

National Guard Regulation 415-5

Construction

Army National Guard Military Construction Program Development and Execution

National Guard Bureau
Arlington, VA 22204
6 March 2015

UNCLASSIFIED

SUMMARY of CHANGE

NGR 415-5
ARMY NATIONAL GUARD MILITARY CONSTRUCTION
PROGRAM DEVELOPMENT AND EXECUTION

This revision, dated 6 March 2015 --

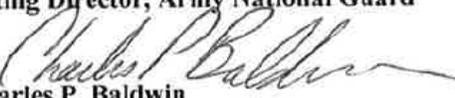
- o Follows Department of Army publication format, reorganizing chapters by acquisition phases (Planning, Programming, Budgeting and Execution).
- o Includes references to the Army National Guard Military Construction Budget and Programming Guidance.
- o Includes information on the Military Construction Cooperative Agreement removed from the updated National Guard Bureau Office of Principal Assistant Responsible for Contracting regulation NGR 5-1.
- o Includes updates to the Design Build Delivery System & introduces Construction Manager at Risk / Construction Manager General Contractor.
- o Includes comment about the congressional notification for Unspecified Minor Military Construction projects.
- o Includes information on Planning Charrettes.
- o Removes DD Forms 1390/91 detailed instructions.
- o Clarifies Environmental terms substituting the Environmental Baseline Study with Environmental Condition of Property.
- o Addresses Contract Modifications reference requirements.
- o Adds the President's Budget Submission information.
- o Includes references to the Readiness Center's minimum total authorized strength.
- o Removes all mentions of Facility Center and replaced with PRIDE.
- o Removes mention of Federal/State Agreement.
- o Includes references to subject to the availability of funds solicitation authorization.
- o Clarifies percent of Federal funding reimbursement for Federal Contracting/Federal land.

Construction

**ARMY NATIONAL GUARD MILITARY CONSTRUCTION
PROGRAM DEVELOPMENT AND EXECUTION**

By Order of the Secretary of the Army:

JUDD H. LYONS
Major General, GS
Acting Director, Army National Guard

Official: 
Charles P. Baldwin
Deputy Chief of Staff

History. This printing publishes a revised regulation of the NGR (AR) 415-5, dated 18 July 2003, which is hereby rescinded.

Summary. This regulation provides guidance for planning, programming, budgeting, and executing all Military Construction Army National Guard (MCNG) projects.

Applicability. This regulation applies to the Army National Guard and all MCNG funded in whole or in part with a military construction appropriation.

Proponent and exception authority. The proponent of this regulation is the Installations Division Chief, Army National Guard (ARNG-ILI). The proponent has the authority to approve exceptions to this regulation that are consistent with controlling law and regulation. This authority may not be delegated.

Management Control Process. This regulation contains management control provisions in accordance with AR 11-2, key management controls that must be evaluated in NG Pam 415-5.

Supplementation. Supplementation of this regulation requires the approval of the Army National Guard, Installations Division, ARNG-ILI, 111 South George Mason Drive, Arlington, VA 22204.

Suggested Improvements. Users are invited to send comments and suggested improvements on DA Form 2028 (Recommended Changes to Publications and Blank Forms) to the Army National Guard, Installations Division, ARNG-ILI, 111 South George Mason Drive, Arlington, VA 22204.

Distribution. B.

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* This regulation supersedes NGR (AR) 415-5, 18 July 2003.

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Chapter 1

General

1-1. Overview

This regulation provides basic policies, responsibilities and requirements for the Adjutant General (and staff) for the development and execution of the Military Construction Army National Guard (MCNG) program. This includes guidance on planning, programming, budgeting, designing, contracting, and managing projects. Also, it prescribes the means for achieving high quality, cost effective military construction within schedules that meet the needs of the facility users and attain and maintain the compliance with Federal and State laws and regulations. The term State is used in this regulation to include the 50 States, the three territories and the District of Columbia.

1-2. References

Required and related publications are listed in Appendix A.

1-3. Explanation of Abbreviations and Terms

Abbreviations and special terms used in this regulation are explained in the glossary.

1-4. Responsibilities

The following responsibilities are applicable to this regulation in general.

a. The Under Secretary of Defense (Comptroller) (USD-C) is the approval authority for military construction budget submissions and for funding of authorized and appropriated projects.

b. Assistant Chief of Staff for Installations Management (ACSIM) is the Army staff element responsible for programming funds for facilities programs and for providing policy guidance for all areas and activities associated with programming facilities funds. Also, provides replacement facilities for ARNG units displaced at Army installations in accordance with DoD 1225.07.

c. The Assistant Secretary of the Army for Installations, Energy and Environment (ASA-IE&E) has the principal responsibility for all Department of the Army matters related to installations and environment, energy, safety and occupational health.

(1) Has overall responsibility for providing guidance on installation facilities, housing, energy initiatives and environmental policy and program direction. This includes approving and forwarding Congressional actions to OSD and Congress.

(2) Provides project reviews of all military construction budget submissions and approves the overall submission before its submittal to OSD.

(3) Approves all military construction projects for both design and construction release.

(4) Delegates work classification authority to Chief, National Guard Bureau.

d. Assistant Secretary of the Army for Financial Management and Comptroller (ASA-FM&C) controls military construction appropriation funds and manages the budget as provided in AR 1-1.

e. Chief, National Guard Bureau (CNGB) establishes National Guard priorities and policies to support the commanders of the unified combatant commands, the military services, and the States and delegates work classification authority to Installations Division Chief. Also, advises DA program coordinators of program implications resulting from force structure and stationing changes, Base Realignment and Closure (BRAC) initiatives, or congressional actions (for example, for MILCON and non-MILCON program additions).

f. Director, Army National Guard (DARNG) as the MILCON appropriation sponsor acquires, manages and distributes resources to meet the ARNG priorities and to influence the development of policies in order to support the commanders of the unified combatant commands, the military services, and the States.

g. Chief, Army National Guard, Installations Division (ARNG-ILI) serves as the primary advisor to the DARNG regarding Installations. The ARNG-ILI Chief administers military construction to support the mission of the Army National Guard and is responsible for the planning, programming, acquisition, operation and disposal of ARNG land, utilities, infrastructure and facilities. Other responsibilities include:

(1) Provides resources and policy guidance to the States regarding facilities planning, programming, acquisition, design, construction, inspection, maintenance and repair, and disposal.

(2) Recommends policy to the Director, Army National Guard, involving military construction for the ARNG and implements approved policy.

(3) Develops and directs planning, programming, and budgeting involving military construction for the ARNG.

(4) Provides professional and technical guidance and assistance to the States in developing, managing, and executing a sound MCNG program in accordance with current DoD and DA policies, and industry construction standards, practices, codes, and principles.

(5) Chairs the Facility Review Committee and superintends the prioritization of MCNG projects.

(6) Serves as the proponent for readiness centers.

h. Army National Guard, Environmental Programs Division (ARNG-ILE) provides guidance, recommendations, and assistance to the States in the environmental aspects associated with planning, programming, siting, and scoping military construction projects. Reviews and approves all environmental documentation required to acquire and construct real property as part of the MCNG program. Serves as a non-voting member of the Facility Review Committee (FRC), provides guidance and assistance in project prioritization.

i. Army National Guard, Logistics Division (ARNG-ILS) serves as the proponent for surface maintenance and logistics facilities and provides guidance, advice, assistance, and recommendations regarding functional requirements, criteria, programming, and design review for surface maintenance and logistics facilities. As a voting member of the FRC, provides guidance and assistance in project prioritization.

j. Army National Guard, Training Division (ARNG-TR) serves as the proponent for training facilities and training centers and provides guidance, advice, assistance, and recommendations regarding functional requirements, criteria, programming, and design review for training facilities and training centers. As a voting member of the FRC, provides guidance and assistance in project prioritization.

k. Army National Guard, Aviation and Safety Division (ARNG-AV) serves as the proponent for aviation facilities and provides guidance, advice, assistance, and recommendations regarding functional requirements, criteria, programming, and design review for aviation facilities. As a voting member of the FRC, provides guidance and assistance in project prioritization.

l. The Adjutant General (TAG) provides strategic direction for the preparation and update of the State's Real Property Development Plan (RPDP) and is the State authority for cooperative agreements.

m. United States Property and Fiscal Officer (USPFO) serves as the contracting agent for all MCNG projects executed through Federal procedures, unless the State makes a request to ARNG-ILI to delegate that responsibility to another Federal construction agent (U.S. Army Corps of Engineers or the Naval Facilities Engineering Command).

(1) Accountable and responsible for the proper obligation and expenditure of all MCNG funds provided to the State through Military Construction Cooperative Agreements.

(2) Responsible to monitor, advise, and assist in the MCNG program, to ensure that Federal funds are expended only on the authorized scope, as set forth in NGB-PARC cooperative agreement directives. Ensure projects are executed through the Federal Acquisition Regulation (FAR) and its supplementary procedures.

(3) Responsible for the certification of Federal funds for those projects executed through State procedures, Military Construction Cooperative Agreement (Federal/State Agreement) compliance, and final project acceptance.

(4) Responsible to review and approve any interagency agreement assigning design and construction supervision to a State agency other than the Military Department.

(5) Accountable officer for reporting all Federally-owned real property and the responsible person to sign the DD Form 1354 as the Federal representative upon project completion.

n. The Construction and Facilities Management Officer (CFMO) serves as principal advisor to the Adjutant General on all aspects of the State's facilities including the MCNG, O&M and in most cases environmental programs, being the principal point of contact for all the State's facilities programs.

(1) Leads the development, justification, and execution of all military construction (specified and un-specified) projects in design and construction for the State ensuring the functionality, operability, and maintainability characteristics of all military construction projects.

(2) Accomplishes short and long-range planning, with the Adjutant General's approval, for future development of land, facilities, and infrastructure of the State, following the master planning methodology of ARNG Directorate master planning directives and any other published regulations and policies.

(3) Prepares a complete and comprehensive economic analysis for each proposed MCNG project in accordance with DA Pam 415-3 to justify project, its location, and scope before commencing design.

(4) Fully coordinates with all facility users, functional proponents, and other appropriate State staff elements to ensure the maximum functionality and usability of each project and the project compliance with all statutory, regulatory, and code requirements.

(5) Prepare completed project documentation on designated MILCON projects per ARNG-ILI instructions. Ensure all non-construction funded requirements including OMA or OPA cost related to these projects have been identified and are shown in the appropriate fiscal years to provide facilities which are ready for the user to commence operation upon beneficial occupancy.

(6) Serves as member and Records Custodian of the Joint Service Reserve Component Facility Board for the State. Stores all records of the Board, submits all required reports, assures all required minutes of the Board's proceedings have been received by ARNG-ILI, and may serve as Chair on a rotating basis.

Chapter 2 Planning

2-1. Overview

Project planning supports the Adjutant General's vision by identifying alternatives and establishes a strategy for future development that may or may not include construction. During the planning phase, the baseline of existing facility conditions is established along with all the facility requirements to satisfy current and future mission necessities to support the States missions and readiness.

2-2. Facility Requirements

a. Real Property Development Plan (RPDP) identifies the Adjutant General's goals and objectives for development and operation of the State and its supported installations. It identifies major work to be done to real property to assure continued mission performance. To accomplish this, the RPDP:

(1) Documents results of the planning process.

(2) Depicts all projects that bring the States facility inventory to an ISR-I F-2, Q-2, or C-2.

- (3) Provides a decision-support tool to identify requirements and alternatives for resolving real property deficiencies/excesses.
- (4) Provides the basis to support acquisition, management, accountability, and disposal of real property.
- (5) Provides the framework and decision support tool for supporting requested military construction projects.
- (6) Provides supporting information, assisting the State with developing programming documents for MCNG projects.
- (7) Must be regularly updated and submitted annually to ARNG-ILI (Refer to the ARNG MILCON Budget and Programming Guidance).

b. Long Range Construction Plan (LRCP) consists of a prioritized list of MCNG projects required by the State to implement its RPD. This plan provides the State's input into ARNG Directorate's updated prioritization of the entire MCNG program. For details refer to the ARNG MILCON Budget and Programming Guidance from ARNG-ILI.

c. Infrastructure Requirements Plan (IRP) is a process which produces a prioritized list of MCNG projects from all States. This list is formed using a model from the programming guidance that prioritizes all projects on States' submitted LRCPs. Based on a variety of weighted factors; the model includes the highest priorities of the Adjutant General, while integrating national level military construction needs and programmatic and statutory priorities. The criteria in the IRP are determined by the Facilities Review Committee (FRC), which contains ARNG Directorate and State membership. Recommendations of the FRC are presented to the Director, Army National Guard for final approval. The highest ranking projects from the IRP process become part of the Future Years Defense Program (FYDP), while the remaining projects become the unfunded military construction requirements of the ARNG. Instructions are in the ARNG MILCON Budget and Programming Guidance update each cycle.

2-3. Real Estate Considerations

The Construction and Facilities Management Officer (CFMO) shall determine whether any proposed construction project requires acquisition of real estate interests and what such interests would cost. When acquiring real property to support MCNG projects follow and adhere to the provisions in the ARNG Real Estate Manual.

a. The relationship between the Army National Guard (ARNG) Directorate and the State Military Department is governed by the fact that all ARNG facilities are owned by, leased for, permitted to, or licensed to the States. As a result, the States, and not the Federal government, operate and maintain all ARNG facilities.

b. The identification of an adequate, cost-effective site is the first step in successfully executing a MCNG project. When selecting real property for MCNG projects, the CFMO shall maximize the use of existing real property and joint use with other DoD components. A factual justification will be required if the CFMO proposes unilateral construction to support the conclusion that joint facilities are not practical or economically advantageous to the Federal government.

c. When acquiring land for MCNG projects, the CFMO will select real property that on a long-term basis most economically meets the State's training, mission, support, and operational requirements and is consistent with the Adjutant General's planning philosophy.

d. In making a major land acquisition using Federal funds, the CFMO will comply with DoDI 4165.71.

e. The following is a prioritized list of methods of acquiring real property to satisfy MCNG requirements:

(1) Use of existing, underutilized Federal or State owned facilities, especially those of other DoD Components (both Reserve and Active). This may include re-stationing force structure to maximize the use of existing facilities.

