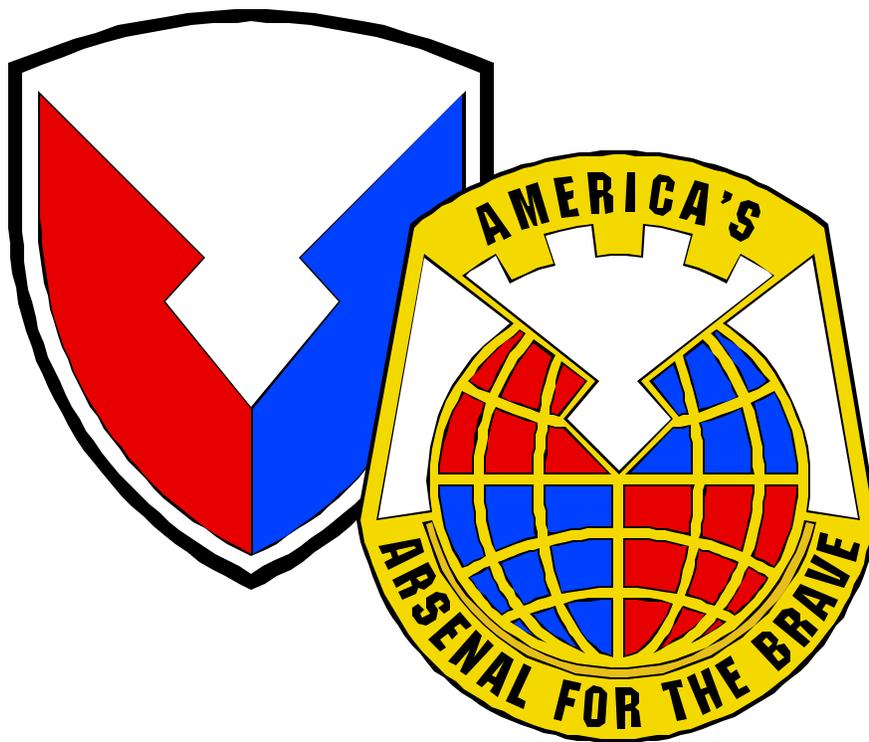


AMC
Contracts and Contractors
Supporting Military Operations



U.S. Army Materiel Command
5001 Eisenhower Avenue
Alexandria, Virginia 22333-0001

June 2000

DEPARTMENT OF THE ARMY

HEADQUARTERS, UNITED STATES ARMY MATERIEL COMMAND

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AMC Contracts and Contractors Supporting Military Operations

CHAPTER	TITLE	PAGE
1	Introduction	1-1
2	Operational Planning and Contract Execution	2-1
3	Management	3-1
4	Accounting for Personnel	4-1
5	Logistics Support Element	5-1
6	Logistics Civil Augmentation Program	6-1
7	Risk Assessment and Mitigation	7-1
8	Classification	8-1
9	Funding	9-1
10	Force Protection	10-1
11	Status under International Law	11-1
12	Mission Task Organized Force	12-1
13	Legal Assistance	13-1
14	Central Processing and Departure Point	14-1
15	Travel Authorization	15-1
16	Standard Identification Cards	16-1

CHAPTER	TITLE	PAGE
17	Medical	17-1
18	Clothing and Equipment Issue	18-1
19	Weapons and Training	19-1
20	Vehicle and Equipment Operation	20-1
21	Contractor Liability to Third Parties for Property Damage, Personal Injury and Death	21-1
22	Passport, Visas and Customs	22-1
23	Reception, Staging, Onward Movement and Integration (RSO&I)	23-1
24	Living under Field Conditions	24-1
25	Morale, Welfare, Recreation (MWR)	25-1
26	Status of Forces Agreement	26-1
27	Uniform Code of Military Justice	27-1
28	Captivity, Hostile Detention and Prisoner of War Status	28-1
29	Pay	29-1
30	Awards	30-1
31	Tour of Duty/Hours of Work	31-1
32	On-call Duty	32-1
33	Workers' Compensation	33-1
34	Hostage Aid	34-1
35	Veterans' Benefits	35-1
36	Health and Life Insurance	36-1
37	Next of Kin Notification	37-1
38	Redeployment	38-1
39	Government Furnished Material/Services	39-1

