

# **PART 1 — FEDERAL ACQUISITION REGULATION SYSTEM**

## **TABLE OF CONTENTS**

### **SUBPART 1.1 — PURPOSE, AUTHORITY, ISSUANCE**

- 1.101 Purpose.
- 1.103 Applicability.
- 1.104 Issuance.
- 1.104-2 Arrangement of Regulations.

### **SUBPART 1.2 — ADMINISTRATION**

- 1.201 Maintenance of the EFARS.
- 1.201-100 Amendment of the EFARS.

### **SUBPART 1.4 — DEVIATIONS FROM THE FAR**

- 1.403 Individual Deviations.

### **SUBPART 1.6 — CONTRACTING AUTHORITY AND RESPONSIBILITIES**

- 1.601 General.
- 1.601-93 Responsibility of commanders.
- 1.601-100 Civil Works construction contracts.
- 1.602 Contracting officers.
- 1.602-1-100 Administrative contracting officer authority.
- 1.602-2 Responsibilities.
- 1.602-3 Ratification of unauthorized commitments.
- 1.603 Selection, appointment, and termination of appointment.
- 1.603-1 General.
- 1.603-1-90 Ordering Officers.

## **SUBPART 1.1 — PURPOSE, AUTHORITY, ISSUANCE**

### **1.101 Purpose.**

The Engineer Federal Acquisition Regulation Supplement (EFARS) is issued pursuant to Subpart 1.3, Federal Acquisition Regulation (FAR), by the Chief of Engineers, United States Army Corps of Engineers, under authority of the Secretary of the Army. The EFARS implements and supplements the FAR, the Defense FAR Supplement (DFARS), and the Army Federal Acquisition Regulation Supplement (AFARS).

### **1.103 Applicability.**

The FAR, DFARS, AFARS, and the EFARS apply to all USACE acquisitions.

### **1.104 Issuance.**

#### **1.104-2 Arrangement of Regulations.**

(a) *General.* The arrangement and numbering of EFARS conforms to the FAR, DFARS and AFARS.

(b) Numbering. Numbered divisions (parts, subparts, sections, or paragraphs, etc. and lettered appendices) of this Supplement correspond to the same numbered division in the FAR, DFARS and AFARS. Numbered divisions of this Supplement with a suffix in the "100" series (e.g. 1.601-100) contain subject matter related to but not contained in a FAR, DFARS, or AFARS numbered division. Omission from the EFARS of a numbered division which appears in FAR, DFARS or AFARS denotes that there is no additional coverage in EFARS.

(c) References and Citations. This Supplement shall be referred to as the Engineer FAR Supplement (EFARS). Any numbered division may be cited as "EFARS" followed by the division number. Thus, this section would be cited as "EFARS 1.104-2", but within this supplement, it would be cited as "1.104-2".

## **SUBPART 1.2 — ADMINISTRATION**

### **1.201 Maintenance of the EFARS.**

#### **1.201-100 Amendment of the EFARS.**

(a) The EFARS will be maintained by the Principal Assistant Responsible for Contracting (PARC), code CEPR-ZA. All revisions to the EFARS will be prepared by the PARC. Proposed revisions to the EFARS shall be submitted to the PARC, ATTN: CEPR-P, through normal command channels.

(b) The EFARS will normally be amended by PARC Instruction Letters (PIL) which will contain replacement pages and be distributed electronically.

## **SUBPART 1.4 — DEVIATIONS FROM THE FAR**

### **1.403 Individual Deviations.**

(1) Requests for deviations from the EFARS shall be submitted to the PARC for approval.

(2) Requests for deviations from the FAR, DFARS, or AFARS, shall be submitted through the PARC.

## **SUBPART 1.6 — CONTRACTING AUTHORITY AND RESPONSIBILITIES**

## ENGINEER FAR SUPPLEMENT (EFARS)

### **PART 1 — FEDERAL ACQUISITION REGULATIONS SYSTEM**

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#### **1.601 General.**

#### **1.601-93 Responsibility of commanders.**

Functional Coordination. The Contracting officer is responsible for all contract decisions, as prescribed by FAR 1.602. Major contract decisions will be staffed with functional coordination among staff elements.

Command Involvement in Award Decisions. Some architect-engineer (A-E), construction, design-build, hazardous toxic and radioactive waste (HTRW), and federal information processing (FIP) contracts are so critically important that the commander should be the source selection official or approval authority. HQUSACE will determine source selection authorities on Total Environmental Restoration Contracts (TERCs). FAR clause 52.204-1, Approval of Contract shall be placed in solicitations where the source selection approval is above the contracting officer or in solicitations when a formal acquisition plan is required in accordance with EFARS 7.102(S-102)(b). FAR clause 52.204-1 is not applicable to post award contract actions regardless of its use in the award of the initial contract.

Command Oversight of Post Award Contract Decisions. Some contracts are so critically important that commanders should be fully involved in the key post award decisions. However, management oversight of post award decisions must be more limited.