(2) Use of existing, available, excess or vacant Federal real property, via transfer, license, use agreement, permit, or purchase, including maximum use of facilities excess because of base realignment and closure actions.

(3) Donation, or lease at no cost to the Federal or State government, of existing privately-or publicly-owned real property, provided that only minimal additional construction is required.

(4) Additions/alterations to existing DoD facilities or new construction on DoD installations provided that provisions are made to maximize joint use.

(5) Purchase of existing privately or publicly-owned real property, provided that only minimal additional construction is required.

(6) Construction of a new facility to be jointly used by at least one other DoD component.

(7) Construction of a new facility to be solely used by the ARNG. As much as possible, design and provide a site that will accommodate future expansion for joint use.

f. The State lease of State-owned or private property to the Federal government for a proposed readiness center project requires a 25 percent State share. Donating land to the Federal government to avoid State share for a Readiness Center is prohibited. See paragraph 4-3 Authorized Charges for descriptions of Federal/State cost shares for MILCON projects.

g. The existence of a Federal lease of State-owned property does not normally qualify a proposed readiness center project on such a site for 100 percent Federal reimbursement of design and construction costs. Instead, unless an exception is granted by the Assistant Secretary of the Army (Installations, Energy and Environment), should a readiness center project be approved for such a site, the State share of 25 percent still applies.

2-4. Site Selection

a. The purchase or lease of State land to support a proposed or programmed construction project is a State responsibility. This includes the actual property acquisition, any required boundary surveys, Environmental Condition of Property (ECOP), and any other environmental documentation required for the acquisition of the site. The ECOP can be federally funded only for acquisition of Federal land. For information refer to ARNG Real Estate Manual and the Army National Guard Bureau Environmental Condition of Property (ECOP) Handbook.

b. A good selection process determines the most suitable site, considering land availability, support of unit readiness and recruiting/retention goals, current and future zoning that may influence encroachment and the economics of site preparation,

environmental impacts and other effects on construction costs. As part of the site selection process, the CFMO investigates all prospective sites for conformance with the following requirements:

- (1) The size of the site for a facility must have adequate acreage to accommodate the project scope including antiterrorism/force protection (ATFP) requirements.
- (2) The sites selected for other projects shall provide adequate area to support mission requirements.
- (3) Front on at least one public street or road, while ensuring adequate standoff to meet conventional construction ATFP requirements.
- (4) Have adequate access roads from nearby population centers and from public highway networks. Preferably should be served by public transportation.
- (5) Be free from low-lying areas, steep slopes, faults, and other prospective nuisances.
- (6) Have uniformly contoured terrain that is either level or only slightly sloping (less than 4 percent).
- (7) Have soil at the frost line depth for the locality with a minimum bearing capacity of 2,000 pounds per square foot on natural, undisturbed earth.
- (8) Have accessible public utilities necessary and required for successful operation of the facilities being constructed. Connection to existing utility system beyond building property line is limited to 300 linear feet; see NG Pam 415-12 for details.
- (9) Be protected by local zoning regulations so as to permit the construction and full use of a facility and to prohibit the establishment of any activities or industries that would adversely affect the operation of the facility.
- (10) Be uncontaminated land, free from the prospect of hazardous substances that could subject the State or Federal government to liability for response, clean-up, and health costs or for natural resource damage costs, and free from conditions that would prevent or affect the construction, occupancy, and future operation of the facility.
- (11) Should avoid former landfills, fuel farms, waste treatment facilities, and other potentially contaminated sites.
- (12) Should not be sited in flood hazard areas or areas subject to sea level rise and storm surges.
- (13) When siting new construction, preference shall be given to brownfields and other previously-developed lands, proximity to existing supporting infrastructure (e.g., utilities), and connectivity to transportation modes/networks where feasible.

c. Once the State has made a tentative site selection and has received design authority, it conducts an engineering site investigation. The investigation includes a minimum number of soil borings, based on visual observation of the site and knowledge of the local area, in order to determine the nature and consistency of sub-surface soil strata conditions. Additional borings may be necessary if the first results are insufficient or inconclusive to use to design foundations. Soil borings from the selected site becomes part of the site survey report required by paragraph 5-6l (1).

d. The Federal government does not normally support construction costs associated with work to correct site deficiencies at locations that do not conform to the specifications in paragraph 2-4 b. If the site does not conform, the State must submit a memorandum clearly justifying its siting decision, including documentation such as an economic analysis justifying increased construction costs.

e. Acquisition of sites for military construction projects has to comply with applicable requirements of the National Environmental Policy Act (42 U.S.C. §§4321-4370a), National Historic Preservation Act (16 U.S.C. §470 et. seq.), Comprehensive Environmental Response Compensation and Liability Act (CERCLA) (42 U.S.C., Chapter 103), and other environmental requirements (See AR 200-1 and 32 CFR Part 651). The CFMO uses the guidelines contained in these statutes and regulations to help select project sites and initiates the required environmental processes before requesting funds for design and construction.

f. The acquisition of real property for a construction project requires at minimum an ECOP (typically this would be an Environmental Baseline Study (EBS) for Federal property and an Environmental Site Assessment (ESA) for the State property) to determine the extent of potential liability of the Federal government should it approve the project at that site. If the project is on an installation with a previously approved ECOP, the State completes an Environmental Survey and Clearance for Construction. As appropriate, the State should use the sampling required for environmental contamination to supplement the soil borings required in paragraph 2-4c above.

g. Because of the potential liability for excess construction costs for poor site selection, the CFMO should carefully examine all proposed sites for their slopes, drainage, rock, soils, unexploded ordnance (UXO), and environmental hazards, contamination or constraints (i.e., soil or groundwater contamination, wetlands, presence of endangered species, or cultural sites). States may have to fund excess construction costs if they elect to choose a given site in lieu of an acceptable site.

2-5. Planning and Programming Charrettes (PPDC)

a. Planning Charrettes (Not to be confused with a Design Charrette) are used to validate the information and assumptions that were made in the preparation of the DD Forms 1390/1391. A PPDC is conducted at FY-5, (i.e. FY13 ARNG-ILI was conducting PPDC's for FY18 FYDP projects). PPDC's utilize 2065 sustainment funds and cannot be conducted once 2085 MILCON funds have been allocated to a project. Refer to the ARNG MILCON Budget and Programming Guidance for more information on the procedures for a PPDC.

b. While planning and programming charrettes are an important tool to ensure MILCON projects are properly scoped and include the requirements of all stakeholders; NGB can only fund charrettes with OMNG funds for some MILCON projects and only after the project has been accepted for the FYDP. Considerations as to which planning and programming charrettes are funded by NGB depend on the availability of funds, complexity of the project, and project cost. States are encouraged to conduct their own charrettes at a time of their choosing at their own expense. However when a State needs NGB funding support for a planning or programming charrette, the CFMO should request such after the project is placed on the FYDP.

c. Where projects have multiple stakeholders, or are complex in nature, PPDCs are viewed as reasonable if not essential. The proper document to initiate a planning and programming charrette is a draft 1390/91. The CFMO should request funding for

PPDCs through the Operations and Maintenance program; master planning funds are the appropriate Management Decision Evaluation Package (MDEP), or the CFMO may elect to fund the PPDC through their normal OMNG allotment. PPDCs conducted during the development of DD Forms 1390/1391 should receive full State and ARNG-ILI support. Detailed reviews of RFPs should be conducted by all organizations that have a vested interest in each project. This includes but is not limited to; the user, the project proponent and the ARNG-ILI representative.

d. For further guidance see the USACE Engineering and Construction Bulletin 2003-8 (Rev 1).

Chapter 3 Programming

3-1. General

MILCON programming is the process of acquiring both the authority and resources necessary to meet facility requirements identified by the planning process. A construction project with an estimated cost greater than the Operations & Maintenance (O&M) funded ceiling is normally funded through the MILCON Program. Requirements, identification, feasibility studies, DD Forms 1390/91 creation, etc., should be programmed for and accomplished prior to formally initiating a project into the ARNG MILCON program. For a project to be considered, the State CFMO needs to reference annual ARNG MILCON Budget and Programming Guidance for specific minimum requirements. A project is not considered an actual funded project until it has been authorized and appropriated by Congress.

a. ARNG-ILI obtains programming and budgetary resources based upon ARNG Directorate's success in the annual Program Objective Memorandum (POM) process. ARNG-ILI applies these programming funds against the highest MCNG priorities nationwide annually to prepare its next MCNG President's Budget submission, to update its FYDP, and to create a prioritized, unfunded MCNG list. In some cases, Congress may provide additional resources during the annual budget authorization and appropriation cycle.

b. A project remains on the FYDP until Congress authorizes and appropriates it, the Adjutant General cancels it, or the State fails to comply with the MCNG programming and project documentation process. Also, a Department of Defense element (including the Secretary of Defense, the Secretary of the Army, or the Chief, National Guard Bureau) can decide to remove it from the program. ARNG-ILI oversees the development of the funded MCNG project list (the FYDP) and the unfunded MCNG list (the IRP) after doing a detailed analysis of the annual LRCP submissions from all CFMOs and convening the Facility Review Committee.

c. Cost on the DD Forms 1390/1391 are for programming purpose and are not the actual fund amounts for State to execute the project. The actual funding is predicated on the construction bid amount. The bid savings not used for the project will support the overall ARNG MILCON program on projects requiring additional funds due to bids exceeding programmed amount.

3-2. Project Limitations

a. The Military Construction Army National Guard (MCNG) program consists of three parts, each with a separate authorization and appropriation line from Congress; Major Construction (i.e., specified projects), Unspecified Minor Military Construction (UMMC), and Planning and Design (P&D). Once appropriated, funds may not be moved from one part to another without a formal Congressional reprogramming action.

b. Each MILCON project shall result in a complete and usable facility or a complete and usable improvement to a facility. Avoid combining work on multiple facilities of different types into a single project. Combining multiple projects into a single, lump sum request is prohibited, except when each project is in the same general facility category (i.e. supply facilities, maintenance and production facilities, etc.) and the required completion date of each facility is programmed in the same fiscal year.

c. Major MILCON projects are programmed separately. Every MCNG construction undertaking must be individually authorized and funded in military construction legislation or performed under special statutory authority (e.g., 10 U.S.C. §2803 or 10 U.S.C. §2854). UMMC and P&D funding is authorized and appropriated as a lump sum and are managed at the appropriation level by ARNG-ILI.

d. No entity within the State nor any tenant organization (including the Active Army and other DoD components) shall start any project work without the prior written project approval of the CFMO, the USPFO, ARNG-ILI, and any other entity required by this regulation for a specific type project.

3-3. Project Development

Project development is one of the most important actions in MILCON programming and is documented using a DD Forms 1390/91. The DD Forms 1390/91, by itself, shall explain and justify the project to all levels of the Army, OSD, OMB, and Congress.

a. The State CFMO will review, validate, and prioritize the State MILCON facility requirements, including total authorized scope and unit strength (per NG PAM 415-12). To construct a Readiness Center you must have total authorized strength of 55 minimum for all units combined that are assigned to this type of facility. When it is determined that a facility shall be constructed or upgraded, the CFMO will prepare and submit DD Forms 1390/91, with all other applicable documentation. This will be accomplished using the PROJDOC DD Forms 1390/91 development tool.

b. ARNG-ILI shall validate each MILCON project by verifying the requirement that creates the need for the proposed project and confirming that the proposed project is the most cost effective means of satisfying the requirement.

c. Accurate project cost estimates are essential to successful MILCON project development and execution. Cost estimates must be closely scrutinized to ensure they are in-line with the OSD Pricing Guide. Project requirements will be captured as separate line

items under Primary or Supporting Facility cost and shall include contingency allowances, Supervision, Inspection, and Overhead (SIOH) and commissioning services. Detailed directions for completion of the DD Forms 1390/91 are contained in the annual ARNG MILCON Budget and Programming Guidance.

d. Demolition funded as part of a MILCON project shall be directly related to the project (e.g., in the footprint of the new construction or no longer needed as a result of the new construction).

e. Storm Water Management. Site development for all projects of 5,000 ft² or greater shall retain the pre-development site hydrology in accordance with EISA 2007 Section 438; referenced in UFC 3-210-10.

3-4. Unspecified Military Minor Construction Programming

Unspecified minor construction (UMMC) projects are authorized by *Title 10, United States Code, Section 2805, Unspecified Minor Construction*. Although individual UMMC projects are not separate line items in the budget; they require notification to congress before being considered for Federal funding.

a. Unspecified Military Minor Construction requirements should be unforeseen and so urgent that the project cannot wait for the MILCON POM Process. The State is to remember that a UMMC project is still a 2085 MILCON project and must follow the rules as such. Each project shall provide a complete and usable facility or improvement to an existing facility. Splitting requirements to keep project costs below the threshold is prohibited. An UMMC project shall not be accomplished concurrently with a MILCON project in the same facility. A UMMC project may precede a MILCON project for a new mission requirement when the UMMC will provide a complete and usable facility to meet a specific need during a specific time frame.

b. The CFMO will submit the project requests to ARNG-ILI-R in accordance with the instructions provided in the most current ARNG MILCON Budget and Programming Guidance.

