

Army Corp of Engineers (ACE) Validation Program Hurts Small Laboratories

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Background on the American Association for Laboratory Accreditation (A2LA)

Established, in 1978, the American Association for Laboratory Accreditation (A2LA; www.A2LA.org) is a non-profit, public service organization with over 2,300 accredited laboratories, many of which are small businesses, in all fields of testing including the full range of construction materials. A2LA accreditation is often required by local, state and federal agencies to perform test work. A2LA has been internationally recognized since 2000 by the International Laboratory Accreditation Cooperation after undergoing rigorous evaluations conducted by peer experts in laboratory accreditation around the world.

Background on AASHTO Accreditation Program (AAP)

The [AASHTO Materials Reference Laboratory](#) (AMRL) is part of the American Association of State Highway and Transportation Officials (AASHTO), which is sponsored by the state DOTs, the Federal Highway Administration (FHWA), the Port Authority of NY/NJ, the Washington DC DOT, and the Puerto Rico DOT. AMRL offers accreditation for construction materials laboratories under a program formally referred to as the AASHTO Accreditation Program (AAP). An AAP-accredited laboratory is often required to submit test results to State DOTs. AAP is the only construction materials laboratory accreditation program recognized to support the laboratory validation program of the US Army Corps of Engineers (ACE). AAP has not been peer evaluated and is not recognized internationally.

ACE Validation Program

The US Army Corps of Engineers (ACE) Engineer Regulation 1110-1-261 defines the requirements for Quality Assurance of testing procedures within the mission of the ACE and Engineer Regulation 1110-1-8100 assigns to the Materials Testing Center (MTL) the responsibility to validate commercial laboratories to perform ACE work according to several ASTM standards. This validation is required so that laboratories can perform materials testing services for ACE projects. From the ACE Materials Testing Center web site: <http://gsl.erdc.ACE.army.mil/SL/MTC/> as of 10 July 2012, the ACE has “validated” 620 labs. 421 of those labs are AASHTO Accreditation Program (AAP) accredited. Validation can occur through one of three means, which are generally described through various documents under the “Inspection” icon:

1. Inspection – Under this scenario, the ACE performs a 2 to 3 man-day inspection of the lab. We have obtained information from six labs that have been actually inspected by the ACE. All six of these were inspected in 2011 or 2012:
 - El Paso, TX - \$8,753
 - Ft. Bliss (El Paso), TX - \$7,578
 - Harlingen, TX - \$10,847
 - Houston, TX – \$10,979
 - Miami, FL - \$12,058
 - Portland, OR – \$10,524

The average cost of these six equals \$10,123, which we believe is more typical of actual ACE inspection costs and is generally higher than private sector accreditation fees.

2. Desk Audit – If the lab has been inspected (but not accredited) by AMRL, the lab can submit their CCRL/AMRL inspection reports, the associated corrective actions, their quality manual and a list of other items, for a desk audit. No physical visit to the lab is necessary. Cost for a desk audit is \$4,500.
3. Abbreviated Audit - If the lab is accredited through the AAP, then the lab can just send them some money with their application. Again, no physical visit to the lab appears necessary. The cost of an abbreviated audit is \$2,500.

After validation, a laboratory can add a maximum of four procedures for \$650 each if an MTC inspector and the Director, Materials Testing Center, agree that submitted evidence of proper compliance to the Standard is sufficient. The breadth of the scope also factors here as on the ACE estimating sheet an additional cost is incurred once more than 15 procedures are requested. In the case of the abbreviated or desk audit, the lab only gets validated for those methods within the scope of the AMRL/CCRL inspections. There are provisions for potentially adding up to four non-scope methods for \$650 each.

The ACE web site states that the duration of the validation is two years. There is also a provision, however, for an inspected lab to receive a third year under certain conditions (i.e. few deficiencies during the ACE inspection, no significant turnover in staff, etc.).

We believe that the AAP-accredited are only charged for an abbreviated audit. Therefore, for the purposes of estimating total costs, we assume \$2,500 per lab times 423, the number of “AASHTO Accredited” equals \$1,057,500.

A2LA has accredited 68 construction materials labs, 23 of which are ACE-validated labs.

By using the average actual figures from these six labs above, the total added cost for these 23 labs equals \$232,829.

