CWE. The funds certified by the CFSC will always match the approved SA.

d. Billings from the USACE Command to the CFSC will be based upon reimbursable expenses and identify the costs to the category and line items identified in the SA. Additionally, each billing to CFSC will contain the following information: Project Title, Location, Project Number and signature of the PM. Billings shall be sent to the address in the approved SA.

e. The ENG Form 93 will be used for contractor pay requests (design/construction). Contractor payments are subject to the Prompt Payment Act; therefore, the Contracting Officer or his authorized representative will send a copy of the ENG Form 93 by facsimile to the designated CFSC office on the same day that the form is signed. The original form with attachments will be mailed to the CFSC with a note attached that this payment has previously been sent by facsimile. The CFSC or the Nonappropriated Fund Instrumentality will promptly make the approved contractor payments if a signed copy of the design or construction contract is on file. Subsequent modifications also must be on file with the CFSC before any contingency funds can be disbursed.

f. User-requested changes will be funded separately by the user through the CFSC, or directly by the CFSC, and will not be accomplished with normal contingency funds, unless approved in advance by the CFSC. Any approval to use contingency funds will normally be limited to urgent and/or emergencies and the CFSC accepts responsibility to restore the contingency to the level required for its intended purpose.

g. The USACE Automated Management and Progress Reporting System (AMPRS) will be updated monthly for all NAFCP. AMPRS data fields will be completely filled out including those reflecting projected in-house and contractor earnings. The AMPRS data base will be used by the CFSC to project cash flow.

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h. The CFSC is responsible to pay all billings that arise from execution of the work promptly. Copies of all contract documents, change orders and supplemental agreements must be provided by the USACE Command and be on file with the CFSC before contractor payments can be made. To ensure timely payment the USACE Command will, within two calendar days of signature by the Contracting Officer, send the signature page and scope by facsimile. Payments will be made either direct to the USACE Command for expenses, or to the contractors. It is the USACE Command responsibility to ensure that each pay request is accurate, has the required information and signatures, and that proper procedures are followed. Additionally, the CFSC will ensure that payments in foreign currency will comply with the laws and international agreements of the countries concerned for such payments.

i. Within 45 days after the final billing for the A-E design contract is sent to the CFSC, the USACE Command will provide the CFSC with a bill marked final payment for design expenses. If the design contract must remain open during construction, then the SA must be revised to reflect the estimate for the remaining work.

j. Within 45 days after final payment for the construction contract is sent to the CFSC, the USACE Command will provide the CFSC with a bill marked final for USACE construction expenses. If, due to outstanding claims or other issues, it is apparent that the construction contract will remain open for an extended period after physical completion, the SA will be revised to reflect the USACE Command estimate to bring the NAFCP to fiscal completion.

k. Final billings for the USACE expenses shall be accompanied by a detailed breakdown identifying costs for labor, travel, equipment and materials.

7. APPLICABLE LAWS AND REGULATIONS. This paragraph is limited to applicable administrative and management regulations.

- a. DOD I 4105.67, Nonappropriated Fund Procurement Policy
- b. AFARS 1-9001, Acquisitions Using Nonappropriated Funds
- c. AR 10-5, Organizations and Functions
- d. AR 215- Series, Morale Welfare and Recreation Regulations
- e. AR 415-17, Cost Estimating for Military Programming

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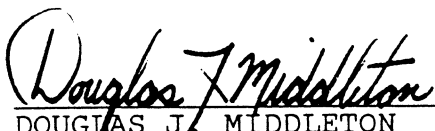
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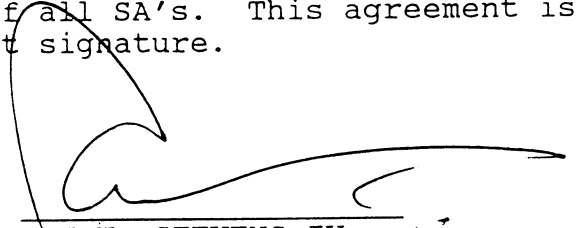
- f. ER 5-7-1 (FR), Project Management
- g. ER 1140-3-1, Support to Defense Departments and Agencies
- h. EP 415-345-2, Automated Management & Progress Reporting System (AMPRS) Data Dictionary

8. CLAIMS AND DISPUTES. Contract disputes and appeals will be handled according to AR 215-4, Chapter 7, Section II. Generally decisions concerning NAF contract disputes made by the Armed Services Board of Contract Appeals cannot be appealed.

9. PUBLIC INFORMATION. The CFSC is responsible for providing all releases of information associated with planning, policy or future projects/programs. In coordination with the CFSC, the USACE will answer directly, public inquiries regarding NAFCP where USACE actions are responsible for the inquiry.

10. EFFECTIVE DATE, AMENDMENT, AND TERMINATION. Parties to this agreement will meet within 45 days of a written request from either party to review the provisions of this agreement for the purpose of amendment or termination as circumstances dictate; however, in the event either party desires to terminate, this decision is binding on the other party and this MOA will remain in effect until fiscal close-out of all SA's. This agreement is effective on the date of the latest signature.