Chapter 4 Budgeting

4-1. General

A project's Federal funding is based on the ARNG-ILI approved DD Forms 1390/91 for the project and is limited by congressional authorization and appropriation for the project and, if required, the availability of State funding.

a. Appropriations must be obligated within five years (FY+4). Any MILCON funds less than five years old may be used for in scope changes on any current MILCON project. Any MILCON funds older than five years and less than ten years old may only be used for in scope changes on the project for which the funds were originally appropriated. After 10 years, funds are not available for any purpose unless extended by Congress for their original intent.

b. Authorizations are good for three years (FY+2). If no obligations are made within this three year period a Congressional extension is required. Extension is for one year at a time with a maximum limit of two extensions.

c. Funding categories: The State shall use the following Army Management Structure Codes (AMSCO) for the following projects. No charge shall be made to the listed AMSCOs unless it specifically falls under the guidelines of the AMSCO.

(1) Code for each major construction project is project specific. Major construction project line item in budget is normally more than \$2,000,000. This includes construction supervision and administration (Title II or Type "C" services).

(2) Minor Construction: Specific projects at known locations with construction costs normally under \$2,000,000, executed as an exigent minor construction project. This includes construction supervision and administration (Title II or Type "C" services).

(3) Planning: Design of major and minor MILCON projects, soil testing, and consultant studies.

d. Design/supervision: An Architectural/Engineering (AE) professional services contract is authorized for State MCNG projects. The contract will be based on the ARNG-ILI approved project DD Forms 1390/91, which establish scope of work and cost estimates for State MCNG projects. The Federal reimbursement share of the AE contracts for MCNG projects assigned State design and construction agent responsibilities will be based on an amount not exceeding the estimated construction cost indicated in NGB's design authorization letter, or as later modified by ARNG-ILI in the MCCA design appendix.

4-2. President's Budget Submission to Congress

Each year, as part of the President's Budget Estimate submitted to Congress, budget books containing the details of each appropriation are prepared. These books are used by Congress to prepare Appropriation and Authorization legislation and reports. One of those books is the Military Construction Program for the Army National Guard. Once submitted to Congress, these books become publically available documents.

a. The Army National Guard Military Construction book is prepared by ARNG-ILI and reviewed/approved through the command chain including the Chief, National Guard Bureau, the Secretary of the Army and the Secretary of Defense.

b. The Army National Guard Military Construction book typically contains the following sections:

(1) Summary list of projects submitted for Appropriation and Authorization.

(2) Supporting forms, in the form of DD Forms 1390/91, detail each project submitted. The forms detail projects' scope and justification. If funded, deviation from the contents of the forms could have legal implications.

(3) Future Years Defense Program (FYDP). Some appropriations, including DoD reserve component Military Construction Programs, have been requested by Congress to publish an outline of its FYDP, along with changes from the previous FYDP and justifications for each change.

(4) Special Program Considerations. Formal communication of various issues related to the appropriation. Items in this section have included the following.

- (a) Comments (including project status) regarding issues outlined in Congressional Reports including directed design and directed minor construction.
- (b) Requests for scope changes for projects funded in prior years.
- (c) Requests for extension of authorization for projects authorized in prior years.
- (d) Summaries areas of compliance with laws, regulations and policies applicable to the program.

4-3. Authorized Charges

The relationship between ARNG Directorate and the State Military Department is that of a grantor and grantee as defined in 31 U.S.C. §§ 6301-6308. ARNG Directorate transfers funds to the State for NGB approved scope through a cooperative agreement, as detailed in Principal Assistant Responsible for Contracting (NGB-PARC) cooperative agreement directives, so that the States may construct facilities in support of the Federal mission of the ARNG to meet criteria established by ARNG Directorate.

a. *Construction of Non-readiness center facilities* to include logistical, aviation, training site facilities and others, located on either Federal or State land is 100 percent federally reimbursed when constructed in compliance with ARNG criteria.

b. *Readiness Center Projects Construction*

(1) Federal reimbursement for readiness center projects on State land is limited to 75 percent of allowable cost of construction, exclusive of land acquisition, which is a State responsibility.

(2) Costs for the construction of or additions/alterations to readiness center projects that are caused by Federally directed conversion, re-designation, or reorganization of units during force structuring can be supported with 100 percent Federal construction reimbursement.

(3) Costs for the construction of readiness center projects on Federal land are 100 percent Federally funded when Federal contracting procedures are used and land is licensed or permitted to the State from one of the DoD services or 75 percent if federal land is not licensed or permitted from one of the DoD services. Cost for construction is 75 percent Federal reimbursement when State contracting procedures are used on Federal land.

(4) Readiness center projects to be constructed on State owned land leased to the Federal Government will be considered State owned and will be limited to 75 percent Federal reimbursement.

c. *National Guard/Reserve Center Project costs* for the construction of reserve centers for joint use by the Army National Guard and units of one or more other reserve components are supported with 100 percent Federal construction reimbursement.

d. *Division of costs:* Items that are in excess of NGB authorization, and therefore not eligible for Federal reimbursement, may be included in a project if they do not substantially diminish the usefulness of the facility for National Guard purposes. Such items must be separately bid as alternates, or have a unit price bid, to establish the cost of the excess items. If the excess item is of a nature that separate bidding is not possible, the additional cost will be based on a predetermined calculation of the difference in cost of the item (or unit cost) and the cost of the quality or quantity authorized Federal support. Cost for excess floor area in a building (which cannot be bid separately) will be based on the average square foot unit cost of the building.

e. *Maintenance and repair:* NGB funding support from the MCNG appropriation is limited to new construction of facilities and the additions, alteration, conversion, and/or rehabilitation of existing facilities. Normally, the maintenance or repair of a facility will not be supported with MCNG funds unless specifically identified as part of the scope of work in the approved DD Forms 1390/91.

f. *Installed Building Equipment (IBE):* Installed-building equipment (real property) are items that are affixed or built into the facility and become an integral part of the facility. The cost for IBE is included in the costs of the primary facility and is not listed as a separate line item. For details and examples, see NG Pam 415-5 and AR 420-1 Chapter 4 Section VI. Personal property must be distinguished from IBE. Although potentially reimbursable with Federal funds and an integral part of the construction project, personal property is funded with other than MCNG funds.

4-4. Unauthorized Charges

a. *Incremental construction:* No requirement for a facility, or improvement to a facility, at a single location shall be subdivided into two or more projects (for construction in the same or succeeding years) to circumvent regulatory cost limitations or approval authorities.

b. *Items in excess of NGB support* (including excess energy consuming items) or to support non-DoD users of the project.

4-5. Military Construction Cooperative Agreement (MCCA)

This section describes procedures for the administration of the Military Construction Cooperative Agreements (MCCA) executed in conjunction with the Military Construction Army National Guard (MCNG) Program. For further information see NGR 5-1 (National Guard Grants and Cooperative Agreements) and the current MCCA from NGB-PARC (Principal Assistant Responsible for Contracting). If there is any discrepancy, the information on the MCCA from NGB-PARC supersedes all other references being the actual legal document and final authority. The MCCA is not considered an approved document until the final signature from ARNG-ILI Division Chief.

a. The state determines whether Federal or State contracting procedures will be used. An MCCA is required when State contracting procedures are used or if Federal contracting procedures are used on State-owned or State-leased property. Projects on Federal land, licensed or permitted to the state from one of the DoD services, using Federal contracting do not require an MCCA.

b. If an MCCA is required; it must be in effect prior to distributing any Federal funds.

c. Contribution of funds for State executed MCNG programs are authorized under Title 10, U.S.C. Chapter 1803. The program is formulated on the basis of MCNG design and construction requirements accomplished by State contracts and executed by a State contracting officer. This contract is subject to the regulatory policies established by NGB and Federal law and within authorized funding limits. In the event of a conflict between Federal and State law, NGB and Federal requirements may be amended or deleted to

conform to State law, but only after written approval has been obtained from the U.S. Department of Labor in the case of labor requirements, or from ARNG-ILI in all other cases.

d. The MCCA is composed of a basic model document with separate model appendices. Basic project types are listed below, some of which will require supplemental language to the appendices. Unique State conditions may also require modifications to the basic document. Such modified language must be approved by ARNG-AQ and may be a cause for delay in obtaining final approval.

(1) Readiness Center Projects on State Property: Federal reimbursement of both design and construction is limited to 75 percent of NGB approved scope.

(2) Readiness Center Projects on Federal Property: Federal reimbursement of both design and construction for readiness center projects on land that is licensed or permitted to the state from one of the DoD services is 100 percent of NGB approved scope when Federal contracting procedures are used. Readiness center projects on federal land that is not licensed or permitted to the state from one of the DoD services have the same federal reimbursement percentage as if the construction were on state owned land. If State contracting procedures are used, federal reimbursement is limited to 75 percent of NGB approved scope.

(3) Non-Readiness Center Projects on State or Federal Property: Federal reimbursement of both design and construction is 100 percent of NGB approved scope.

(4) National Guard/Reserve Center projects on State or Federal property: Federal reimbursement of both design and construction is 100 percent of NGB approved scope.

e. Funding the design of projects with a State share:

(1) NGB may agree to advance 100 percent design funds; if so the State will reimburse NGB its share at bid opening.

(2) The State may decide to use State funds for 100 percent design costs; if so NGB will reimburse the State its share at bid opening if it is put into the MCCA under pre-agreement costs. Federal reimbursement of state costs for design is contingent upon one or more of the following conditions being met:

(a) MILCON project is appropriated for construction

(b) Congress has directed project design

(c) Project is included in the Future Year Defense Plan

f. All MCCA MCNG supported facilities must be maintained and operated for its intended purpose for at least 25 years. As an exception to policy, ARNG-ILI may approve the use of MCNG funds for temporary or semi-permanent construction and may approve an MCCA for less than 25 years. ARNG-ILI will concur in such an agreement only if the State presents compelling evidence that an existing facility on State-owned or leased property cannot be rehabilitated sufficiently to increase its useful life to at least 25 years and that the requirement for an addition and/or alteration project is of such a critical nature that it cannot be deferred until a permanent replacement facility can be constructed. In these instances, the State must document the conditions of the existing facility and the critical nature of the requirement on the project's DD Forms 1390/91. ARNG-ILI will then determine the agreement period and the type of construction authorized based on its estimate of the remaining number of years of useful life of the existing facility.

g. The State may propose alterations or changes to one of the existing MCCAs. The State shall attach the complete statement of the approved alterations and changes, with justification, to the executed MCCA when it forwards the MCCA to ARNG-ILI for approval. Two copies of the MCCA agreement with original signatures and the date of execution to ARNG-ILI for concurrence will be part of the submittal.

h. Before concurrence, ARNG-ILI shall review the submitted MCCA for the following items:

(1) Use of current edition of proper MCCA.

(2) Proper calculation of cost sharing.

(3) Duration of agreement is not less than 25 years, unless ARNG-ILI has previously approved an exception.

(4) Properly written and approved changes and alterations to the standard format. If there are none, the MCCA must so state.

(5) Verification that Architect-Engineer services do not exceed 3 percent of the approved estimated project cost for Type A and Type C services (unless ARNG-ILI has approved otherwise) and that they do not exceed the statutory six (6) percent for Type B services.

(6) A properly annotated date of MCCA execution.

(7) Original signatures on both copies of the MCCA of the Adjutant General; the USPFO; signed certification by the State Attorney General; including any required signature delegation letters and copies of statutory signature delegation authorizations.

(8) Modifications will be accomplished using the Military Construction Cooperative Agreement (ARNG) Modification form shown in the latest version approved by NGB-PARC.

Chapter 5 Execution

Section I 5-1. General

It is the ARNG-ILI mission to construct high quality, sustainable, maintainable, long lasting, flexible, responsive, cost effective, new and replacement facilities for the Army National Guard on suitable land that is free from environmental hazards, within schedules that meet the needs of facility users, satisfy operational and training requirements, and attain and maintain compliance with Federal, State, and local environmental laws, codes, and regulations. During the execution phase, all projects are on the FYDP with validated programming documents (DD Forms 1390/91). The State CFMO has the lead role to design and construct MCNG projects with the support of the USPFO.

Section II Design Management

5-2. General

The project design year starts when DASA (IH&P) releases the projects to ARNG-ILI for design. ARNG-ILI will review the project programming documents (DD Forms 1390/91) for cost, scope and criteria compliance before issuing a design authority memorandum. This initial design authority memorandum gives the State CFMO and USPFO the authority to negotiate an Architect-Engineer contract for the preparation of the concept design. Other design directives will follow authorizing the project to proceed to the next design level; validating the project scope and cost in each level of submission, with special instructions for the design of the project. This process applies to all the MILCON projects (specified, unspecified, emergency, damaged or destroyed, and contingency construction).

