

MEMORANDUM OF UNDERSTANDING NO. DE-GMO4-84AL23521  
BETWEEN  
U.S. DEPARTMENT OF ENERGY  
AND  
U.S. ARMY CORPS OF ENGINEERS

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MEMORANDUM OF UNDERSTANDING NO. DE-GM04-84AL23521  
BETWEEN  
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AND  
U.S. ARMY CORPS OF ENGINEERS

1. INTRODUCTION:

a. Background:

The U.S. Department of Energy (DOE) is projecting substantial capital construction programs for several years into the future which may require assistance of the U.S. Army Corps of Engineers (USACE). USACE finds it consistent with its mobilization readiness mission to assist DOE in all facets of work involved with construction services required by DOE. DOE and USACE have previously entered into Interagency Agreements (IAs) for (i) the expansion and modernization of DOE's Pantex Plant, Amarillo, Texas and (ii) assistance in managing the construction of DOE's Waste Isolation Pilot Plant (WIPP), Carlsbad, New Mexico. This MOU accomplishes the following: (i) recognizes the continuance of the ongoing IAs, (ii) provides a single management umbrella addressing the principles applicable to the furnishing of services to DOE by USACE, and (iii) establishes procedures for affecting IAs which are consistent with the spirit and intent of this MOU. This MOU is consistent with and is entered into under the following statutory authorities: Section 601 of the Economy Act of 1932, as amended (31 U.S.C. 1535); Section 161.f. of the Atomic Energy Act of 1954, as amended (P.L. 83-703); Section 219 of the Flood Control Act of 1965 (P.L. 89-298); and Section 646 of the Department of Energy Organization Act (P.L. 95-91).

b. Purpose:

The purpose of this MOU is to form a procedural framework for providing construction related services by USACE on behalf of DOE, and to authorize the issuance and performance of implementing IAs by DOE's Albuquerque Operations Office (AL) and the appropriate USACE Division Offices.

c. Policy:

USACE is to provide construction related services when requested and funded by DOE, subject to availability of USACE manpower. Nothing in this MOU shall be construed to require DOE to use the services of USACE, nor to require USACE to accept the work of DOE. However, both agencies expect implementation of this MOU to result in increased construction services to be rendered to DOE by USACE.

2. MANAGEMENT AND PROGRAM GUIDELINES

a. Policy Management and Review:

DOE will continue to establish program objectives for implementation by AL. AL will propose assignments within established objectives for USACE support and conclude mutually agreeable IAs with appropriate USACE Division Commanders for such support. Periodic management, command, or staff visits will be made by DOE and USACE to provide review and guidance for activities being performed under IAs. The contemplated geographical alignments for the responsible program offices for DOE and USACE under this MOU are:

DOE AREA OFFICES

Los Alamos, NM  
Amarillo, TX  
Rocky Flats, CO  
Kansas City, MO  
Dayton, OH  
Pinellas, FL

USACE DIVISION

Southwest Division  
Southwest Division  
Missouri River Division  
Missouri River Division  
Ohio River Division  
South Atlantic Division

or such other offices as may be designated in writing by mutual agreement.

b. Guidelines:

(1) Interagency Agreements

Major IAs (i.e., estimated cost in excess of \$100,000) entered into or having a major revision subsequent to the effective date of this MOU will be consistent with the provisions of this MOU, will generally follow the WIPP IA format (DOE Interagency Agreement No. DE-AI04-82AL19960), and will conform generally with DOE Order 1270.1, dated June 13, 1979, as it may be amended or superseded. Small value IAs (i.e., estimated cost of \$100,000 or less) shall follow the format shown in Attachment A to this MOU. Services to be rendered under IAs can be as diverse as those normal to the USACE activity performing under the IA and may include but not be limited to: (i) construction management, (ii) design and constructibility reviews, (iii) construction inspection, (iv) construction related testing, (v) design management services, and (vi) other services such as development of conceptual designs and design criteria, engineering studies, and archaeological surveys.