CHAPTER	TITLE	PAGE
40	Contractible Functions	40-1
41	Program Manager	41-1
42	Contracting Officer	42-1
APPENDIX	TITLE	PAGE
A	Preparation for Deployment	A-1
B	Management of Contractors Attached to Military Units	B-1
C	Compilation of Suggested Contracted Special Requirements	C-1
GLOSSARY	List of Acronyms	Glossary-1

The proponent of this pamphlet is the United States Army Materiel Command. Users are invited to send comments and suggested improvements on DA Form 2028 (Recommended Changes to Publications and Blank Forms) to the Commander HQ AMC, ATTN: AMCRDA, 5001 Eisenhower Avenue, Alexandria, VA 22333-0001.

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Chapter 1. Introduction

"In all countries engaged in war, experience has sooner or later pointed out that contracts with private men of substance and understanding are necessary for the subsistence, covering, clothing, and moving of any Army."

Robert Morris, Superintendent of Finance, 1781

The purpose of this pamphlet is to integrate operations and contracting for support of operations. For purposes of this pamphlet, "operations" includes the full spectrum of armed conflict and military operations other than war (MOOTW), both domestic and overseas, as directed by appropriate authority. The terms "operations" and "contingencies" will be used interchangeably in this pamphlet.

The soldier in the field needs to know what contractors can and cannot do; the contracting community needs standard contract language to implement the special requirements for contingency operations. Thus, the intended audience for the pamphlet is both the operations community (including the Logistics Support Elements, operations centers, planners, Logistics Centers of Excellence and Integrated Materiel Management Centers) and the acquisition community (including Principal Assistants Responsible for Contracting, contracting officers, contracting officer representatives and Program Managers).

The Army has used contractors to provide supplies and services to its forces in the field since the Revolutionary War. In recent conflicts and military operations other than war, our success in deploying and sustaining the force has depended heavily on the performance of contractors. Contracting is an effective combat service support force multiplier that can increase existing capability, provide a new source of supplies and services and bridge gaps in the deployed force structure. As the Army moves into the 21st century, contracted support is predicted to increase as the sustainment of complex weapon systems relies more on contractor logistics support, and we search for cost-efficiencies in supporting the force.

The information in this pamphlet is subject to change based on evolving policies, procedures and directives, as well as

federal statutes, judicial interpretations and international agreements (which take precedence over this guidance). For the latest information, please contact the writing team at HQ AMC, ATN: AMCLG or AMCRDA, 5001 Eisenhower Avenue, Alexandria, VA 22333-0001. This publication will be updated on a periodic basis as required. Users are encouraged to recommend improvements to the writing team.

The suggested special contract requirements cover areas not discussed in current Federal and Department of Defense (DOD) Acquisition Regulations. The suggestions are standard language to either modify an existing contract or prepare a new contract to ensure continued performance during a contingency. The suggestions are not all inclusive nor are all items required for all situations. The contracting and operational communities jointly must determine which to use based upon the situation and cost implications. The suggestions are provided in each chapter and collectively in Appendix C, along with additional miscellaneous contract requirements.

Each contingency evolves differently; the theater commanders issue different guidance affecting the deployment of contractors into their theater of operations. Often, the contracting officer will need clarification on specific requirements applicable to their contract. Contracting officers may seek necessary clarification through the Headquarters, U.S. Army Materiel Command Operations Center or through their designated legal support office, as appropriate.

"Industry can expect a call from AMC when a system they produce experiences a readiness problem. Readiness is a team sport - soldiers, civilians, and contractor."