5-3. Design Considerations

a. The NGR 415-10, NG Pam 415-12, and other technical publications will be used by the State for design development of applicable facilities. In absence of technical facility criteria, the current Uniform Building Code (UBC) will be used to complete the design. The States may request exceptions only to ARNG criteria. ARNG Directorate has no authority to waive the criteria in the UBC, or local building codes. However, the State must submit a certification of the local code in accordance with paragraph 5-11g(7) when the proposed design exceeds ARNG criteria.

b. MCNG planning and design funds (P&D) will be used for project design activities after issuance of the design authority memorandum until the award of the construction contract; including a design-build contract. This will include inhouse and AE activities associated with preparation and evaluation of the design-build RFP.

c. MCNG construction funds will be used for post-award project activities performed by the construction contractor and AE. Design-related activities performed by the design-build contractor will also be MILCON funded. Post-award design review costs will be a direct charge to MILCON funds. For certain projects, such as those accelerated by Congress, MILCON funds may be used for pre-award activities only where such activities are explicitly identified and associated costs specifically shown on the DD Forms 1390/91 funded as part of construction.

d. In the case of State contracted procedures, the CFMO (or State official) determines if they will utilize a unique AE selection or a pre-selected contractor, for instance an Indefinite Delivery Indefinite Quantity (IDIQ) contract. For Federal contracting, the USPFO shall select the source for the pre-design activities. These required efforts will begin when a design directive is received from ARNG-ILI. Unless otherwise directed, pre-design activities require the following documentation before beginning:

- (1) Approved DD Forms 1390/91 for the project.
- (2) Site surveys.
- (3) Site plans including Real Estate certification.
- (4) Preliminary subsurface investigation and analysis.
- (5) Preliminary utility investigation and analysis.
- (6) Narrative description of structural, electrical, mechanical, power, fire protection, and HVAC systems, and alternative energy systems to be considered.
- (7) A Construction Working Estimate (CWE) for budget purposes, which will be prepared if cost differs from that shown on the approved DD Forms 1390/91.
- (8) Environmental documentation indicating the site is suitable for construction. The CFMO will commence environmental documentation prior to submitting DD Forms 1390/1391 for the project.
- (9) Selection and negotiation of an AE contract.

e. To ensure that maximum functionality and usability throughout the design process the CFMO involves all facility users, functional proponents, and other appropriate State staff elements.

f. To ensure that the project complies with all statutory, regulatory, and code requirements, the CFMO will consult at each stage of the design with appropriate code officials and environmental, physical security, range safety, explosive safety, and occupational health experts and have them review the design documents.

g. The CFMOs ensure that the State Safety Officer submits such site plans through the National Guard Bureau's Army Aviation and Safety Division (ARNG-AVS) to the Department of Defense Explosives Safety Board (DDESB), as needed.

h. Preparation and contents of site plans will be in accordance with Preliminary and Final Site Submittal Checklist and Site and General Construction Plan Guide, USATCESP 385-02.

i. An industrial hygiene and occupational health technical review, as described in NG Pam 415-5, for surface and air maintenance facilities and indoor ranges.

j. The CFMO ensures that there is a common site reference point established and referenced on the designs for those projects where there are two or more AEs. In addition, all of the site designs will be accomplished using an equivalent scale.

k. The CFMO will verify all construction projects through an Archival Search Report the hazards and costs associated with UXO contamination. For details see NG Pam 415-5.

5-4. Types of Design Services

a. Title I, Type A. Field surveys and investigations required to obtain data that is essential to the performance of Type B services and that is not available from Federal or State government resources. These surveys and investigations may include topographical surveys; soil borings and other subsurface investigations; soils, chemical and mechanical surveys and investigations; determination of utility locations and capacities; and similar fact-finding investigations and technical studies at the approved project site. For Design-Build projects this type of service is used for the development of the Request for Qualification (RFQ) and the Request for

Proposal (RFP) to award the contract. This also may include 0.4 percent of pre-construction commissioning services.

b. Title I, Type B. The fee under any AE contract for services for developing plans and specifications is limited by statute to a maximum of six percent of the estimated cost of construction. The six percent statutory limitation applies only to production and delivery of designs, plans, drawings, and specifications for construction. On Design-Build projects, Type B services are not paid for with AE funding (except up to a one percent allowance to produce the RFP); they are programmed into construction costs. Some AE services are not considered an integral part of direct design services for a construction project and should be EXCLUDED from the AE fee when determining compliance with the six percent limitation. Examples are listed below:

- (1) Initial site visits.
- (2) Field, topographic, property, boundary, utility, and right-of-way surveys.
- (3) Subsurface explorations and borings, soils and materials testing, and resultant reports.
- (4) Flow gauging and model testing.
- (5) Reproduction of design documents for review purposes.
- (6) Comprehensive interior design (CID) services – to fund the design of Furniture, Fixtures and Equipment (FF&E), as part of CID, it must be included in the description of construction on the approved DD Forms 1390/1391 per UFC 3-120-10.
- (7) Preparation of general and feature design memoranda.
- (8) Models, renderings, or photographs of completed designs.
- (9) Construction phase services.
- (10) Preparation or verification of as-built drawings during construction.
- (11) The services of consultants not specifically applied to the preparation of designs, plans, cost estimates, drawings, or specifications for a project.
- (12) Preparation of general and development criteria not related to a specific construction project.
- (13) Management and contract administration of AE services contracts in connection with services excluded from the six percent limitation.
- (14) Document reproduction, travel, and per diem costs.

c. Title II, Type C. Construction supervision and inspection services, testing, shop drawing review, and management services including allowances for Supervision, Inspection, and Overhead (SIOH). This also may include 0.6 percent of post-construction Commissioning services. Type C services are part of primary facility construction costs.

5-5. Contracting for Design

a. The CFMO will determine whether a Federal or a State agent is utilized and may elect to contract for all AE services, to perform some of the services within the CFMO office, or to enter into an agreement with a State agency outside of the Military Department to be the contracting agent. When the standard procedures, agreements, or laws of a State require that MCNG projects be designed and their construction supervised by a State agency other than the Military Department; the State Military Department enters into a formal agreement with that agency. Although there is no standard format for the agreement, it will be reviewed and approved by the USPFO to ensure that its procedures are in consonance with the MCCA. The CFMO may request approval from ARNG-ILI to allow part of or all AE services to be performed with Construction and Facilities Management Office staff.

b. Whichever contracting agent the CFMO uses to begin a project (State or Federal) needs to remain the same throughout both the design and construction phases of the project. Exception to this will only be approved if the CFMO submits sufficient justification, which is reviewed and approved by ARNG-ILI.

c. For Federal contracts, the USPFO is usually the design and construction agent on MCNG projects executed under Federal procedures. However, if requested by the State, ARNG Directorate may delegate the responsibility to the Army Corps of Engineers (USACE), the Naval Facilities Engineering Command (NAVFAC), or the NGB Principal Assistant responsible for Contracting (NGB-PARC). All MCNG funds flow through the USPFO, except when NGB is the design and construction agent.

(1) A MCCA is required when a Federal design agent executes a project on State land, but is not required when a Federal design agent executes a project on Federal land.

(2) The CFMO prepares a concise and accurate project description to be used in the statement of work for both the design contracts. At a minimum the description must provide information on utility systems, existing structures that will be affected by the new project, facility user requirements, and a list of Government equipment to be installed.

(3) The CFMO prepares, signs, and dates a detailed cost estimate for both the design and the construction contracts and submit the same (and any required revised estimates) and assist the contracting officer in preparing AE performance evaluations when the FAR requires them.

(4) The CFMO schedules and conducts project AE criteria review conferences for all MCNG projects with a Federal design agent and provides technical support as requested.

(5) The AE selection will be in conformance with the FAR and its supplements. All AE contracts are to be fixed-price, and will contain the following:

(a) The requirement for ARNG Directorate reviews as stipulated elsewhere in this regulation.

(b) A design control cost as described in paragraph 5-5d (2) a below.

(c) The stipulation as described in paragraph 5-5d (5) below.

(6) When ARNG-ILI grants design authority, the CFMO will submit an NGB Form 86-R to ARNG-ILI for review and advance funding. Upon approval, ARNG-ILI allots funding for the estimated Federal share of Title I costs to the USPFO as an advance so that the contracting officer can negotiate an AE contract. Upon completion of AE negotiations, the CFMO submits an NGB Form 86-R to adjust Title I funding to the actual contract amount.

d. For State contracts, the following conditions apply:

(1) Services must be provided by a firm licensed to do business within the State as a registered architect or engineer and comply with State licensing requirements.

(2) The State may contract for AE services in accordance with NGB-PARC cooperative agreement directives and the MCCA (Appendix SD) on the NGB variable fee schedule, an NGB approved State variable fee schedule, or a lump-sum fixed-fee basis. A contract will include the following two clauses:

(a) A stipulation that the AE will revise plans at no cost to the State to stay within the design control cost or to correct errors in the design. This consists of a contract designated amount not to exceed the estimated project cost on the latest approved DD Forms 1390/1391. If the State selects the Army Corps of Engineers (USACE) or the Naval Facilities Engineering Command (NAVFAC) as the design agent and revisions to plans are required to stay within design controls or to correct errors in the design, the State may be required to pay additional design fees from State funds without Federal government reimbursement.

(b) A payment escalation clause, that in the case of a variable percentage contract, will stipulate that the contract amount is an estimated amount only and that final payment for all AE services are based on the lowest acceptable responsible bid under the construction contract. The clause will further state that if the State cancels the project prior to award of a construction contract, the AE only receives payment for Title I services. Payment is based on the lowest bid received, or, if no bids have been received, on the State Contracting Officer's determination, but in neither case to exceed the amount established in the AE contract.

(3) The State is liable for any AE fees that exceed the limits established in the MCCA, Appendix SD, as amended.

(4) Upon completion of its AE contract negotiations and establishment of a design schedule, the CFMO submits an NGB Form 86-R, the State's estimate, and a record of negotiations to ARNG-ILI for review and funding. Upon approval, ARNG-ILI allots funding for the estimated Federal share of Title I costs to the USPFO which will reimburse the State for the AE progress payments.

(5) ARNG-ILI will not normally consider a request for additional funds predicated upon AE work required to modify, change, or correct the project plans, specifications, or bidding documents to conform to ARNG-ILI design review comments on published criteria and construction standards.

(6) If ARNG-ILI approve changes in project scope, construction cost, and construction methods or details require the AE to accomplish Title I work above and beyond that normally required such that the escalation clause in the variable fee contract (or the amount of the fixed fee contract) will not adequately compensate the AE, the CFMO may negotiate a change to the original contract and submit an NGB Form 87-R requesting additional funds.

(a) For fixed fee contracts additional funds are limited to actual time and materials to be expended by the AE. ARNG-ILI approval is contingent upon CFMO justification that clearly itemizes the additional labor required by AE discipline and type of work and other materials required and expenses to be incurred.

(b) Any approval by ARNG-ILI will also require the State to submit a modification to the MCCA, if the increased costs will exceed maximum Federal funding limitation for design in Appendix SD.

(7) Upon award of a construction contract, the CFMO will modify the AE contract according to the payment escalation clause and submit two NGB Forms 86-R, the first form indicates the final fee due to the AE and the adjustment of funds between the final amount and the amount previously allotted to the State for Title I fees. (In the case of a fixed fee AE contract, the State will only submit a form requesting Title II funding.) After review and approval, ARNG-ILI allots additional funds or withdraws unnecessary funds from the USPFO for Title I and allots Title II funds. Any additional design changes required after construction has begun are paid for out of Title II funds.

(8) If changes in construction methods or details required by the contracting officer require the AE to accomplish Title II work above and beyond that normally required the State need to demonstrate that additional work effort is required by these changes. ARNG-ILI approves these changes; the CFMO may negotiate a change to the original contract and submit an NGB Form 87-R requesting additional funds.

(9) For the State to receive Federal funding for design, all of the following must occur.

(a) ARNG-ILI must have an approved a DD Forms 1390/1391 in writing within the past 12 months for the scope of the project. Any scope changes during the design must be notified to ARNG-ILI immediately to ensure compliance with the authorization. All design modifications requires ARNG-ILI approval before proceeding further.

(b) ARNG-ILI must have granted the State authority to proceed to design in writing. Federal reimbursement for design cost is not authorized if the State proceeds to the next design level without authority or without complying with prior NGB review comments before proceeding with design.

(c) There must be a fully executed Military Construction Cooperative Agreement (MCCA) for the project.

(d) The CFMO must have submitted, and ARNG-ILI must have approved, an NGB Form 86-R for design services.

e. Errors and Omissions. No matter what type contracting procedure is used for design, the AE is responsible for the technical competency, accuracy, and completeness of its project plans and specifications and is to be held accountable for any additional expenses and or lost work resulting from its errors and omissions.

(1) Under AE contracts, the AE is required to make necessary corrections at no cost to the Government when the designs, drawings, specifications, or other items or services furnished contain any AE errors, deficiencies, or inadequacies.

(2) No Federal funds are to be used to compensate the AE for additional design work or the construction contractor for construction costs incurred as a result of AE errors and omissions. State and Federal contracting agents will seek appropriate remedies under their applicable contracting procedures. However, this prohibition on additional Federal funds for construction costs as a result of AE errors and omissions applies only to the difference between what the project actually cost and what it would have cost had the AE not made the errors and omissions.

(3) In the case of State contracting agents, the State is liable out of its own, non-Federal, funds for any additional AE or construction costs that accrue as a result of improper guidance, direction, or oversight it provides the AE.

5-6. Design Submittals

a. The State proceeds at its own financial risk if it lets a design contract without ARNG-ILI design authority. The State CFMO will determine the most economical and effective means to design and construct ARNG facilities, including the selection of the project delivery system. Details about the design milestones compliance for design-bid-build and design-build delivery systems are explained throughout this section.

b. ARNG-ILI reviews for industry standard quality control measures. The intent is to ensure facility quality and adaptability and to reduce obvious design errors that increase either construction or operational costs and that reduce mission support. However, this is a quality control review and not a complete technical review, which remains the responsibility of the CFMO.

c. ARNG-ILI primarily conducts its reviews to ensure:

(1) The design is within the scope of the approved DD Forms 1390/1391.

(2) That features that are eligible for Federal construction support are differentiated from those not eligible for Federal reimbursement.

(3) That items that appear to exceed published ARNG criteria and construction standards must be covered by an approved exception to criteria, adequately justified, or may remain in the project without justification if supported with other than Federal funds.