Based upon just the AASHTO and A2LA accreditations, the added cost of the ACE validation program for a 2-year period is estimated to be \$1.3M. There are other US accreditation bodies which have also accredited ACE validated labs, but these costs are not included in the \$1.3M figure. **These costs are clearly unnecessary duplication of what is already offered in the private sector.**

There is nothing inherently superior about the AASHTO over A2LA accreditation. In fact, the opposite is probably true as AAP has not been evaluated and deemed compliant with the ISO/IEC 17011 standard for accreditation bodies, unlike A2LA and other US-based accreditation bodies.

A2LA Application for ACE Recognition

Since 2006, the American Association for Laboratory Accreditation (A2LA) has offered accreditation that is equivalent to AAP and covers all test methods required on ACE projects. A2LA requested the ACE to recognize the A2LA equivalence to AAP so that A2LA-accredited laboratories can avoid ACE assessment costs and get validation based upon desk audits.

For three years, A2LA worked closely with Mr. Daniel Leavell, Director of the Materials Testing Center in Vicksburg, MS (until his retirement from ACE), in order to become recognized by the ACE as an accreditation body equivalent to AAP. A2LA was in its final stage of becoming

recognized by the ACE as a body able to perform assessments in place of the ACE Validation process once a desk audit was completed by the ACE and the laboratory (those pursuing ACE Validation) responses were deemed to be acceptable by the ACE.

On August 23rd and 24th, 2006, Mr. Leavell performed an oversight of our assessment process at a laboratory in Houston, TX. Mr. Leavell provided A2LA representatives with some very positive feedback on our process. He advised that we were actually a little more extensive in our process than the ACE and gave us some advice on how to become more consistent with the ACE validation process.

Upon completion of the first oversight performed by Mr. Leavell, he wanted to witness an entire on-site assessment before making a decision as to whether our program would be recognized by the ACE. We set up a 3-day, full assessment to take place in another Houston, TX laboratory beginning on December 5, 2006. Mr. Leavell was accompanied by Mr. Perry Taylor. Mr. Leavell and Mr. Taylor were very pleased with the thoroughness of this assessment and the competence of our assessor. They both expressed that our assessment exceeded their expectations. Mr. Leavell had expressed to the A2LA representatives that he would be retiring from the ACE at the end of December 2006 and that in his eyes, A2LA only needed to provide a copy of the final report which included the corrective action responses from the laboratory to show that they had satisfactorily resolved the deficiencies that were identified during the assessment. Once they had reviewed the final report and corrective actions, they would be able to make the decision to recognize A2LA as an ACE- equivalent accreditation body.

Acceptance of the laboratory's corrective action response by A2LA was not concluded until after Mr. Leavell had retired. We remained in contact with Mr. Taylor in order to determine what steps would need to be taken to continue with our recognition by the ACE. He had requested to receive the same final report and corrective actions as requested by Mr. Leavell. However, when it came time to submit the documents to Mr. Taylor, he called with some reservations and eventually called back several months later to say that he had been in discussions with the Chief of Engineers who denied our recognition. This was done without any review of A2LA's corrective action response and without knowing the time, energy and money A2LA had invested in the program and our history with Mr. Leavell.

Once this decision was made by the ACE, we continued to stay in contact with Mr. Taylor to determine what steps we needed to take in the process to continue our progression to become recognized by the ACE.

We met with Mr. Taylor and Mr. Leavell, who had been brought back as a consultant, on July 21, 2008. Mr. Taylor agreed the next steps would involve witnessing two more assessors. We agreed that ACE personnel would witness those assessments during the 1st quarter of 2009.

A2LA prepared for and made arrangements with several laboratories that volunteered to participate in our program with our first assessment set for February 17, 2009. In addition, A2LA held another training session for our assessors on January 17, 2009, in Houston, Texas. However, after multiple requests to set up an oversight by the ACE, we received no response from Mr. Taylor until January 6, 2009. Mr. Taylor told us that he was being replaced by Dr. Richard Peterson and he would explain to Dr. Peterson what had transpired over the past few months.

We then began attempts to reach Dr. Peterson to continue with the process Mr. Taylor had agreed in July 2008. Dr. Peterson was not responsive to repeated emails and phone calls. Finally, we were able to reach Dr. Peterson on March 17, 2009, but Dr. Peterson could not give any direction or decision as to where A2LA stood with the ACE. We attempted to set up a meeting with Dr. Peterson with no success. We then contacted Dr. Peterson's superior, Mr. Joe Koester in early

April 2009. However, an attempt to set a meeting with Mr. Koester was not successful as Mr. Koester was away from the office in California.

