

MEMORANDUM OF AGREEMENT
BETWEEN
THE FEDERAL EMERGENCY MANAGEMENT AGENCY
AND
THE U.S. ARMY CORPS OF ENGINEERS
FOR THE
CHEMICAL STOCKPILE EMERGENCY PREPAREDNESS PROGRAM

ARTICLE I - PURPOSE AND AUTHORITY

This Memorandum of Agreement (MOA) is entered into by and between the U.S. Army Corps of Engineers ("USACE") and the Federal Emergency Management Agency (FEMA) ("the parties") for the purpose of establishing an umbrella understanding that shall be used as a mutual framework governing the respective responsibilities of the parties for the provision of engineering, design, construction, and other services supporting the Chemical Stockpile Emergency Preparedness Program (CSEPP). This MOA is entered into pursuant to the Public Law 99-145, Title 14, Part B, Section 1412; and to the Economy in Government Act (31 U.S.C. §1535).

ARTICLE II - SCOPE

Goods and services which USACE may provide under Interagency Agreements covered by this MOA include consulting, technical assistance, planning, design, construction services, and such other related goods or services as may be agreed upon in the future to assist FEMA in providing support to the local communities under the CSEPP. The overall purpose of CSEPP is to reduce the risk of injury through enhanced emergency preparedness in the unlikely event of a chemical stockpile related accident.

Nothing in this MOA shall be construed to require FEMA to use USACE or to require USACE to provide any goods or services to FEMA, except as may be set forth in Interagency Agreements (IAAs). Nothing in this MOA obligates either party to transfer funds to the other. All funding obligations will be set forth in each IAA.

ARTICLE III – PERIOD OF PERFORMANCE

This MOA is effective for a period of five (5) years from the date of issuance.

ARTICLE IV - INTERAGENCY COMMUNICATIONS

To provide for consistent and effective communication between USACE and FEMA, each party shall appoint a Principal Representative (PR) to serve as its central point of contact on technical matters relating to this MOA. Each PR may designate another

individual to fulfill the PR's responsibilities, if the PR is unable to do so or the PR changes duties, positions, or employment status. The PR will provide written notification to his counterpart in the event that such a designation occurs.

For the Federal Emergency Management Agency:

Mr. Robert Butrico, Program Specialist
Federal Emergency Management Agency
Federal Center Plaza, Room 617A
500 C Street, SW
Washington, DC 20472
(202) 646-3361

For the Department of the Army, U.S. Army Corps of Engineers:

Mr. Richard Heiden, Mechanical Engineer
US Army Corps of Engineers, Protective Design Center
215 North 17th Street
Omaha, NE 68102
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Additional representatives may also be appointed to serve as points of contact on IAAs. All IAAs shall be coordinated through FEMA and USACE PRs.

ARTICLE V - INTERAGENCY AGREEMENTS

FEMA may request USACE assistance under this MOA. USACE and FEMA will jointly develop written IAAs. These IAAs will be in the form of either Engineer Form 4914-R or similar document containing the same information as Department of Defense Form 1144. In any event, the IAA will contain a cover page that includes FEMA Form 40-3 and will comply with FEMA procedures then in effect. These IAAs must include:

- a detailed scope of work statement;
- schedules;
- funding arrangements, including whether payment shall be in advance or by reimbursement;
- the amount of funds required and available to accomplish the scope of work as stated above;
- FEMA's fund citation and the expiration date for obligation purposes;
- identification of individual project managers;
- identification of types of contracts to be used (if known);
- types and frequencies of reports;
- identification of the party responsible for government-furnished equipment, contract administration, records maintenance, rights to data, software and intellectual property, and contract audits;

-procedures for amending or modifying the IAA.

Goods or services shall be provided under this MOA only after an appropriate IAA has been signed by a representative of each party, who is authorized to execute that IAA. Upon signature by each party's representative, an IAA shall constitute a valid order under 31 U.S.C. §1535. In the case of conflict between this MOA and an IAA, this MOA shall control.