(4) That items that do not conform to ARNG, NGB, DA, or OSD policies and/or are not supported by a life cycle cost analysis or will not meet Army energy goals are identified.

d. ARNG-ILI design reviews will not supersede State or local code. If the State desires Federal support for an item required by State or local code and normally considered excess to published ARNG criteria and construction standards, the CFMO signs and submits to ARNG-ILI a certified statement detailing the code applicability. For specific format to be utilized, consult NG Pam 415-5. States are encouraged to involve applicable code officials in justifying design components in dispute.

e. The CFMO submits the review documents to ARNG-ILI for comment and approval with a transmittal memorandum which certifies that the State has reviewed the documents prior to submission and a brief discussion of the steps the State will take to resolve the non-complaint items of the review. The review will not start until ARNG-ILI receives the complete submittal to include the transmittal memorandum. For details of the submission, see NG Pam 415-5.

f. At minimum, the design review process will cover the following areas:

(1) Cost – Project cost did not exceed the project programmed amount.

(2) Scope – Project scope is within the authorized area and items listed are authorized on the DD Forms 1390/91.

(3) Real Estate (License, Certificate or Lease).

(4) National Environmental Act and Environmental Condition of Property requirements.

(5) Physical (Anti-Terrorism/Force Protection) and Electronic Security Systems Requirements.

(6) Compliance with the latest Sustainable Design and Development Policy, the Department of Defense Sustainable Buildings Policy and the Secretary of Army's Energy Policy. Also all submissions will reflect the principles of sustainable design and development as enunciated in Executive Orders 13101 and 13123.

(7) Design and construction standards for the Building Envelope (heating, ventilation, and air conditioning; lighting; and service water heating) per ASHRAE Standard 189.1-2011 or any subsequent standard as articulated by the Department of the Army.

(8) Chief of Financial Officer Act compliance.

(9) Subsurface Investigation and Analysis.

(10) Functional Requirements (Maintenance, Training, Aviation), the CFMO must submit copies of the required approvals.

g. All design submittals, conceptual through final, will be submitted in half-size drawings. Cost estimates and specifications submittals will include a hard copy. Bid final drawings and specifications must include an electronic format. The State should coordinate directly with the ARNG-ILI-C Regional Facilities Management Engineer (FME) for the specific details.

h. Conceptual Design is submitted at approximately at the 30% point in the design process. Design will begin when the State receives the design authorization memorandum from ARNG-ILI and is based upon the compliance of pre-design activities. The design will be limited to the approved scope as shown on the DD Forms 1390/91. The State CFMO and ARNG-ILI will review each design submittal, assuring that the authorized scope on the DD Forms 1390/91 is not exceeded during design. The design will establish all basic features, materials, construction methods, facility systems, and related costs of the facility. This is a requirement for all MILCON projects.

i. The purpose of the conceptual design is to ensure early coordination at both the Federal and State levels and to clarify project requirements, criteria, and utility services. A conceptual design submittal may be considered for preliminary submission approval if the level and quality of detail of the submission meets the preliminary design requirements. Any changes required due to exceeding criteria, scope or costs identified at this level of design are still the responsibility of the AE to correct without additional compensation. The conceptual submittal requirements follow:

(1) Outline specifications.

(2) Current working estimate for budget purposes.

(3) Thirty-five percent design drawings, which includes:

(a) Project site plan.

(b) Area site plan.

(c) Complete subsurface investigation and analysis.

(d) Architectural floor plans that consider functional relationships, work area use, security requirements, and traffic flow patterns.

(e) Building sections.

(f) General interior finish selections including interior design concepts.

- (g) Exterior elevation drawings showing principal exterior finishes.
- (h) General preliminary mechanical, electrical, and information systems layouts, including equipment capacities and sizes.
- (i) Fire protection plan.
- (j) Exterior utility plans.
- (k) Electronic Security System infrastructure plan.
- (4) Basis of design, including the following:
 - (a) Design assumptions.
 - (b) Design analysis and calculations.
 - (c) Economic analyses.
 - (d) List of materials and methods of construction to be used.
 - (e) Information systems requirements.
 - (f) Discussion of types and capacities of HVAC systems, including a description of the selected system.
 - (g) Discussion of types and capacities of primary electrical power, conduit, information systems, lighting, and other systems considered, including a description of the selected systems.
 - (h) Descriptions of the foundation, including any special requirements such as drilled piers, pilings, and support facilities.
 - (i) Site analysis that discusses the opportunities and constraints of the site.
 - (j) Operability studies.
 - (k) Department of Defense Explosives Safety Board (DDESB) site approval, if required by AR 385–10.
 - (l) Hazard analyses, if required.
 - (m) Preliminary erosion control analysis.
 - (n) Preliminary landscaping planting plan and a plant material analysis that reflects the selection of plant material native to the project area.
 - (o) Life cycle cost analyses on the use of renewable energy.
 - (p) Building energy simulations, energy conservation studies, and design energy use calculations.
 - (q) Design submittals for DoD Minimum AT/FP compliance.
 - (r) Fire protection analyses.
 - (s) Corrosion mitigation plan.
 - (t) ARNG-AV review of all new range construction projects and validation that the surface danger zone (SDZ) has been properly mapped and applied in accordance with AR 385-63.

(5) Concept design is not complete until it incorporates all valid comments and is approved by ARNG-ILI. Refer to the most current ARNG MILCON Budget and Programming Guidance for submittal deadlines. The cost reported by the current working estimate, is reviewed, validated, and approved by ARNG-ILI prior to its submission to HQDA.

j. Preliminary Design is submitted at the 60% point in the design process and consists of plans, technical specifications, cost estimate, supporting design data, along with a transmittal memorandum from the CFMO that addresses each and every ARNG-ILI review comment from a prior review. The preliminary submittal will include all items required in the conceptual submittal further developed to the 60% point and updated to include refinements in the design identified during the conceptual review or in developing the preliminary design. Preliminary specifications will be in draft form and closely approximate the final specifications. This design will begin when the State receives the design directive from ARNG-ILI-C based upon the compliance with the conceptual design review comments. The State and ARNG-ILI will review each design submittal, ensuring that the authorized scope on the DD Forms 1390/91 is not exceeded during design phase. This is a requirement for all MILCON projects.

k. Once a project has obtained a preliminary design submission approval, no criteria changes that may be subsequently published may be incorporated into the design. The only exceptions are projects that have no authority to exceed that design level or projects that are not in a military construction budget already submitted or just about to be submitted to DA. In those cases, the States must make a formal, justified case for an exception. In other cases, the States may also request an exception if it can demonstrate that adhering to the original criteria would not negatively impact the readiness levels of the supported units or would not significantly increase the cost of construction.

l. Prior to or simultaneously with the preliminary design submission, the CFMO provides ARNG-ILI with the following documents.

(1) Site survey report. This report is for the actual location of the project, not for adjacent or similar locations, and will include laboratory results that classify, grade, characterize, and determine the strength of the surface land sub-soils for supporting building and pavement construction (i.e., Declaration of Soil Bearing Capacity). The report will provide recommendations on whether to use slab-on-grade or a foundation and what type of paving to apply.

(2) Environmental Condition of Property (ECOP). ARNG-ILI will not begin review of the preliminary documents without an ARNG-ILE approved ECOP that demonstrates that the project site meets the requirements stipulated in paragraph 2-4b.(10) above.

(3) Certificate of Title, dated within one year of its submission to ARNG-ILI-E. It will be in two originals, with the original signatures on both of the State Attorney General, his or her legal representative, or another State official specifically authorized by statute to certify title validity. However, ARNG-ILI-E may consider waiving this requirement until the submission of final design documents in the case of projects requiring a license, if the State can demonstrate that it has a legally binding right of entry to the project site.

(a) The State will have fee simple interest in the property or a lease interest that is not revocable with a firm term or right of renewal for a minimum of 25 years, unless there is compelling reason for a lesser period. The legal description in the title or lease places no restrictions against ARNG use for construction, administration, operations and training or to Federal government use in time of war or national emergency. Any lesser period requires approval of ARNG-ILI.

(b) If the property is on Federally owned land, the State submits two copies of its license, which provides for at least a 25 year interest, unless there is compelling reason for a lesser period. Any lesser period requires approval of the Assistant Secretary of the Army (Installations, Energy and Environment).

(c) If the project is on the same tract of land as a previous MCNG project, then the State submits a certificate stating only that no transactions have been recorded for the described tract since the date of the original certificate. This certificate has the same signature and signature validation requirements as an original Certificate of Title and references the MCCA or Federal/State Agreement of the original project and the current MCCA or Federal/State Agreement. However, in the case of projects on the same tract of land as a previous MCNG project where the State only holds a lease or license interest, the State must demonstrate that it has at least a remaining 25 year interest from the estimated date of construction completion.

(4) The CFMO will submit appropriate proof that the State has complied with applicable requirements of the National Environmental Policy Act (NEPA) (42 U.S.C. §§4321-4370a), National Historic Preservation Act (16 U.S.C. §470 et. seq.), Comprehensive Environmental Response Compensation and Liability Act (CERCLA) (42 U.S.C., Chapter 103), the DA Sustainable Design and Development Policy (see UFC 1-200-02 High Performance and Sustainable Buildings Requirements) and other environmental requirements. See AR 200-1 and 32 CFR Part 651 for details. The documentation will contain an ARNG-ILE approved Record of Environmental Consideration, Finding of No Significant Impact, or Environmental Impact Statement. In addition, if there is a potential for the project to be considered an undertaking (as defined in 36 CFR 800.16(y)) on a historical property (as defined in 36 CFR 800.16(1)(1)), the State must provide proof of concurrence from the State Historic Preservation Office (SHPO). Failure to do so can result in a Letter of Foreclosure from the Advisory Council on Historic Preservation to the Secretary of the Army. Additionally, NEPA funds will not be made available until the project is on the FYDP.

m. A preliminary design submittal could be validated as a final design submittal at the discretion of ARNG-ILI-C if the level and quality of the submission is sufficient to satisfy the final submittal requirements.

n. Final design is submitted at approximately the 90% point in the design process. This level of design is authorized after a project complies with the preliminary design review requirements. Final review documents will explicitly describe the quantity and quality of work to be performed by the construction contractor. This description will be of such quality in such detail that a qualified contractor can build a complete and usable facility suitable for the purpose intended, without recourse to subsequent contract modifications or changes (assuming no user directed changes and any AE errors and omissions).

o. Prior to submission, the CFMO in conjunction with the appropriate environmental, physical security, range safety, explosive safety, and occupational health experts, examine the design documents from the AE for completion. They should pay special attention to possible omissions of authorized items, threats to environmental protection, and violation of safety and occupational health requirements.

p. The CFMO shall review the documents prior to submitting to ARNG-ILI to ensure that the submission is in accordance with the ARNG-ILI comments on the preliminary submission, the scope in the approved DD Forms 1390/1391, and the generally accepted construction standards in the appropriate Design Guides. The CFMO shall certify in the final submittal memorandum that the State has complied with this requirement.

q. The CFMO ensures that the contracting officer does not solicit bids until ARNG-ILI approves the final review documents and authorizes that the project be bid. The State is liable for all additional costs incurred as a consequence of soliciting bids for construction prior to ARNG-ILI granting bid authority.

r. Prior to or simultaneously with the final design submission, the CFMO provides ARNG-ILI with the following additional documents.

(1) Appendix SC of the MCCA, unless the CFMO submitted it with the MCCA at the time ARNG-ILI issued design funds. Those States who had a Federal/State Agreement approved prior to the adoption of the MCCA may use that document. This requirement does not apply to projects with a Federal construction agent.

(2) The CFMO will either certify that no change has occurred in its environmental documentation or it will update the documents submitted with the preliminary design package.

s. ARNG-ILI will issue bid authority when the Final Design is approved, stamped by the designer of record; major issues are resolved; all required documentation and certifications are submitted; and funding is available. The Chief of ARNG-ILI may grant an exception in cases where no MILCON funds are authorized by Congress. Such exception shall be solicited as "Subject to Availability of Funds (SAF). No other exceptions are allowable.

t. Bid Finals - Prior to soliciting bids, the CFMO submits 100% bid final, drawings and specifications in CD form.

(1) This submittal includes all of ARNG-ILI's comments on the final review submission and will be identical to the documents that will be issued to prospective contractors.

(2) The CFMO ensures that an architect and/or engineer(s) licensed to practice within the State stamps or otherwise certifies the final construction drawings and includes the necessary plans, elevation, sections, schedules, and notes, to include the material submittal requirements (required for Federal contracts).

u. Concurrent with the submission of the bid final documents, the State submits the following:

(1) A draft DD Form 1354 itemizing by real property category code all construction that the AE shows as taking place. Without this document, ARNG-ILI will not issue construction dollars.

(2) Certification that the environmental documentation, including the compliance of applicable sustainability policies and the Certificate of Title are all still current and valid and that any required matching funds are currently available.

v. ARNG-ILI will review the bid final documents to determine conformance with final review comments. If it finds items in excess of authorization that have not been properly annotated as additive or alternate bid items, it coordinates with the State to resolve the issues and, if necessary, determine a reasonable cost for the items and deduct that amount from the amount issued to the USPFO to reimburse the State during construction.

w. The bid final documents become the final, auditable record of the project as bid for both the State and ARNG Directorate.

x. Design-Build Procurement. Projects planned for execution as design-build will be identified as early as possible, preferably at the time the project is submitted for the LRCP. Further, the opportunity to make changes to a design-build contract will be severely limited after contract award. After contract award, all discretionary (user-requested) changes, including those that affect the contractor's design, must be approved by ARNG-ILI-C. For this type of contract:

(1) Planning and design funds (P&D) will be used for project activities after issuance of a design authority until award of a design-build contract. This will include in-house and AE activities associated with preparation and evaluation of the Requests for Qualification (RFQ) and Requests for Proposal (RFP).