(2) Negotiating the IA

AL will identify needs for USACE services and will initiate the negotiation of an IA by notifying the USACE Division Commander who is geographically situated to serve the need. AL will be responsible for preparing a draft IA. Simultaneously, USACE will propose an organization to be dedicated to the DOE effort. The IA will set forth by fiscal year the capital construction program, or portion thereof, expected to be accomplished under the IA. The proposed organization will have time-phased manning levels corresponding to the work requirements of the construction program or other work. An estimate of the direct and indirect costs by fiscal year of the organization will be developed. When it is determined by AL and the Division Commander that the proposed organization can be manned, funded, and perform the work, the parties will finalize, execute, and distribute the IA.

(3) Task Orders

Major IAs may provide for the issuance of task orders. Task orders are issued periodically during the IA period of performance and will specify the services to be performed by USACE. They become obligation documents once signed by the DOE Contracting Officer and accepted by the servicing USACE. IAs may provide for issuance of an annual or periodic design and construction support services (general management and administrative activities) task order. The purpose of such a task order will be to confirm and direct the agreed manpower and other resources to be dedicated by USACE to perform the required services for DOE, and to serve as a commitment by DOE to fund the resultant direct and indirect costs estimated to accrue. Task orders to provide direction and authorization to commence specific construction projects will normally be issued separately when the need can be translated into clear work requirements and funds are available.

c. Program Funding:

(1) IA Financing

All work accomplished by or under the management of USACE pursuant to IAs under this MOU will be authorized and funded by DOE. Financing is subject to the availability of appropriations and/or continuing resolutions of the Congress. For the work under major IA, funding transfers will be accomplished by SF-1151, Nonexpenditure Transfer Authorization, pursuant to the Treasury Fiscal Requirement Manual, Volume I, Section 2060, and OMB Circular A-34, Paragraph 61.2A(3). This method of transfer provides DOE and USACE control via the option to preclude transfers which might be inconsistent with DOE program objectives or USACE field operating capabilities. For work under small value IAs, either SF 1080 or SF 1081 shall be utilized as mutually agreed. The USACE "Corps of Engineers Management Information System" will be used for accounting.

(2) Excess Funds

Any unobligated balances of DOE funds will be returned to DOE upon DOE direction to do so. Further, following termination of an IA executed pursuant to this MOU, or termination of the MOU itself, or upon completion of the work performed under an IA, any residual funds in USACE accounts shall be transferred to DOE.

d. Management Arrangements:

This MOU envisages direct communication between DOE and USACE program officials involved in the management of construction related activities for DOE by USACE. For each major IA, a detailed Project Management Plan tailored to the Area Manager or Project Manager on DOE's part and District Commander on USACE's part will be developed at that level under the guidance of AL and the appropriate Division Commander. The Project Management Plan shall be made a part of the IA.

e. Manpower

Manpower resource requirements will be evaluated and updated periodically at DOE's Area Manager and AL levels and at USACE's District Commander and Division Commander levels in order to assess what changes, if any, may be required to assure timely performance of forecasted workload requirements.

f. Reports and Documentation:

Construction management data is to be reported periodically. Where practical, the "Automated Military Progress Reporting System" (AMPRS) will be used to provide construction management data simultaneously to Division Commanders and the Office of the Chief of Engineers (OCE), as well as to AL. The DOE Uniform Contractor Reporting System (UCRS) establishes a standard procedure for collecting and reporting information to aid the DOE in managing contractor performance. Commensurate with the nature and magnitude of the work, the UCRS will be used in conjunction with AMPRS to provide project monitoring information to DOE and USACE. Periodic narrative reports will be initiated at the field operating activity level to keep management informed of project status at higher echelons. Financial reporting shall include the monthly submission of Standard Form 133, Report on Budget Execution, and such other reports available from USACE financial systems as may be requested by DOE.