ARTICLE VI - RESPONSIBILITIES OF THE PARTIES

A. Responsibilities of the Department of the Army

1. Provide FEMA with goods or services in accordance with the purpose, terms, and conditions of this MOA and with specific requirements set forth in IAAs and implementing arrangements.
2. Identify authorized USACE representatives to sign IAAs.
3. Use its best efforts to provide goods or services either by contract or by in-house effort.
4. Provide detailed periodic progress, financial, and other reports to FEMA as agreed upon in the IAA. Financial reports shall include information on all funds received, obligated, and expended, and on forecast obligations and expenditures. Records shall be maintained separately for each IAA in sufficient detail to permit identification of the nature of the expenditures made by USACE and shall be made available upon request for inspection by FEMA officials.
5. Inform FEMA of all contracts entered into under each IAA.

B. Responsibilities of FEMA

1. Issue IAAs in accordance with Article V and other applicable agency-specific procedures.
2. FEMA shall certify, prior to the execution of each IAA under this MOA, that the IAA complies with the requirements of the Economy in Government Act.
3. Pay all costs associated with USACE's provision of goods or services under this MOA and certify, at the time of signature of an IAA, the availability of funds necessary to accomplish that IAA.
4. Ensure that IAAs are signed by authorized FEMA contracting officers.

5. Develop, in coordination with USACE, IAAs, which include scope of work statements.

6. Obtain for USACE all necessary real estate interests and access to all work sites and support facilities, and coordinate with and obtain any permits from state and local agencies, as necessary during the execution of each IAA, or as otherwise negotiated in the IAA.

ARTICLE VII - FUNDING

FEMA shall pay all costs of USACE's goods or services provided under each IAA. FEMA shall provide funding for the goods or services requested in advance of any obligation by USACE to provide such goods or services, or as set forth in the IAA.

If USACE forecasts its actual costs under an IAA to exceed the amount of funds available under that IAA, it shall promptly notify FEMA of the amount of additional funds necessary to complete the work under that IAA. FEMA shall either provide the additional funds to USACE, or require that the scope of work be limited to that which can be paid for by the then-available funds, or direct termination of the work under that IAA.

Within 90 days of completing the work under an IAA, USACE shall conduct an accounting to determine the actual costs of the work. Within 30 days of completion of this accounting, USACE shall return to FEMA any funds advanced in excess of the actual costs as then known, or FEMA shall provide any additional funds necessary to cover the actual costs as then known. Such an accounting shall not limit FEMA's responsibility under Article XII to pay for any costs associated with each individual IAA, such as contract claims or other liability, which may become known after the final accounting.

ARTICLE VIII - APPLICABLE LAWS

This MOA and all documents and actions pursuant to it shall be governed by the applicable statutes, regulations, directives, and procedures of the United States, including FEMA rules, policy issuances, and operations guidelines. Unless otherwise required by law, all contract work undertaken by USACE shall be performed in accordance with USACE policies and procedures.

Nothing in this MOA relieves any applicant, grantee consultant contractor, subcontractor, or other party from any obligations imposed upon them by contract law, FEMA regulations, and other applicable statutory or other requirements.

ARTICLE IX – REPORTS

USACE will provide US Army Corps of Engineers Financial Management System (CEFMS) monthly project status reports to FEMA. These reports will include engineering work activities for the month, management information, and scheduled activities. To the extent permissible, all contract documents will be turned over to FEMA for its records.

ARTICLE X - CONTRACT CLAIMS AND DISPUTES

All claims and disputes by contractors arising under or relating to contracts awarded by USACE shall be resolved in accordance with Federal law and the terms of the individual contract. USACE shall have dispute resolution authority for these claims. Any contracting officer's final decision may be appealed by the contractor pursuant to the Contract Disputes Act of 1978 (41 U.S.C. §§ 601-613). The U.S. Army Corps of Engineers Board of Contract Appeals ("ENG BCA") is designated as the appropriate board of contract appeals. In lieu of appealing to the ENG BCA, the contractor may bring an action directly to the United States Court of Federal Claims.

USACE shall be responsible for handling all litigation involving disputes and appeals, and for coordinating with the Department of Justice as appropriate. USACE shall notify FEMA of any such litigation and afford FEMA an opportunity to participate in, review, and comment on the litigation proceedings and any resulting settlement negotiations. The point of contact at FEMA for these purposes is FEMA's Associate General Counsel for General Law (currently Robert S. Brock , at 202-646-4095).