(2) MCNG funds will be used for post-award project activities performed by the construction contractor and AE. Design-related activities performed by the design-build contractor will also be MILCON funded. Post award design review costs will be a direct charge to MILCON funds.

(3) ARNG-ILI conducts two reviews prior to granting authority to issue the design-build RFP. These reviews will cover the same criteria of a Design-Bid-Build project (scope, cost and criteria) and in accordance with current, accepted practices for design-build RFPs. The State is encouraged to incorporate Design Build Institute of America (DBIA) best practices, where practical and in compliance with State law and Federal policies (see Appendix A, References).

(a) The State will submit the draft RFP for review with any applicable bridging documents. ARNG-ILI will review the draft RFP documents to assure the project conforms to and does not exceed the approved project scope, and budget; and includes all applicable criteria.

(b) ARNG-ILI-C will review final RFP documents to assure the project conforms to the approved concept requirements for functionality, operability, and maintainability; and that any corrections identified during the draft review have been incorporated into the final.

(c) To receive approval to award the design-build contract, the State must submit the final negotiated price for the selected proposal, the record of negotiations or basis of award, and the selected proposal. After the compliance with these conditions ARNG-ILI will grant the State authority to award the design-build contract.

(4) After contract award, ARNG-ILI will review the design at 50 percent design completion stage to ensure criteria compliance; the State cannot start any construction activity until ARNG-ILI approves the 50 percent submittal. ARNG-ILI has the option to provide comments to the States; however, time for ARNG-ILI design review will not be included in the project schedule. The ARNG-ILI design review will focus on the whether the design accurately complies with the criteria in the contract RFP and any associated bridging documents. If the design has serious issues or does not adequately address all required criteria items, ARNG-ILI may reject the submission completely or conditionally accept it, requesting further information or submissions per ARNG-ILI guidance and discretion.

(5) The design-build contractor is responsible for correcting any errors or omissions in the design and adjusting their internal schedule to accommodate those corrections at no additional cost to the State or Federal government.

(6) Construction Phase. Once ARNG-ILI has reviewed and accepted the design, it will issue authority to proceed with the construction phase of the contract. All technical issues are the responsibility of the State and their design-build contractor.

(7) NGB does not encourage the use of fast tracking as it increases the labor requirements for more reviews (site work phase and vertical construction phase). However, there may be times that fast tracking is needed to meet mission schedule. If fast tracking is anticipated for any given design-build project, the State must coordinate this closely with ARNG-ILI.

(8) For Firing Range Projects a design-build delivery method is restricted only to range projects that will accommodate a full SDZ without modification or waiver as determined during the course of a planning charrette to develop the DD Forms 1390/91. Also, the final RFP will include a preliminary SDZ analysis that demonstrates compliance with criteria based on a conceptual site plan of the range layout including firing points. See NG Pam 415-5 for more details.

(9) For Manufacturing, Storing, Handling, Transporting, or Testing Military Explosives or Ammunition, and Demolition Ranges a design-build delivery method may NOT be applied in the acquisition of these facilities. Such projects require DDESB approval based on the design of the project and are therefore not candidates for the design-build delivery method.

y. Construction Manager at Risk (CMAR). CMAR is a delivery option that is a variant of the Design-Bid-Build (DBB) giving the owner some benefits of the Design Build option. The CMAR is also referred to as Construction Manager General Contractor (CMGC).

(1) The CMAR/CMGC delivery method retains a separate A&E contract by the owner, with the owner still assuming risk for design errors. All the design reviews of CMAR/CMGC are required as they are for DBB prior to actual construction. The CMAR/CMGC method is best suited for large construction and/or renovation projects that are schedule sensitive or have budget concerns.

(2) The CMAR/CMGC is awarded based on a best value selection with the construction manager (CM) assuming risk by providing a guaranteed maximum price (GMP) to build the project within the programmed amount (PA). To achieve the greatest benefit bring on the CM prior to design initiation. The CM becomes a partner with the owner and the A&E during the design to insure the PA for construction is not exceeded by the design. It is beneficial to wait until the later portions of design (90%) to execute the GMP. The CM provides preconstruction services which include constructability reviews, value engineering solutions, and cost estimates during the design process. The CM preconstruction services during the development of the bid package by the A&E are paid out of Type A funds.

(3) The CM may not award subcontracts until such time as construction authority is granted to the State from ARNG-ILI. When ILI grants the construction authority; the State may award the construction contract(s) and obligate the project funds, reporting the project as executed. At this time, this method is not an approved delivery option for Federal Contracting by the PARC Office.

Section III

Construction Management

5-7. Pre-Award Requirements

a. Appropriate interests in real property will be obtained before bids are advertised or construction contracts are awarded (see AR 405–10).

b. When the contracting officer has completed the bidding process and selected a recommended contractor(s), the CFMO submits the following documents to ARNG-ILI for review and approval of the appropriate level of Federal reimbursement:

(1) NGB Form 86-R (initial or adjustment, depending on whether the project has a State or a Federal construction agent) for each proposed contract.

(2) A copy of the bid abstract.

(3) A copy of the bid(s) of the successful low bidder(s).

(4) A copy of the contract for construction, if State contracting procedures are used and the Payment by Reimbursement is selected, within Article V Payments of the executed MCCA.

(5) Bid Results and Award Recommendations Memorandum. When the bids received exceed the estimated construction cost of the project, the CFMO shall prepare a "Bid Results and Award Recommendation" memorandum that summarizes the bid results and bidding climate/history, identifies the low bidder and provides a recommendation for award along with an analysis of the costs as a percentage above the programmed amount. This recommendation shall also include a discussion of the additive bid items or bid options being requested for funding, and discussion of any additional State dollars that can be added to the project. It should also describe any MCCA modifications that may be required.

c. Additive Bid Items and Bid Options - Non-essential additive items or bid options could be deferred if the bids are not favorable. Additive bid items and bid options may only include scope items described in the DD Forms 1390/91 and will under no circumstances include primary facility items require for a complete and usable facility.

d. During advertising, bidding, awarding, and construction of a MILCON project, it may be impossible to award all additive bid items or bid options related to a project. This occurs when statutory limitations are reached, when items are prohibitively costly, when the appropriation is critically short of contingency funds, or for other reasons.

e. As a process to mitigate risk, 15 percent of maximum construction limit shall be identified as an additive bid items or bid options to be included in a solicitation during the preliminary design submittal.

f. Title 10 USC 2853 directs that any reduction in scope of more than 25 percent requires formal Congressional notification. Additive bid items or bid options that are part of a solicitation that impact scope must not total more than 25 percent of the authorized project scope without approval by HQDA (DAIM–OD).

5-8. Contract Award

a. Funds sufficient to cover the cost of the contract, contingencies, engineering during construction, as-built drawings, and supervision and administration must be available at time of award.

b. A State should not advertise a construction project and solicit bids without receiving written authority from ARNG-ILI. Failure to have this approval may subject the State to financial risk. Such authority is normally part of ARNG-ILI's written approval of the bid final review documents.

c. The CFMO ensures that the contracting officer does not award a project until ARNG-ILI has accepted the CFMO's bid package and approved the amount of Federal support authorized for that package.

d. Federal projects follow the procedures of the FAR and supplements, State projects follow State contracting procedures. For Federal projects, the CFMO submits NGB Form 86/87-R twice, once for ARNG-ILI to issue an advance to the USPFO and the second time to adjust the construction costs based upon the actual proposed contract (or change order) award. In State contracts, the CFMO submits the forms only once, at the time of award.

e. Savings realized from favorable bids (for example, lower than expected bids, quantity under-runs, invalid claims) will be used at the discretion of ARNG-ILI to fund shortfalls in the MILCON program.

f. Since MILCON cost estimates provided in the Congressional Justification Books are based on less than 100 percent design, the Congress allows the Services certain flexibility to approve cost increases. Per 10 USC 2853, a Service Secretary can approve a cost increase if the cost increase is not the result of an increase in the authorized scope. (Note that there is no authority under the law for the Services to increase the scope of any project approved by Congress.) The flexibility to increase the cost of a project is generally contingent on the availability of savings from other projects such as, bid savings or cancellations, and is only approved up to 125% or \$2.0 million (whichever is less) by the Chief of Installations Division.

5-9. Supervision and Inspection

a. During the project concept phase, the CFMO requests from ARNG-ILI appropriate additional resources to support construction agent responsibilities with supervision and inspection services. The CFMO will justify the need for Title II services in an AE contract.

b. The CFMO includes appropriate members of the Adjutant General's staff in construction progress inspections to ensure that the completed projects meet environmental, safety, occupational health, building code, and other statutory and regulatory requirements.

c. On Federal projects, the construction agent determines the CFMO's responsibilities. Because these are governed by the FAR and its supplements and any appointment as COR, they are beyond the scope of this regulation. Nonetheless, the construction agent, at minimum, conducts a midpoint and final inspection of the project and record these on the project's NGB Form 593. This normally is the contracting officer's Technical Representative, usually a member of the CFMO's staff.

d. On State projects, the Adjutant General is responsible for the inspection and supervision of MCNG projects.

(1) All projects are to be inspected as they progress through each phase of construction to ensure the project is in conformance with the contract drawings and specifications.

(2) All inspections include at least two parties: a representative of the Adjutant General who is not a Federal employee, and the USPFO or CFMO (if designated the Assistant USPFO for Real Property).

(3) The results of the midpoint and final inspections are recorded on the project's NGB Form 593. The midpoint inspection report ensures that the progress and quality of construction is in conformance with the terms of the contract and is retained by CFMO. The final inspection report verifies that project is complete without any exceptions and is ready for acceptance by ARNG Directorate and the State which is submitted to NGB after completion of the project (see para 5-13 below).

5-10. System Commissioning

Individual operating systems testing to ensure that contractual requirements have been met are not always an adequate process to guarantee overall performance. For projects which include various large, complex, or interactive utility systems, where significant operational degradation may occur, it may be necessary to ensure that the design intent has been accomplished through the use of the systems commissioning process. The commissioning process will help ensure systems function as required in critical facility processes and in life, health, or safety features of the project. The CFMO will identify and justify, in the project DD Forms 1390/91, all such requirements and program all funds necessary to implement this process, including any required MCNG funds.

5-11. Contract Modifications

a. The approved DD Forms 1390/91 serve as the validated and approved scope and cost of the project. An appropriation above this amount is not itself justification for contract modifications.

b. ARNG-ILI approves contract modifications for changes in construction contracts that execute modifications under the changes clause and increase or decrease the Federal cost of a project only if these modifications are in the best interest of the Federal government. Failure to get this approval may subject the State to financial risk.

c. Upon award of a construction contract, the CFMO submits an NGB Form 86-R to ARNG-ILI to request Title II funding. After review and approval, ARNG-ILI allots Title II funds.

(1) ARNG-ILI approval is contingent upon CFMO justification for the additional labor required by AE discipline and type of work and other materials required and expenses incurred.

(2) ARNG-ILI will not normally consider a request for additional funds predicated upon AE work required to modify, change or correct the project plans, specifications or bidding documents to conform to ARNG-ILI design review comments on published criteria, construction standards, etc.

d. ARNG-ILI will not approve increases or decreases in the Federal cost of a project when they incorporate additional features, improvements, alternations, modifications, etc. unless these changes satisfy one of the following conditions.

(1) Conform to NGR 415-10, NG Pam 415-12 or other ARNG, NGB and DoD policies and directives.

(2) Is the most economical solution.

e. Additionally, contract modifications must satisfy all of the following conditions.

(1) Sufficient funds are available to cover the cost of the modification.

(2) Does not exceed or substantially modify the scope of work as approved in the DD Forms 1390/91.

(3) Is for facility components approved by ARNG-ILI.

(4) Is not more advantageously accomplished by a separate, competitively bid contract.

(5) Is not beyond the scope of the change clause and overall scope of the construction contract.

(6) The cost of the proposed agreement is reasonable.

(7) The project's appropriation must not be expired. However, if the appropriation has expired but has not canceled, the contract modification may be approved if all of the following conditions are satisfied. For details on appropriation limits see para 4-1a.

(a) It must be for an item within the scope of the original contract.

(b) The request form must so state this and include the certification of either the USPFO or the contracting officer (in the case of a Federal construction agent) and name, title, and telephone number of the legal counsel or contracting officer making this determination. This is known as a "Dead Money Statement".

(c) There must be sufficient expired funds available at ARNG-ILI that was not expired at the time the original contract was let.

(8) The proposed agreement must be for items not previously supported with other than MCNG funds.

f. Any item or functional space funded at less than 100 percent Federal reimbursement in the original construction contract uses the same reimbursement rate in the contract modifications. As an exception, if the contract modification includes items not authorized Federal reimbursement or authorized less than full reimbursement, then the amount of Federal reimbursement is to be reduced accordingly.

g. ARNG-ILI will not approve construction contract modifications unless the State agrees to support all costs that are not eligible for Federal reimbursement. These consist of:

(1) Work previously supported 100 percent with other than Federal funds and not approved by ARNG Directorate.

(2) Work already started or accomplished by the contractor without prior notice to and formal approval by ARNG-ILI.

(3) Obligations incurred by the contracting officer not approved by ARNG Directorate or not in conformance with contract provisions.

(4) Modification or correction of construction required as a result of AE error or omission.

(5) Costs for additive changes considered by the approval authority to be unreasonable for the work to be accomplished or credit for deductive changes considered by the approval authority to be insufficient for the work to be deleted.