General Coburn, Commander U.S. Army Materiel Command,
at the February 2000 Association of the U.S. Army symposium

Suggested Special Contract Requirements: The first contract requirement is offered as the introductory paragraph. Contracting officers and Program Managers should consider it for all contracts to facilitate the transition to an operational environment.

- ◆ The government may direct the contractor to perform in support of a contingency or exercise, as provided by law or defined by the applicable Army Service Component

Command. Services may be performed in the identified area of operations, also known as theater of operations, or in support of the contingency or exercise, but not in the area of operations.

- ◆ In the event that the contractor deploys individuals into the area of operations in support of a contingency or exercise, the following items and conditions will apply:

[The contracting officer should attach all appropriate special contract requirements to ensure performance during a contingency or exercise as suggested in Appendix C.]

Chapter 2. Operational Planning and Contract Execution

"Planning for contractor support is an integral part of the planning for any operation."

Field Manual 100-21, Contractors on the Battlefield, 26
March 2000

Planning is the key to successful operations. This chapter discusses operational planning and its impacts on contract execution. The operational requirements to support the armed force drive contracting for that support. This chapter lays the foundation for the remaining chapters and the suggested special contract requirements.

There are two types of planning, deliberate and crisis action. Deliberate planning is pre-planning. Crisis action planning is done in conjunction with a specific operation. It includes the same steps as deliberate planning but is compressed and continuous throughout the operation.

Deliberate Planning. The deliberate planning process (Figure 2-1) begins with the theater and Army Service Component Command operations plans (OPLAN). The Army Service Component Command operations plan will identify requirements, risks and policy for contractor augmentation. The AMC prepares supporting plans (e.g., AMC Logistics Plans 1003, 5027 and 9601). The AMC plans cover the full range of AMC support to the combatant command, including the Logistics Support Element and Logistics Civil Augmentation Program. Major Subordinate Commands and the theater Logistics Support Elements also prepare supporting plans. In addition, the Logistics Civil Augmentation Program (LOGCAP) AMC support contractor prepares plans for contingencies as required.

The Army Service Component Command operations plan specifies missions to LOGCAP and to the theater Logistics Support Element. The requirements are based on the size of the force and planning factors. These specified missions are well defined (time, location and scope). The Program Manager and contracting officer can develop the scope of work and contract directly from the information in the plan without additional analysis.

Other (implied) missions are developed in supporting plans. The time phased force and deployment data lists the force structure entering the area of operations over time. From that data, AMC can compute the time phased flow of personnel and materiel plus shortfalls in the sustainment force structure. Based on experience and emerging allocation models, AMC can estimate requirements for sustainment (e.g., weapon system technical assistance, modifications and maintenance).

The Army Service Component Command conducted a risk assessment of its operational concept and assigned forces. Part of that assessment identified shortfalls in the combat support and combat service support force structure. Now, before deciding to use contractors, the Army Service Component Command is required to conduct another risk assessment based on the situation (mission, enemy, troops, terrain/weather, time and civilian considerations). If the Army Service Component Command approves using contractors, supporting operational plans must address managing contractors, accounting for contractors, equipment/services provided to contractors, preparation for deployment, reception/integration in the theater and force protection. Policies for these are established by the theater Principal Assistant Responsible for Contracting.

