

## SECTION 9

### CONTRACT TYPES

**9-1 Introduction.** The very nature of HTRW remediation not only creates the need for more innovative methods for cleaning up hazardous sites, but also requires innovative types of contracts to accomplish cleanup missions. This section summarizes the various contracts used by the USACE for remediation services and presents an overview of their advantages over traditional contracting methods. It is the policy of the USACE to maximize use of sealed bid procedures for execution of its contracts. The policy is in accordance with 10 U.S.C. 2304 (a) and FAR 36.103. Most construction contracts follow the typical sequence of completion of design before initiation of construction. Most of these same contracts are executed by sealed bid procedures and awarded as a firm-fixed price (FFP) contract. However, remediation activities typically include many unknowns, and do not always involve construction. Most criteria are performance based and involve subsurface conditions, quantities, and concentrations that are difficult to define. These uncertainties make it impossible, in many cases, for technical planners and the contracting community to accurately define the remediation requirements. Characterization of sites presents special contracting problems, as does the need for continuity of the entire work effort. Federal, state, and local regulatory agencies significantly impact the contracting strategy as does the potential threat to life and property. Therefore, when developing contracting strategies, project objectives, client organization, and external influences/pressures should be considered. Contracting strategies should also consider the number of contracts, criteria for award, and type of contract to be utilized. The contract delivery strategy should include a review of the contract options available by comparing all project requirements with the contracting methods available. For this reason, contract forms other than Invitation for Bid (IFB) are commonly used to achieve environmental restoration. Any contract type other than an IFB negotiated. Negotiated contracts can be either cost-reimbursable or firm fixed price. Some contracts are specific to the job, others are indefinite delivery/indefinite quantity (ID/IQ) with the flexibility to issue task orders specific to the job. These features are described in the following paragraphs.

**9-2 Contract Methods.** Negotiation is one of two major methods of arriving at a price for a project. The other method is "sealed bidding" which requires contracts be awarded to responsive and responsible offerors only on the basis of price and price-related factors. Negotiation can be utilized with competitive or other-than competitive proposals. Any contract awarded without the use of sealed bidding is a negotiated contract. The key benefit of the negotiated contract is that it is a flexible, but orderly, procedure that includes the receipt of proposals from offerors, permits bargaining, and usually affords offerors an opportunity to revise their offers before the award of a contract. Negotiation is used for both fixed price and cost-reimbursable contracts.

**9-3 Contract Pricing.** Contract pricing arrangements can either be "fixed price" or "cost-reimbursable." If the nature and quantity of unknowns is such that a fixed price contract can not be defined, the contractor's accounting system is adequate for the determination of costs applicable to the contract, and the government surveillance during performance will be such to provide reasonable assurance that efficient methods and cost controls are used, then a cost-reimbursable contract can be used. For information on USACE procedures for administration of cost contracts refer to the following web site:  
<http://hq.environmental.usace.army.mil/tools/reimburse/reimburse.html>

**9-4 Indefinite Delivery/Indefinite Quantity Contracts.** Indefinite delivery/indefinite quantity (ID/IQ) contracts are basic contracts against which task orders are issued. The task orders are issued and treated as separate projects. Basic contract management procedures or advance agreements may govern matters related to all task orders under the basic contract. Dollar ceilings are established for the total value of all task orders to be issued and can be established for individual task orders.

**9-5 Service Versus Construction Contracts.** Many procurements for remediation actions are actually "service" not "construction" contracts. It is fairly common for task orders of contracts, or full contracts, to be issued as "service" with separable "construction" items within the broader service contract. The impact is, that a portion of the workers on site will be covered by the Service Contract Act wage determination and others will be covered by the Davis Bacon Act, construction wage determination. In addition, there is no requirement for a performance bond on a service contract. There is also no requirement for a performance bond on a cost reimbursable construction contract except for the portion of the contract that comprises a fixed price subcontract greater than \$100,000. Finally, the warrants held by most area/resident/project engineers are for construction contract actions and are not applicable to service contract actions. Incineration, disposal, and operations and maintenance contracts have been appropriately classified as service contracts.

**9-6 Major HTRW and OE Contracts.** USACE utilizes many different contract strategies to execute its HTRW and OE missions. Table 9-1 compares and contrasts several contracting methods for remediation services which have proved to be especially effective in dealing with the uncertainties of HTRW and OE work:

<b>Table 9-1 Major HTRW and OE Contract Tools</b>					
<b>Contract Tool</b>	<b>ID/IQ or project specific</b>	<b>Ceilings</b>	<b>Typical Use</b>	<b>Contract Pricing</b>	<b>Authority Delegated to Field</b>
Invitation for Bid	Project Specific	None – determined by bid	Construction/ Service	Firm Fixed Price	ACO
Request for Proposal	Project Specific	None – determined by bid	Construction/ Service	Firm Fixed Price/Cost-Reimbursable	ACO/COR
Preplaced Remedial Action Contract (P-RAC)	ID/IQ	Typically \$50 M ceiling  Typically no task order limit  One year base contract with four 1-yr options	Construction/ Service (only incidental A-E services)	Cost-Reimbursable - with - Fixed Fee Award Fee or Incentive Fee  - or - Fixed Price	ACO, unless service, then COR only
Total Environmental Restoration Contract ( TERC)	ID/IQ	Typically greater than \$200 M  Typically no task order limit  One four year base contract with two 3-yr options	Cradle to Grave Investigation, Design, Construction/ Service	Cost-Reimbursable - with - Fixed Fee Award Fee or Incentive Fee	COR
Multiple Award Remediation Contract (MARC)	ID/IQ	Collective ceiling is established for multiple contracts. i.e., One award could be \$100 M for four contracts. One contractor could get the bulk of that.	Construction/ Service (only incidental A-E services)	Cost-Reimbursable - with - Fixed Fee Award Fee or Incentive Fee  - or - Fixed Price	ACO, unless Service, then COR only

<b>Table 9-1</b>					
<b>Major HTRW and OE Contract Tools (Continued)</b>					
<b>Contract Tool</b>	<b>ID/IQ or project specific</b>	<b>Ceilings</b>	<b>Typical Use</b>	<b>Contract Pricing</b>	<b>Authority Delegated to Field</b>
Small Action Remedial Tool Contract (SmART)	ID/IQ	Less than \$3M contract ceiling  \$500,000 or no task order limit  One two year base with one three year option	Construction/ Service (only incidental A-E services)	Firm Fixed Price	ACO, unless Service, then COR only
Rapid Response	ID/IQ	Typically \$50M  Typically no task order limit  One base year with four one-yr options.	Emergency or Time Critical Construction/ Service	Cost Reimbursable with Fixed Fee/ Fixed Price	None, retained in Omaha
Miscellaneous	ID/IQ	Varies extensively	Drilling, Analytical Services, Sampling, Geophysical Services, Tank Removal, Long Term O & M, Asbestos/Lead Removal	Typically Fixed price/Cost Reimbursable	COR
Time and Materials	ID/IQ	Varies by contract	Typically has been used for ordnance removal or emergency situations	Reimbursement of labor at fixed hourly rates (which include profit) and cost only for material	ACO, unless service, then COR only