- (6) Work exceeding the approved project scope.
- (7) Work not in conformance with ARNG, NGB and DoD criteria, standards, and policies, unless supported by an approved exception to criteria or a CFMO code certification waiver.
- (8) Work or costs that exceed ARNG Directorate approval authority.
- (9) Changes that the approval authority judges to be not in the best interest of the Federal government.

h. USPFO approval limit.

(1) The USPFO has the authority to approve individual contract modifications that do not exceed \$25,000 in Federal share. The aggregate of contract modifications that a USPFO may approve per project, net of deductive agreements, may not exceed 2.5 percent of the validated Federal share on the approved DD Forms 1390/1391. For projects less than \$1 million in Federal share the USPFO may approve up to \$25,000 in supplemental agreements.

(2) In approving these contract modifications, the USPFO is acting for ARNG Directorate in approving the agreements as to scope and cost and certifying that they are in the best interests of the Federal government under the terms of paragraphs 5-11b through 5-11g(9) above. This does not relieve the USPFO of the requirement to verify, with ARNG-ILI, that the proposed modification is supportable for Federal reimbursement and sufficient funds are available prior to final negotiation and before issuing contract modifications.

(3) The USPFO may not delegate this authority to any other person.

(4) The State will not increment or subdivide contract modifications to remain within the USPFO approval limit.

(5) All changes during negotiations, even if no changes in cost, require change orders documented on 87-Rs.

(6) Details of processing these agreements are in NG Pam 415-5.

i. Contract modifications beyond USPFO authority.

(1) ARNG-ILI reviews and analyzes the CFMO's request for a contract modification via telephone or other electronic means and conveys ARNG Directorate's approval or disapproval for the contracting officer to start formal negotiations with the contractor.

(2) Upon successful completion of negotiations, the contracting officer will work with the CFMO to prepare the following documents for ARNG-ILI review, approval, and funding.

(a) Checklist for Processing Contract Modifications. (See NG Pam 415-5.)

(b) NGB Form 87-R.

(c) Contracting officer's Description of Modification.

(d) Contracting officer's Justification Data.

(e) Contracting officer's Cost Estimate.

(f) Report(s) of Negotiations. (Not required for unilateral contract modifications.)

(g) Contractor's Proposal. (Not required for unilateral contract modifications.)

(h) Statement of Legal Sufficiency, provided by State National Guard Staff Judge Advocate, an attorney in the Attorney General's office, or by other competent legal authority authorized to review State contracts. (This does not apply when there is a Federal construction agent.)

j. Contract modifications not requiring Federal funds.

(1) The CFMO may approve and execute without ARNG-ILI approval contract modifications that do not require Federal funding support or that delete items previously supported with Federal funds. As an exception, if the project scope changed in any way and the work is not in conformance with ARNG, NGB and DoD criteria, standards, and policies, then approval must be obtained from ARNG-ILI that the proposed modification is supportable for Federal reimbursement and sufficient funds are available prior to the contract modification being issued (remember the 13901/91 is the scope of record and is a fiscal limitation; it cannot be exceeded regardless of cost).

(2) Change orders need to be done even if no cost, particularly if scope is altered during negotiations with the contractor.

(3) Should the potential change order have additive scope items not previously authorized by ARNG-ILI at time of award or combined with deductive scope results in a net of no cost or deductive cost as a result of the modification, the USPFO/CFMO are not absolved of the requirement to verify with ARNG-ILI that the proposed modification is supportable for the contract modification to be issued.

(4) The CFMO will submit a copy of the agreement and an NGB Form 87-R to ARNG-ILI for recordkeeping purposes. No backup or justification material is required.

k. Unilateral contract modifications.

(1) The CFMO ensures that the contracting officer does not provide the contract modification to the contractor until after ARNG-ILI has issued funding to the USPFO.

(2) If a dispute over the contract modification leads to a board of arbitration, court of law, or other legal mechanism awards the contractor a claim, the CFMO forwards a copy of the documents resolving the claim and an NGB Form 87-R to ARNG-ILI. ARNG-ILI, in consultation with NGB-JA, makes a final determination on the issuance of funds to the USPFO to support Federal responsibilities under the claim.

5-12. Beneficial Occupancy

a. Beneficial occupancy, or substantial completion, is the stage of the project when the construction is sufficiently complete according to the contract documents that the contracting agent can allow the users to occupy the facilities for their intended use. This date of beneficial occupancy or declaration of substantial completion is documented as the placed-in-service date. The CFMO will prepare an interim DD Form 1354 to be accepted prior to the day the user beneficially occupies the premises. The abovementioned certification starts the 25 year agreement (for projects with an MCCA/FSA).

b. The contracting agent will not allow occupancy until there is an approved Certificate of Substantial Completion (or memorandum of beneficial occupancy in the case of projects that use Federal contracting procedures) that establishes the responsibilities of the contracting agent and the contractor and fixes the time within which the contractor completes the remaining items in the project.

c. Upon payment of all invoices and settlement of all change orders with the contractors, the CFMO will update the interim DD Form 1354 to add the final cost of each facility constructed or capital improved in the project and make any other updates to the interim. The placed-in-service date must remain the same as in the interim. The Real Property Accountable Officer (RPAO) must then accept the final DD Form 1354 and the sum of the costs for all facilities should equal the sum of all the contract costs on the NGB Form 593.

d. Once a MILCON project is complete and usable, execution of follow-on construction projects using other than MILCON appropriations may proceed. There is no required waiting period. However, each such follow-on project must address a newly identified requirement, to preclude project splitting or incrementing, which would be a violation of the Military Construction Codification Act, 10 USC 2801 et seq.

5-13. Acceptance and Project Closeout

a. Physically complete MCNG projects will be accepted by the RPAO on a DD Form 1354.

b. Fiscal closeout of the project should occur within 60 days after physical completion including the submittal of the NGB Form 593. Fiscal closeout may be delayed by pending changes and claims.

c. A completed and approved NGB Form 593 certifies that the project is complete without exception according to the approved plans, specifications, criteria, and standards and that the constructed facilities are ready for full user occupancy.

(1) All contracts design and construction contracts have been fully completed and terminated with an accounting of the total Federal funds disbursed for each contract.

(2) The date of final completion and satisfaction of all outstanding contracts, including contract modifications.

d. The two signatories on the NGB Form 593 must actually perform the inspection for the acceptance of the project jointly on behalf of the State and the Federal government.

e. After the USPFO verifies and approves the information on the NGB Form 593, the CFMO mails a copy to ARNG-ILL, retains a copy, and provides the original to the USPFO.

f. At the time of fiscal closeout of the project, the CFMO updates the interim DD Form 1354 to reflect quantities and cost of the actual construction.

5-14. Payments

a. The USPFO reimburses the State on projects with a State construction agent and pays the contractor progress payments on projects with a Federal construction agent, as based upon receipt of contractor's invoice and certification of work completed. The contracting officer provides this certification for Federal projects and the Adjutant General or other delegated official will provide the certification for State projects.

b. The USPFO retains the appropriate funds (as determined by the FAR or the appropriate State contracting procedures) until the contract is complete and an NGB Form 593 certifies such completion.

c. Final payment.

(1) The USPFO makes final payment for Federal projects in conformance with the FAR and supplements upon receipt of the completed NGB Form 593 and the contracting officer's certification that all work required by the contract has been completed without exception.

(2) The USPFO makes final payment for a State contract only upon receipt of the completed NGB Form 593 and the USPFO's approval of the form. In the case of a project with multiple State contracts, the USPFO will make final payment after the work of all contractors has passed inspection, or, upon request of the State, separately after each contractor's work has passed inspection. In the latter case, the State submits a separate NGB Form 593 for each contract and consolidates the information on the final NGB Form 593.

Appendix A References

Section I Required Publications

AR 1-1

Planning, Programming, Budgeting, and Execution System (Cited in para 1-4d)

AR 200-1

Environmental Protection and Enhancement (Cited in paras 2-4e, and 5-6l(4))

AR 385-10

The Army Safety Program (Cited in para 5-6i(4)(k))

AR 385-63

Range Safety (Cited in para 5-6i(4)(t))

AR 420-1

Army Facilities Management (Cited in para 4-3e)

The ARNG Real Estate Manual

(Cited in para. 2-3)

The Army National Guard Bureau Environmental Condition of Property (ECOP) Handbook

(Cited in para 2-4a)

ARNG MILCON Budget and Programming Guidance (Annual)

(Cited in para 2-2a(7), 2-2b, 2-2c, 2-5a, 3-1, 3-3c, 3-4b, 5-6i(5))

Assistant Secretary of the Army (Installations, Energy and Environmental) Memorandum 16 December 2013

Sustainable Design and Development Policy Update (Cited in paras 5-6f(6), and 5-6l(4))

DA Pam 415-3

Economic Analysis: Description and Methods (Cited in para 1-4n(3))

DA Pam 415-28

Real Property Category Codes.

DA Pam 420-1-2

Army Military Construction and Nonappropriated-Funded Construction Program Development and Execution

Deputy Secretary of Defense Memorandum 17 November 2002 (supersedes Memorandum 13 September 1990, amended 1 December 1994) Land Acquisition and Leasing of Office Space in the United States

DoD 1225.07

Reserve Component Facilities Programs and Unit Stationing (Cited in para 1-4b)

DoDI 1225.8

Programs and Procedures for Reserve Component Facilities Programs and Unit Stationing

DoD 4165.06

Real Property

DoDI 4165.71

Real Property Acquisition (Cited in para 2-3d)

Engineering and Construction Bulletin 2003-8 (Rev 1)

DD Form 1391 Preparation Planning Charrette Process (Cited in para 2-5d)

Executive Order 13101

Greening the Government Through Waste Prevention, Recycling, and Federal Acquisition (Cited in para 5-6f(6))

Executive Order 13123

Greening the Government Through Efficient Energy Management (Cited in para 5-6f(6))

Assistant Secretary of the Army, Installations, Energy and the Environment (ASA-IEE)

Policy of Energy, Sustainability and Leadership in Energy and Environmental Development (LEED) Policy, Oct, 2013

Military Construction Cooperative Agreement

(Cited in paras 1-4m(1), 1-4m(3), 4-5, and 5-5d(9)(c))

NG Pam 415-5

Army National Guard Military Construction Program Execution (Cited in paras 4-3e, 4-5f(8), 5-3i, 5-3k, 5-6d, 5-6e, 5-6x(8), 5-11h(6), 5-11i(2)(a))

NG Pam 415-12

Army National Guard Facilities Allowances (Cited in paras 2-4b(8), 3-3a,5-3a, 5-11d(1))

NGR 5-1

National Guard Grants and Cooperative Agreements (Cited in paras 4-5)

NGR 405-80

Army National Guard Program

NGR 415-10

Army National Guard Facilities Construction (Cited in paras 5-3a and 5-11d(1))

USATCESP 385-02

Site and General Construction Plan Developers Guide (Cited in para 5-3h)

Uniform Building Code

(Cited in para 5-3a)

UFC 1-200-02 High Performance and Sustainable Buildings Requirements, (Cited in para 5-6 l(4))

UFC 3-120-10 Interior Design (Cited in para 5-4b(6))

UFC 3-210-10 Low Impact Development (Cited in para 3-3e))

UFC 4-010-01 DoD Minimum Antiterrorism Standards for Buildings

UFC 4-010-02 DoD Minimum Standoff Distances for Buildings

UFC 4-020-01 Security Engineering Facilities Planning Manual

10 USC §2306

Procurement Generally, Kinds of Contracts

10 U.S.C. §2803

Military Construction and Military Family Housing, Emergency Construction (Cited in para 3-2c)

10 U.S.C. §2854

Military Construction and Military Family Housing, Restoration or replacement of damaged or destroyed facilities (Cited in para 3-2c)

10 U.S.C. Chapter 1803

Facilities for Reserve Components

10 U.S.C. §18233a

Facilities for Reserve Components: Limitation on certain projects; authority to carry out small projects with operations and maintenance funds (Cited in the Glossary, Section II, UMMC.)

10 U.S.C. §18234

Facilities for Reserve Components, Location and Use

10 U.S.C. §18237

Facilities for Reserve Components, Supervision of Construction: compliance with State law

16 U.S.C. §470 et. seq.

National Historic Preservation Act (Cited in paras 2-4e, 5-6l(4))

31 U.S.C. §§ 6301-6308

Using Procurement Contracts and Cooperative Agreements (Cited in para 4-3)

32 CFR Part 651

Environmental Analysis of Army Actions (Cited in paras 2-4e, and 5-6l(4))

42 U.S.C. §§4321-4370a

National Environmental Policy Act (Cited in paras 2-4e, 5-6l(4))

42 U.S.C., Chapter 103

Comprehensive Environmental Response Compensation and Liability Act (CERCLA) (Cited in paras 2-4e, 5-6l(4))

Section II

Related Publications

AR 1-33

The Army Memorial Program

AR 11-2

Managers' Internal Control Program

AR 55-80

DoD Transportation Engineering Program

AR 190-11

Physical Security of Arms, Ammunition and Explosives

AR 190-13

The Army Physical Security Program

AR 190-51

Security Of Unclassified Army Property (Sensitive And Nonsensitive)

18 U.S.C §1001

Fraud and False Statements.