Figure 2-1. Deliberate Planning

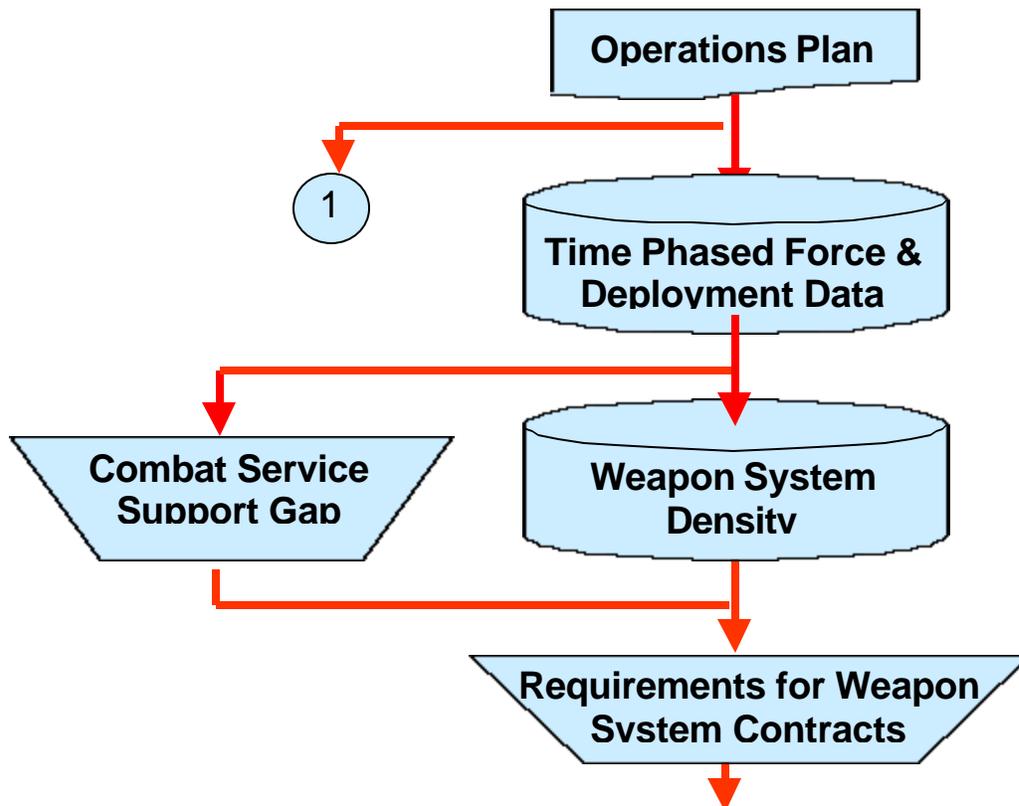