In summary, A2LA's program, including the technical assessors used for this program, far surpasses the inspection program of AASHTO as pointed out by Mr. Leavell who praised our assessment process after having the chance to oversee A2LA on two separate occasions. A2LA has devoted significant resources to satisfy ACE and has responded to every ACE request or question.

After being denied a response for over a year, A2LA CEO Peter Unger approached Congressman Van Hollen for help. As a result, a meeting was held with the ACE Chief of Engineering and Construction James Dalton and three of his colleagues on 28 May 2010. We were encouraged that there was a common understanding to continue the recognition process. However, after repeated efforts to confirm a final process to gain recognition, A2LA received a letter from Mr. Dalton dated October 20, 2010, stating that recognition of an accreditation by a nationally recognized accreditation body was "an inherently governmental mission" and "There is no need to increase capacity for inspections and validations by the use of commercial accreditation resources at this time."

In May 2011, Congressman Bartlett wrote a letter to USACE on A2LA's behalf. The response from USACE dated in November 2011, argued that recognizing additional private sector accreditation bodies would pose an unacceptable risk to public safety. This reasoning is simply absurd. Unfortunately, the USACE letter did not get uncovered by the Congressman's office and he is just been defeated in his re-election bid.

In short, even though the ACE already recognizes one private sector accreditation body (i.e. the AASHTO Accreditation Program (AAP)) to support its validation program, it rejects the benefits of a process to recognize other accreditation bodies with equivalent or superior technical accreditation competence. As explained in the attached letter to Major Clark in the SBA Office of Advocacy dated October 15, 2010, if a laboratory has an accreditation from the AAP, the validation would merely require a desk audit by ACE involving a \$2,500 fee rather than a fee for an ACE audit costing \$8K to 11K. By imposing these unnecessary additional costs on small laboratories accredited by A2LA, ACE is arbitrarily harming small businesses qualified to provide needed construction materials testing services on ACE projects.

In addition to these unnecessary costs, the ACE recognition of accreditation by only one private accreditation body limits competition to the further disadvantage of the government.

Legal Considerations

These actions by representatives of ACE over an extended period of time have created and sustained a Government Granted Monopoly in contravention of government laws and policies promoting competition and requiring the productive use of increasingly limited Federal resources. The National Technology Transfer and Advancement Act (NTTAA) of 1995 codified existing policies in OMB Circular A-119 establishing requirements designed to coordinate and harmonize the conformity assessment activities of Federal departments and agencies in order to reduce unnecessary duplication and complexity. The ultimate purpose is to promote efficiency and reduce costs to government.

In 2000, the National Institute of Standards and Technology (NIST) issued detailed guidance (15 CFR 287) which makes clear that agencies should act to promote efficiencies and economic competition through harmonization of conformity assessment activities. This guidance outlines

Federal agency responsibility for evaluating efficacy and effectiveness of the conformity assessment activities. Each agency is responsible for coordinating its conformity assessment activities with those of other appropriate government agencies and with those of the private sector to make more productive use of increasingly limited Federal resources available for conduct of conformity assessment activities and to reduce unnecessary duplication. By maintaining a coercive monopoly, ACE ignored these policy guidelines and has allowed decisions on price and quality to be made free of competitive forces. A2LA-accredited laboratories are forced to submit to AASHTO or ACE assessments covering the same tests for which they have already been accredited – an unnecessary duplication, contrary to Congressional intent under the NTTAA and at a high cost, especially to small laboratories.

Ultimately, simple considerations of fairness should encourage ACE to create a legal and regulatory framework which treats all qualified bodies in a uniform and defensible way. By failing to implement a transparent and open process and to provide a rationale for limiting competition, ACE has acted unreasonably and in violation of the guidance provided in 15 CFR 287 4b, which requires a rationale for an agency's use of specified conformity assessment procedures and processes.

Finally, there is no evidence to support the position advanced by ACE last year that recognizing any more accreditation bodies is an “additional risk.” This position fails to note that ACE retains final decision-making authority and control for “internal quality assurance” of all test results being received by ACE from validated laboratories.

To date, ACE has followed an arbitrary, burdensome and unfair process and procedure. A2LA has demonstrated its capabilities to meet all requirements ACE has established to advance its mission. We would like the process to be reinstated.

Respectfully submitted,

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