ARTICLE XI - DISPUTE RESOLUTION

The parties agree that, in the event of a dispute between the parties, FEMA and USACE shall use their best efforts to resolve that dispute in an informal fashion through consultation and communication, or other forms of non-binding alternative dispute resolution mutually acceptable to the parties. The parties agree that, in the event such measures fail to resolve the dispute, they shall refer it for resolution to the Office of Management and Budget or such other entity as the parties may mutually agree upon in writing.

ARTICLE XII – RESPONSIBILITY FOR COST

The parties agree that USACE has no appropriations that may legally be made available for the goods and services to be provided by USACE under this MOA, other than the funds provided by FEMA. Accordingly, FEMA is responsible for all of the costs, to include liabilities, associated with USACE's provision of goods and services under this MOA and any IAAs thereto. The parties recognize that **the funds available from**

FEMA for the goods and services identified in Article II are limited to the funds annually provided by the Department of the Army ("DA") under the "Memorandum of Understanding between the Department of the Army and the Federal Emergency Management Agency," dated 8 October 1997. If the actual costs for USACE's provision of services exceeds the funding amount specified under any IAA, FEMA shall remain responsible, as the program proponent, for providing such funds as are necessary to discharge this responsibility, subject to available appropriations. If FEMA has no funds legally available to discharge this responsibility, including such funds as may legally be made available through transfers, reprogrammings, or other means, FEMA remains responsible for seeking additional funds from the DA for such purpose during the same fiscal year and in subsequent fiscal years if such funds cannot be made available in the same fiscal year. Nevertheless, nothing in this MOA shall be construed to imply that DA will provide sufficient funds to meet the deficiency.

FEMA's liability for claims submitted under the Federal Tort Claims Act is limited to \$2,500 per claim.

ARTICLE XIII - PUBLIC INFORMATION

Justification and explanation of FEMA's programs before Congress and other agencies, departments, and offices of the Federal Executive Branch shall be the responsibility of FEMA. USACE may provide, upon request, any assistance necessary to support FEMA's justification or explanations of FEMA's programs conducted under this MOA. In general, FEMA is responsible for all public information. USACE may make public announcements and respond to inquiries about the procurement and contract award and administration process. FEMA and USACE shall make every effort to coordinate and provide the other party advance notice before making any public statement regarding work contemplated, undertaken, or completed pursuant to IAAs under this MOA.

ARTICLE XIV - MISCELLANEOUS

A. Other Relationships or Obligations

This MOA shall not affect any pre-existing or independent relationships or obligations between FEMA and USACE.

B. Survival

The provisions of this MOA which require performance after the expiration or termination of this MOA shall remain in force notwithstanding the expiration or termination of this MOA.

C. Severability

If any provision of this MOA is determined to be invalid or unenforceable, the remaining provisions shall remain in force and unaffected to the fullest extent permitted by law and regulation.

ARTICLE XV - AMENDMENT, MODIFICATION AND TERMINATION

This MOA may be modified or amended only by written, mutual agreement of the parties. Either party may terminate this MOA by providing written notice to the other party. The termination shall be effective upon the sixtieth calendar day following notice, unless a later date is set forth. In the event of termination, FEMA shall continue to be responsible for all costs incurred by USACE for outstanding IAAs and for the costs of closing out or transferring any on-going contracts. Upon the termination of this MOA, each IAA shall continue to completion under the terms of the respective IAA unless specifically indicated otherwise by one of the parties.

ARTICLE XVI - EFFECTIVE DATE

This MOA is effective for a five-year period, from the date of the last signature by both parties. Upon request by either party, but at least annually, both parties shall review this MOA to assure that it continues to reflect the appropriate understandings and procedures to provide for current needs and capabilities.

Federal Emergency Management
Agency

U.S. Department of the Army



Russell Salter, Director
Chemical and Radiological Preparedness
Division

Joe N. Ballard
Lieutenant General, U.S. Army
Commanding

DATE: 21 May 99

DATE: 17 May 1999