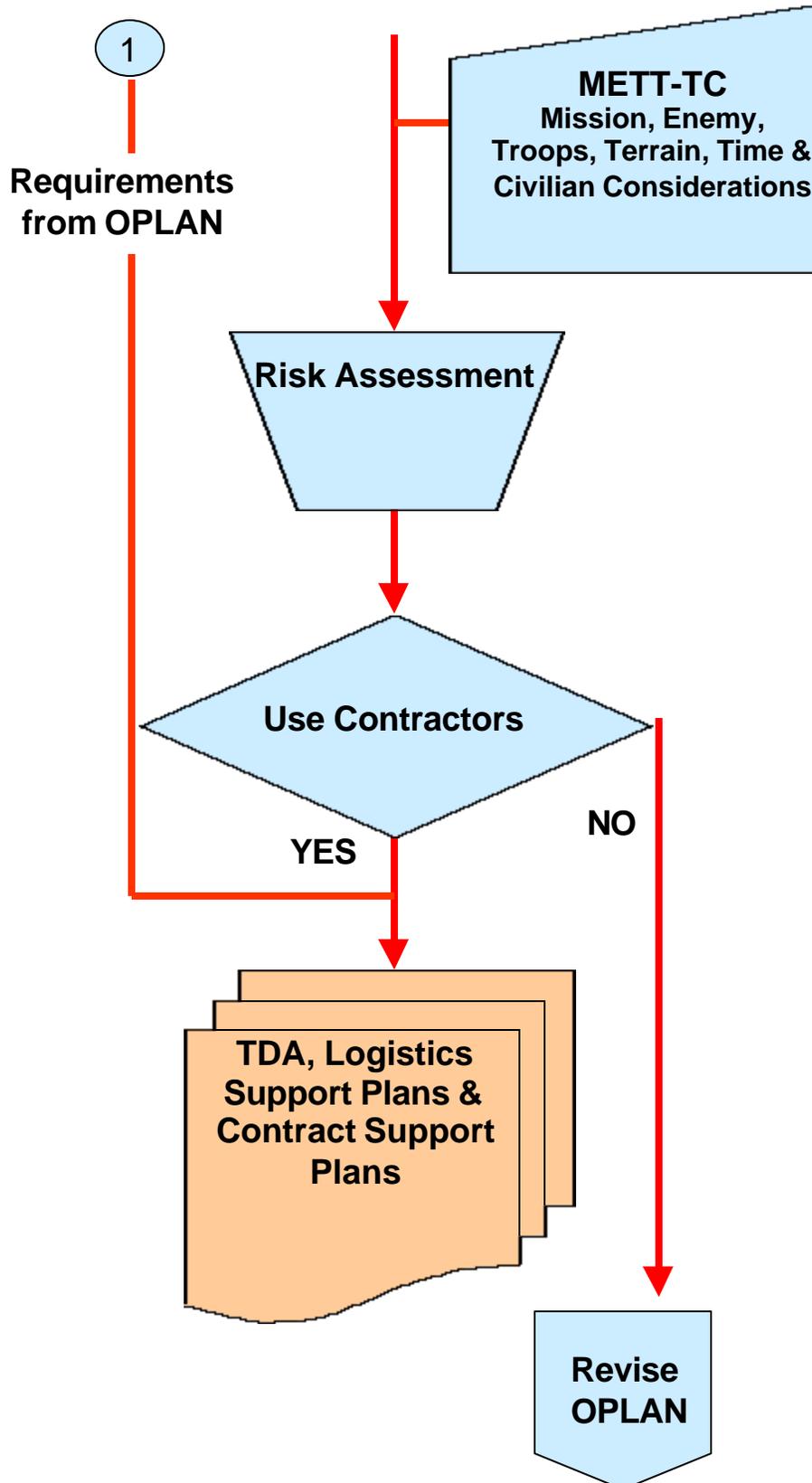