  
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DOUGLAS J. MIDDLETON  
Colonel, Field Artillery  
Commanding

  
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PMA M. STEVENS IV  
Major General, USA  
Director of Military Programs

18 Oct 93  
Date

19 Oct 93  
Date

**APPENDIX A**

**USACE BUDGET AND TARGET RATES**

<b>I. NORMAL DESIGN/BID/CONSTRUCTION:</b>	<b>Percent</b>
a. Design (Includes A-E and S&R):	
1. (\$500K<PA)	use 15.5
2. (\$500K<PA)<\$1M)	use 11.5
3. (\$1M<PA<\$5M)	use 07.5
4. (PA>\$5M)	use 04.0
b. New Construction (S&A):	
1. CONUS	use 06.0
2. OCONUS	use 06.5
c. Construction rehabilitation/upgrades (S&A):	
1. CONUS	use 08.0
2. OCONUS	use 08.5
d. Engineering during construction (EDC)	use 00.5
e. New construction contingency (Rehabilitation/Upgrades)	use 05.0 use 10.0
 <b>II. DESIGN/BUILD:</b>	 <b>Percent</b>
a. Design (RFP package prepared by CFSC)	use 01.5
b. Design (RFP package prepared by USACE)	use 02.4
c. Construction (S&A)	use 03.5
d. Engineering during construction (EDC)	use 00.5
e. Construction contingency	use 02.0

**NOTES:**

(1) The above rates are to be used by USACE divisions/districts as a guide for budget/target purposes for DD Form 1391 estimates and to plan appropriate staffing budget levels.

(2) **USACE Design Budget = Percentage times (ECC + S&A + Contingencies).** Paragraph 2.f governs if allocable costs incurred are greater or less than the budget estimate.

**APPENDIX B  
ACRONYMS/DEFINITIONS**

**CCB:** Configuration Control Board. The CCB is the approval body for all changes affecting the project scope, cost, and schedule. Normally the CCB reviews and approves users requested changes, and other changes that are not error or omissions changes covered by the contingency fund. The CCB is made up of representatives from the MACOM, the CFSC, and the USACE. The MACOM representative initiates the request for the change. The USACE representative provides the engineering cost estimate and impact to the approved schedule. The CFSC representative ensures the necessary Army and DOD reporting requirements are met, processes any necessary programming actions and authorizes the USACE to implement the approved change. Issues for the CCB can be resolved by telephone and facsimile. Changes will not be executed without authority and funds provided by CFSC.

**GEMP-MD:** The Defense Agencies and Support for Others Branch, Program Management Division, Directorate of Military Programs is the headquarters USACE element assigned program management responsibilities for execution of design and/or construction of NAFCP and other available USACE support not covered by Army Regulations.

**CFSC POC:** The person designated in writing by the CFSC to be the point of contact (POC) for the NAFCP through which all activities are coordinated/approved.

**Code:** The authorized phase code of a project. The definition for each code is defined in EP 415-345-2.

**CWE:** Current Working Estimate. The CWE is made up of the various cost elements required to execute a contract, i.e., contract cost, USACE fees, etc. The CWE changes during the life of the project, and is normally revised at each significant phase of a project, i.e., various design stages, advertisement, contract award, and any significant change to the project cost.

**D/B:** Design/Build. D/B is a contracting procedure where one contractor is selected to accomplish both the design and construction. D/B projects follow the same philosophy and guidelines concerning Congressional authorizations, approvals and guidance as any other NAFCP.

**Definitive Design:** The design segment of an IFB/RFP package generally consisting of those elements necessary to represent 10-25 percent of the total design effort.

**DEH:** Directorate of Engineering and Housing. When DEH is used in this MOA, it also refers to the Department of Public Works (DPW), if applicable.

**APPENDIX B**  
**ACRONYMS/DEFINITIONS, continued**

**ECC:** Estimated Cost of Construction. This is the estimated cost of the construction contract(s).

**EDC:** Engineering During Construction. This includes the costs of all engineering activities during construction, including the review of designs from a D/B contractor.

**EEE:** Extra Engineering Effort. EEE includes surveys, geotechnical analyses, assistance during the Code 1 phase with the PVA and preparation of 1391's, studies, lost design, etc.

**NAFCP:** Nonappropriated Fund Construction Project(s)

**ODC:** Other Direct Costs. These costs includes all miscellaneous project requirements such as costs by another government agency, or contractor providing USACE support to the project.

**PVA:** Project Validation Assessment. A PVA is prepared by an independent contractor under contract with the CFSC that is used to assess the market and requirements for a proposed NAFCP. The PVA will provide a recommended scope and location of the project based on financial, and market justification.

**SA:** Support Agreement (prepared on DD Form 1144).

**S&A:** Supervision and Administration. Includes USACE Command management, overhead and supervision and inspection costs during construction.

**S&R:** Supervision and Review. Includes USACE Command management, overhead, and review costs for A-E design. If A-E design is performed in-house, a breakout of those costs will be identified and billed to the A-E design category.

**USACE Command:** Includes major subordinate commands and districts assigned to execute NAFCP.

**USACE Project Manager (PM):** The Life Cycle Project Manager designated by the USACE Command, responsible for planning, organizing, coordinating, directing and controlling the combined efforts of functional staff and contract services to accomplish the NAFCP.