Consequently, to preserve the contracting officer's independence, the commander's review of key post award decisions is limited to concurring with the proposed decision or to returning it with questions (not disapproving and not directing another particular decision).

Command procedures. Each command should develop standards to identify critical contracts that may require approval of award decisions or post award oversight by commanders as stated above. For award or post award decisions, the standards may include complexity, local sponsor interest, type of contract (such as HTRW), and unresolved differences of opinion resulting from functional coordination among staff elements. Key post award decisions may also include sizable contract claims, terminations for default and alternative dispute resolutions (ADR).

HQUSACE will assure that USACE complies with the requirements of AFARS 7.103, Agency Head Responsibilities.

MSC commanders shall nominate individuals to be designated source selection authorities (SSAs) for IDCs over the thresholds in 7.102(S-102)(b)(i) and (ii). Nominations shall be sent to HQUSACE (attn: PARC), and the PARC will approve/disapprove the appointments.

Each MSC Resource Management Board (RMB) shall review the plans of subordinate commands as described in Subpart 7.1 at least twice annually. The MSC RMB shall report its review to the MSC commander with recommendations for approval.

Each district shall prepare the acquisition plans and strategies required in Subpart 7.1.

#### **1.601-100 Civil Works construction contracts.**

## **ENGINEER FAR SUPPLEMENT (EFARS)**

### **PART 1 — FEDERAL ACQUISITION REGULATIONS SYSTEM**

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The Secretary of the Army, acting through the Chief of Engineers, is authorized by 33 U.S.C. 622 et seq. to carry out projects for improvement of rivers and harbors (other than surveys, estimates, and gagings) by contract or otherwise, in the manner most economical and advantageous to the United States.

#### **1.602 Contracting officers.**

##### **1.602-1 Authority**

##### **1.602-1-100 Administrative contracting officer authority.**

(a) Individuals may be delegated administrative contracting officer (ACO) authority as set forth below. Less authority than that specified below may be delegated.

(i) Execute unilateral administrative modifications under FAR 43.103 (b)(1). Modify construction contracts within the scope of the contract under any of the following contract clauses unique to construction contracts, provided that no individual contract modification exceeds \$500,000 (the sum of deletions and additions): FAR 52.212-11, Variation in Estimated Quantity; EFARS 52.212-5001, Variations in Estimated Quantities - Subdivided Items; FAR 52.212-12, Suspension of Work; FAR 52.236-2, Differing Site Conditions; FAR 52.243-4, Changes; and FAR 52.248-3, Value Engineering — Construction.

(ii) Modify construction contract performance periods under FAR clause 52.249-10, Default (Fixed-Price Construction), when a delay is due to unforeseeable causes beyond the control and without the fault of the contractor.

(iii) Modify purchase orders under FAR clause 52.243-5, Changes and Changed Conditions, provided that the modification does not cause the total value of the purchase order to exceed the simplified acquisition procedures limitation described at FAR 13.101.

(iv) Perform any of the contract administration functions in FAR 42.302, subject to the limitations in (i) through (iii) above.

(b) ACOs appointed under (a) above shall not modify construction contracts under any clause not specified in (i) through (iii) above, including (but not limited to) terminations for convenience or for default.

##### **1.602-2 Responsibilities.**

(c)(ii) Legal counsel is an integral member of the USACE acquisition team and process. Consequently, legal counsel shall review all contract actions over \$500,000 and all contractual issues that may lead to a claim, regardless of dollar amount. Although not mandatory, contracting officers and administrative contracting officers are encouraged to seek legal counsel for complex or unusual contract actions under the \$500,000 threshold.

(iii) Differences between the contracting officer and legal counsel as to legal sufficiency that cannot be satisfactorily resolved within the command shall be referred to PARC (Attn: CEPR-ZA) for resolution.

##### **1.602-2-91 Appointment of ordering officers.**

(b) In accordance with AFARS 1.603-1(I) chiefs of contracting offices are hereby delegated authority to appoint ordering officers under their jurisdiction, without power of redelegation.

## ENGINEER FAR SUPPLEMENT (EFARS)

### **PART 1 — FEDERAL ACQUISITION REGULATIONS SYSTEM**

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(c) All ordering officer appointments shall be in compliance with AFARS 1.602-2-91.

#### **1.602-3 Ratification of unauthorized commitments.**

(b)(3) The following ratification authorities are delegated, without authority to redelegate:

(A) PARC for amounts of \$100,000 or less;

(B) Chiefs of Contracting offices for amounts of \$10,000 or less.

(e) Once a ratification action is completed, a copy of the ratification shall be forwarded to HQUSACE (Attn: CEPR-O).

#### **1.603 Selection, appointment, and termination of appointment.**

##### **1.603-1 General.**

(2) Requests for contracting officer and ACO appointments shall be submitted to HQUSACE, ATTN: CEPR.