3. ADMINISTRATION

a. Procurement Policy:

All work assigned to USACE shall be in accordance with the Federal Acquisition Regulation (FAR) as implemented by the Department of Defense Supplement to the FAR and USACE's policies and procedures descending from these regulations. When alternative procurement options are permitted by the regulations mentioned above, DOE reserves the right to select that option which best suits DOE's needs. The Engineers' Board of Contract Appeals will be used as a forum for resolving contract disputes under USACE awarded

contracts. USACE may be tasked to assist DOE on contracts DOE has entered into prior to execution of an IA, wherein DOE procedures and policies will usually continue to apply. Normally, however, USACE will be tasked for procurement work involving only contracts solicited and awarded by USACE. Unless otherwise mutually agreed, upon completion of IAs or tasks thereunder involving the acquisition of property, ownership and accountability of such property shall vest in DOE.

b. Safety and Security:

Normally, the provisions of EM 385-1-1 and the General Provision safety clause of the FAR for construction contracts will be incorporated into USACE's construction contract procurements. Additional safety measures and requirements will be incorporated into IAs and resulting construction contracts as necessitated by the nature of the work. DOE's security regulations, rules, and requirements shall apply to work performed under IAs.

c. Patents and Technical Data:

(1) Policy

The patent and technical data provisions and clauses as set forth in DOE's procurement regulations shall apply to the administration of IAs and procurements thereunder unless the parties otherwise specifically agree in the IAs.

(2) Coordination

USACE shall coordinate all patent and technical data matters with AL's Patent Counsel which may arise during the administration of IAs and procurements thereunder.

d. Public Information Coordination:

Consistent with the Freedom of Information Act (5 U.S.C. 552), procedures for timely release of information to the public will be specified as appropriate in the IAs. DOE retains responsibility for Congressional liaison and public announcements. However, USACE will make public announcements normal to the solicitation and contract award process.

e. Congressional Inquiries:

USACE will assist DOE in answering Congressional inquiries related to USACE delegated activities by preparing and furnishing to DOE for review and final disposition draft responses concerning factual data on design and construction under contract.

f. Amendment and Termination:

This MOU may be modified or amended by written agreement between DOE and USACE. It may be terminated by mutual written agreement or by either party giving 30 days written notice to the other. In the event of termination, DOE shall be responsible for the costs of closing out

ongoing contracts and the costs for demobilization of personnel and facilities fully dedicated to DOE programs. USACE shall retain contract administration responsibilities for contracts awarded by USACE until such contracts have been terminated or their performance is completed.

g. Effective Date:

This MOU shall become effective upon signature by the principal DOE and USACE officials. It shall remain in effect indefinitely; however, upon the request of either party, usually not more often than annually, both parties shall review this MOU to assure that it continues to reflect the appropriate understandings and procedures to recognize and provide for current needs and capabilities.

U.S. ARMY CORPS OF ENGINEERS

/s/

J.K. Bratton  
NAME: J.K. BRATTON LTG, USA

TITLE: CHIEF, US ARMY CORPS OF ENGINEERS

DATE: 10 APR 84

U.S. DEPARTMENT OF ENERGY

/s/

R. G. Romatowski  
NAME: R. G. Romatowski

TITLE: Manager

DATE: 30 April 1984

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Modification No. M001

The MOU effective April 30, 1984 is hereby modified to add the following new paragraph to Article 3.b., Safety and Security:

"The DOE reserves the right to determine, should an accident occur and is of sufficient severity or may have a significant impact on the project, to conduct and chair the accident investigation board. Generally, this will be limited to Type A Investigations as defined in Chapter I of DOE Order 5484.1, Environmental Protection, Safety, and Health Protection Information Reporting Requirements. The USACE will be represented on any accident investigation board conducted by DOE, having access to all reports and information available to the investigative board."

U.S. Army Corps of Engineers

U.S. Department of Energy

/s/ SIGNED

/s/ \_\_\_\_\_

Name: E. R. HEIBERG III

Name: R. G. ROMATOWSKI

Title: Lieutenant General, USA  
Chief of Engineers

Title: Manager  
Albuquerque Operations Office

Date: 15 OCT 1984

Date: \_\_\_\_\_

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U.S. Army Corps of Engineers

U.S. Department of Energy

/s/ \_\_\_\_\_

/s/ R. G. Romatowski

Name: \_\_\_\_\_

Name: R. G. Romatowski

Title: \_\_\_\_\_

Title: Manager  
Albuquerque Operations Office

Date: \_\_\_\_\_

Date: SEP 1 1984