29 CFR Part 1900 – Part 1926

Occupational Safety and Health Administration, Department of Labor (Safety and Health Regulations for Construction)

32 CFR Part 33

Uniform Administrative Requirements For Grants And Cooperative Agreements To State And Local Governments

36 CFR Part 800

Protection of Historic Properties

DA Pam 385-64

Ammunition and Explosive Safety Standards

DFAS Manual 37-100-XX

The Army Management Structure

DoD 4270.5

Military Construction

DoD 6055.9E

Explosives Safety Management and the DoD Explosives Safety Board

(EISA) 2007 Section 438
Energy Independence Security Act

Executive Order 11988
Flood Plain Management

Executive Order 12088
Federal Compliance with Pollution Control Standards

Executive Order 12148
Federal Emergency Management

Executive Order 12580
Superfund Implementation

Executive Order 13148
Greening the Government Through Leadership in Environmental Management

MIL-STD-3007
Standard Practice For Unified Facilities Criteria And Unified Facilities Guide Specifications.

NGR 130-6
United States Property and Fiscal Officer: Appointment, Duties and Responsibilities

TM 5-800-4
Programming Cost Estimates for Military Programs

10 U.S.C. Chapter 159
Real Property

Section III **Prescribed Forms**

DD Form 1354
Transfer and Acceptance of Military Real Property. (Cited in paras 1-4m(5), 5-6u(1), 5-12a, 5-12c, 5-13a, 5-13f)

DD Forms 1390/91
FY__ Military Construction Program. (Cited in paras 2-5a, 2-5c, 3-1, 3-1c, 3-3, 3-3a, 3-3c, 4-1, 4-1d, 4-2b(2), 4-3d, 4-5e, 5-1, 5-2, 5-3c, 5-3d(1), 5-3d(7), 5-3d(8), 5-5d(2)(a), 5-5d(9)a, 5-6f(2), 5-6h, 5-6j, 5-6p, 5-6x(8), 5-7c, 5-10, 5-11a, 5-11e(2)), 5-11h(1))

NGB Form 86-R
Funding Data for MCNG Contract. (Cited in paras 5-5c(6), 5-5d(4), 5-5d(9)(d), 5-7b(1), 5-11c)

NGB Form 87-R
Funding Data for Contract Modification. (Cited in paras 5-5d(6), 5-5d(8), 5-11i(2)(b), 5-11j(4), 5-11k(2))

NGB Form 593
Project Inspection Report. (Cited in paras 5-9c, 5-9d(3), 5-12c, 5-13b, 5-13c, 5-13d, 5-13e, 5-14b, 5-14c(1), 5-14c(2))

Glossary

Section I Abbreviations

AE

Architect-Engineering

AR

Army Regulation

ARNG

Army National Guard

ARNG-ILE

Army Environmental Programs Division

ARNG-ILI

Army Installations Division

ARNG-ILS

Army Logistics Division

ARNG-TR

Army Training Division

ARNG-AV

Army Aviation and Safety Division

NGB-AQ

National Guard Bureau Acquisition

ASIP

Army Stationing and Installation Plan

CERCLA

Comprehensive Environmental Response Compensation and Liability Act

CFMO

Construction and Facilities Management Officer

CFR

Code of Federal Regulations

CSI

Construction Specifications Institute

DA

Department of the Army

DD

Department of Defense

DDESB

Department of Defense Explosives Safety Board

DoD

Department of Defense

DoD

Department of Defense Directive

DoDI

Department of Defense Instruction

ECOP

Environmental Condition of Property

EBS

Environmental Baseline Survey

ESA

Environmental Site Assessment

EISA

Energy Independence Security Act

FAR

Federal Acquisition Regulation

FF&E

Furniture, Fixtures and Equipment

FRC

Facility Review Committee

FYDP

Future Years Defense Program

GSA

General Services Administration

IDIQ

Indefinite Delivery Indefinite Quantity

IRP

Infrastructure Requirements Plan

LRCP

Long Range Construction Plan

MCCA

Military Construction Cooperative Agreement

MCNG

Military Construction Army National Guard

NEPA

National Environmental Policy Act

NG

National Guard

NGB

National Guard Bureau

NGB-PARC

National Guard Bureau Principal Assistant Responsible for Contracting

NGB-JA

National Guard Bureau Judge Advocate

NGR

National Guard Regulation

O&M

Operation and Maintenance funds

OMB

Office of Management and Budget

OSD

Office of the Secretary of Defense

Pam

Pamphlet

P&D

Planning and Design

PPDC

Planning & Programming Document Charette

POM

Program Objective Memorandum

RFP

Request for Proposal

RFQ

Request for Qualification

RPAO

Real Property Accountable Officer

RPDP

Real Property Development Plan

RPLANS

Real Property Planning and Analysis System

SHPO

State Historic Preservation Office

SIOH

Supervision, Inspection, and Overhead

SOP

Standard Operating Procedures

TM

Technical Manual

UBC

Uniform Building Code

UMMC

Unspecified Minor Military Construction

USATCES

U.S. Army Technical Center for Explosives Safety

USATCESP

U.S. Army Technical Center for Explosives Safety Publication

U.S.C.

United States Code

USPFO

United States Property and Fiscal Officer

UXO

Unexploded Ordnance

Section II**Terms****AE Errors and Omissions**

Errors, deficiencies, and inadequacies resulting from the AE firm's failure to supply a professional quality, technically adequate, and fully coordinated set of design documents, whether in the designs, drawings, specifications, or other required services.

Addition/Alternation Project

A military construction project that either increases the overall size or capacity of an existing real property facility or adjusts interior arrangements or other physical characteristics of an existing facility.

Additive Bid Item

An item bid separately not required to complete a project within the validated scope as per the DD Forms 1390/1391. An independent element of the project that does not pre-condition the base project (i.e., it must be usable by itself) and clearly within the scope of the approved project. One of the two desired ways that the State bids items that are excess to authorization for Federal reimbursement or are not essential should the overall bid be in excess of Congressional authorization and appropriation. Also used when a State wants a separate price for an item.

Alternate Bid Item

An item bid separately as a substitute for an item required to complete a project within the validated scope as per the DD Forms 1390/1391. One of two desired ways that the State bids items that is excess to authorization for Federal reimbursement.

Canceled Funds

An appropriation, five years after the entire period of availability for its obligation has ended (i.e., five years after the appropriation has expired). In the case of almost all military construction appropriations this is at midnight on 30 September nine years after the fiscal year named on the appropriation. At this time the appropriation will be closed and any remaining balance (whether obligated or unobligated) in the account is canceled and thereafter not be available for obligation or expenditure for any purpose. Once an appropriation has canceled, obligations and adjustments to obligations that would have been properly chargeable to that appropriation, both as to purpose and amount, before closing may be charged to any current military construction appropriation. (See 31 U.S.C. § 1553(b).)

Construction

The erection, installation, or assembly of a new facility; the relocation of a facility; the complete replacement of an existing facility; or the addition, expansion, extension, alteration, or conversion (to a new type use) of an existing facility. This includes installed building equipment and related site preparation, excavation, filling and landscaping or other land improvements. It also includes increases in components of facilities for functional reasons when a facility is not being repaired and the components are not required to meet current standards, and it includes the extension of utilities to areas not previously served. Construction is an activity that may be a part of either the restoration or modernization program.

Construction Specifications Institute (CSI)

A non-profit organization dedicated to the advancement of construction technology through communication, education, research and service. CSI serves the interest of architects, engineers, contractors, product manufacturers and others in the construction industry.

Construction Specifications Institute Format

A master specification list of construction divisions and sections numbers and titles designated as Division 1 through Division 33 and accepted as a standard by the American Institute of Architects.

Contract Modification

A modification to an existing contract. This may occur when the contracting officer and the contractor mutually agree to the changes, in which case the modification may also be known as a supplemental agreement. Or this may occur when the contracting officer directs or orders the contractor to accomplish the work for a cost considered by the contracting officer to be fair and equitable compensation to the contractor, in which case the modification may also be known as a change order.

Contracting Agent

A person or department/agency authorized to enter into a contract for design and construction of a military construction project or

to perform design or construction of a military construction project by the direct employment of labor.

Contractor's Option

An alternate or additive bid item that if a contractor elects to provide it the firm does so at no cost over the base bid

Deductive Bid Item

An item bid separately proposed to be deleted from the baseline project within the validated scope as per the DD Forms 1390/1391. Not one of the two desired ways that the State should bid items that is excess to authorization for Federal reimbursement.

Demolition

The complete dismantling, tearing down, razing, wrecking, or burning of a fixed building or facility, to include the removal of foundations, utilities, and all debris, the backfill of all areas excavated by the work to maintain site grades and contours, and the reseeded of the property.

Design-Bid-Build

The traditional method of executing military construction projects, where design and construction are sequential and contracted for separately with two contracts and two contractors.

Design-Build

An alternative method of executing military construction projects that combines design and construction in a single contract with one contractor.

Design Control Cost

The total cost of a project as validated on the ARNG-ILI approved DD Forms 1390/1391.

Environmental Condition of Property (ECOP)

The general term for a variety of investigations conducted to classify the "environmental condition of [a subject] property." The investigations determine the existence, or the potential for existence, of environmental contamination (i.e., through release or disposal) from hazardous substances, petroleum products, and special contamination concerns on a parcel of real property. Once conducted, the results of ECOP investigations are used to determine if the condition of the property is suitable for the intended use or if response actions are warranted to ensure the property condition is consistent with the proponent's goals. In addition, ECOP investigations ensure that the ARNG does not acquire environmental liabilities of others, and protect the ARNG's legal interests. The ECOP "report" documents the results of these investigations.

Expired Funds

An appropriation, when balances no longer are available for incurring new obligations, because the time available for making such obligations has expired. In the case of almost all military construction appropriations this is at midnight on 30 September four years after the fiscal year named on the appropriation. After this time the appropriation retains its accounting classification and is only available for adjustment and liquidating obligations properly chargeable to the account (i.e., making obligations within the scope of the contracts in force at the time the appropriation expired). If there are insufficient expired funds available, then military construction appropriation funds available at the time that the contract was issued will be used, or, if these are not available, then current year funds are used. At midnight on 30 September of the fifth year after the period of availability of the appropriation ends, the account is closed and the funds are not available for any purpose. (See 31 U.S.C. § 1553(a))

Facility

A separate and individual building, structure, utility system, or other real property improvement identifiable with a category code from DA Pam 415-28. Supporting elements for structures, such as sidewalks, fire hydrants, gasoline and diesel fuel dispensing systems, flammable materials buildings, roads, fencing, and hard stand, are all separate facilities.

Incremental Construction

The splitting of a project into separate parts where

- (a) It is done solely to reduce costs below an approval threshold or the unspecified minor construction ceiling, or
- (b) Each part is not in itself complete and usable, or
- (c) The total project is not complete until all parts are complete

Installed Building Equipment (IBE)

Installed building equipment (real property) are items that are affixed or built into the facility and become an integral part of the facility. Such property may be supported with military construction funds.

Location Map

Prepared related to the north point at a larger scale than the vicinity sketch, it provides information on existing conditions adjacent to the property on which an MCNG project is located. The map identifies all existing major structures in the neighborhood, including names of roads, streets, streams, etc.

Operation and Maintenance funds (O&M)

O&M appropriations traditionally finance those things whose benefits are derived for a limited period of time. Examples of costs financed by O&M funds are minor construction projects of \$750K or less, expenses of operational military forces, training and education, recruiting, depot maintenance, base operations support, and assets with a system unit cost less than the current procurement threshold (\$250K). O&M appropriations are normally available for obligation for one fiscal year. O&M appropriations are budgeted using the annual funding policy.

Major Construction

A military construction project separately authorized and appropriated by Congress, normally in an amount in excess of the unspecified minor construction statutory limit.

Major Land Acquisition

The purchase, withdrawal from public domain, lease, permit from individuals or government entities, or any other type of use agreement involving more than 1,000 acres or an estimated purchase or annual lease cost of more than \$1 million.

Personal Property (Fixed)

Capital equipment and other equipment of a movable nature that has been fixed in place or attached to real property, but which may be severed or removed from buildings without destroying the usefulness of the facilities. Such property may not be supported with military construction funds. Use Operation and Maintenance funds.

Personal Property (Moveable)

Equipment that is movable and not affixed as an integral part of the facility. Such property may not be supported with military construction funds.

Planning and Design

Funding to prepare engineering plans, drawings, and specifications required to execute a military construction project.

Real Property Exchange

A program whereby existing ARNG operated property is exchanged for private sector property so that the ARNG receives property worth the total replacement cost of the existing property or fair market value, whichever is greater. The purpose of the program is to acquire more advantageous property thus reducing military construction requirements.

PRIDE Web

A customized version of a commercial off the shelf computer integrated facilities management system. It serves as the ARNG's information management system used by ARNG Directorate and the CFMOs to manage real property assets from cradle to grave and to track and maintain all facilities related data, including project data.

Site Preparation

Clearing; grubbing; demolishing existing structures; removing existing utilities, excavation, embankment earth work, drainage channels or systems, and retaining walls; grading/compaction of site soils to proposed subgrade elevations; and taking necessary environmental compliance actions.

Sustainable Design and Development

The systematic consideration of current and future impacts of an activity, product, or decision on the environment, energy use, natural resources, the economy, and quality of life. In terms of military construction, it is also the design, construction, operation, and reuse/removal of the built environment (infrastructure and buildings) in an environmentally and energy efficient manner.

Unspecified Minor Military Construction (UMMC)

MCNG projects, funding is limited to the statutory limits of 10 U.S.C. §18233a, that are unforeseen urgent requirements that cannot wait for the normal MCNG programming process. Examples include facility shortfalls resulting from changes in mission and equipment and damage caused by severe weather or other acts of nature.

Vicinity Sketch

A sketch related to the north point and to scale showing the location of an MCNG project in relation to adjacent towns, cities, environmentally sensitive areas, main thoroughfares, highways, and the public street network. If the site is subject to zoning regulations, then the map will specify the classifications for the site and adjacent areas.