Figure 2-2. Deliberate Planning (Continued)



In order to facilitate the transition to war, existing peacetime contracts, with a continuing requirement during operations, should be structured with a subset of the special contract requirements listed throughout this pamphlet. That subset is determined based on affordability, acquisition policy, and guidance from the theater. Korea has identified which contractors will be required in wartime; other theaters are working the issue.

Crisis Action Planning. Crisis action planning has a direct impact on contracts. The following flow process charts (figures 2-3 through 2-8) summarizes crisis action planning and contract execution.

Requirements Determination. The first step is to determine the requirement. As for deliberate planning, the requirement is developed from the time phased force and deployment data. Also as above for deliberate planning, the Army Service Component Command (customer) is required to conduct a risk assessment.

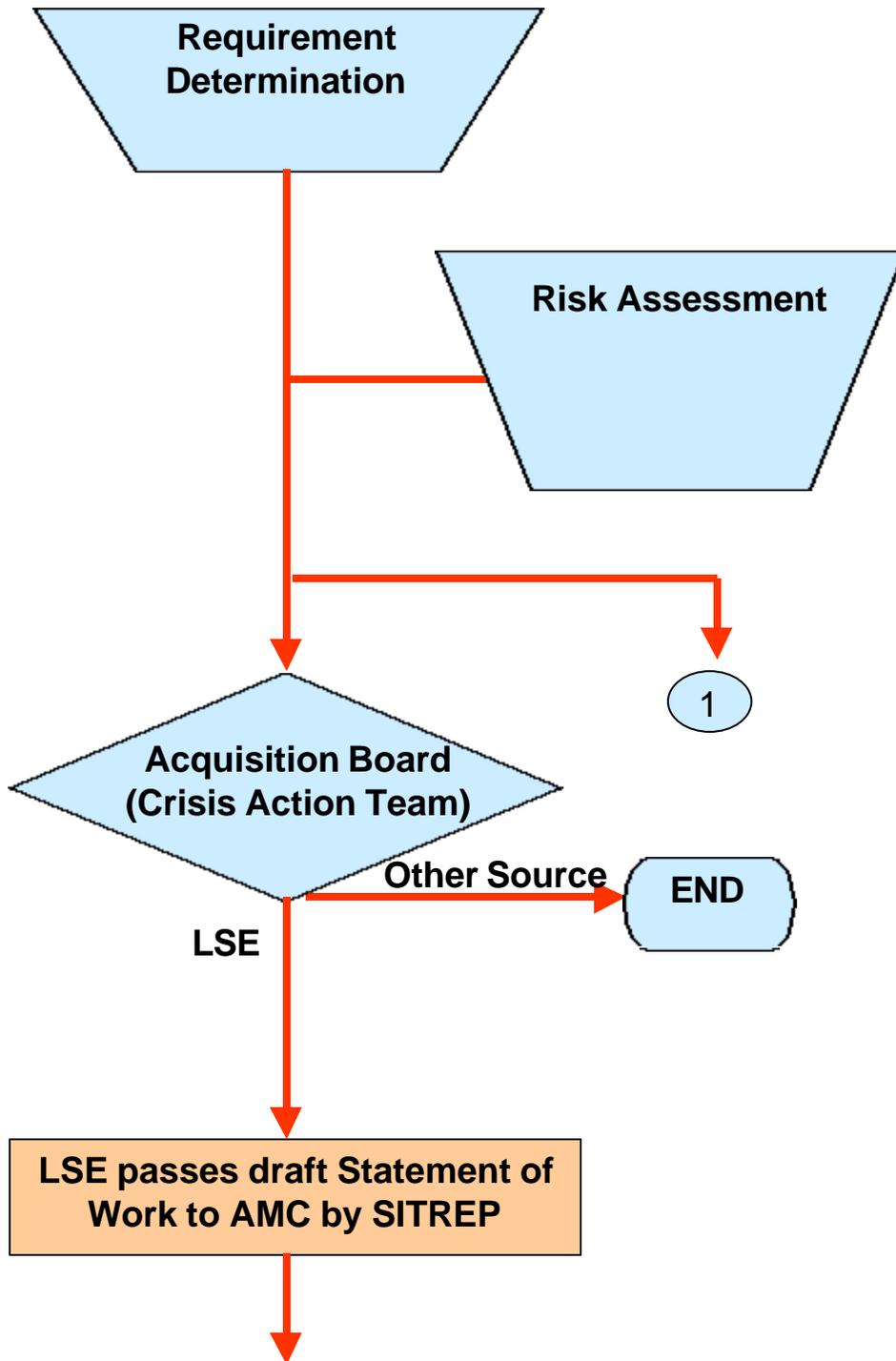
Next, the theater or Army component has an Acquisition Board to approve and source the requirements. The Board is headed by the logistics staff and includes the Logistics Support Element Commander.

Doctrine suggests the Acquisition Board. It is the best organization to employ military, Department of the Army (DA) civilian and contractor capabilities across the spectrum of combat service support functions. With total control of acquisition, the Board also alleviates competition between the Army and contractors for scarce local resources such as housing and transportation.

However, the Board may not be formed. Key personnel may not be available in theater during initial operations and the operational tempo may preclude formal processing of requirements. If there is no board, the Commander of the Theater Support Command or senior logistician will approve requirements and issue the notice to proceed.

If the Logistics Support Element is tasked, it passes the requirement to HQ AMC and the Major Subordinate Commands by its situation report. It is important that the situation report contains as much information as possible regarding the size of the force, its equipment, the operational tempo, customer expectations, and the situation (i.e., an initial statement of work).

Figure 2-3. Crisis Action Planning - Requirements Determination



Contract Identification. If the requirement was part of the deliberate planning process, that is pre-planned, the team required to accomplish the mission is already documented (e.g., the Logistics Support Element Table of Distribution and Allowances) and only needs to be tailored to the current situation and force. If not, the Major Subordinate Command will estimate the requirement. That estimate will be adjusted as the requirement is better defined.

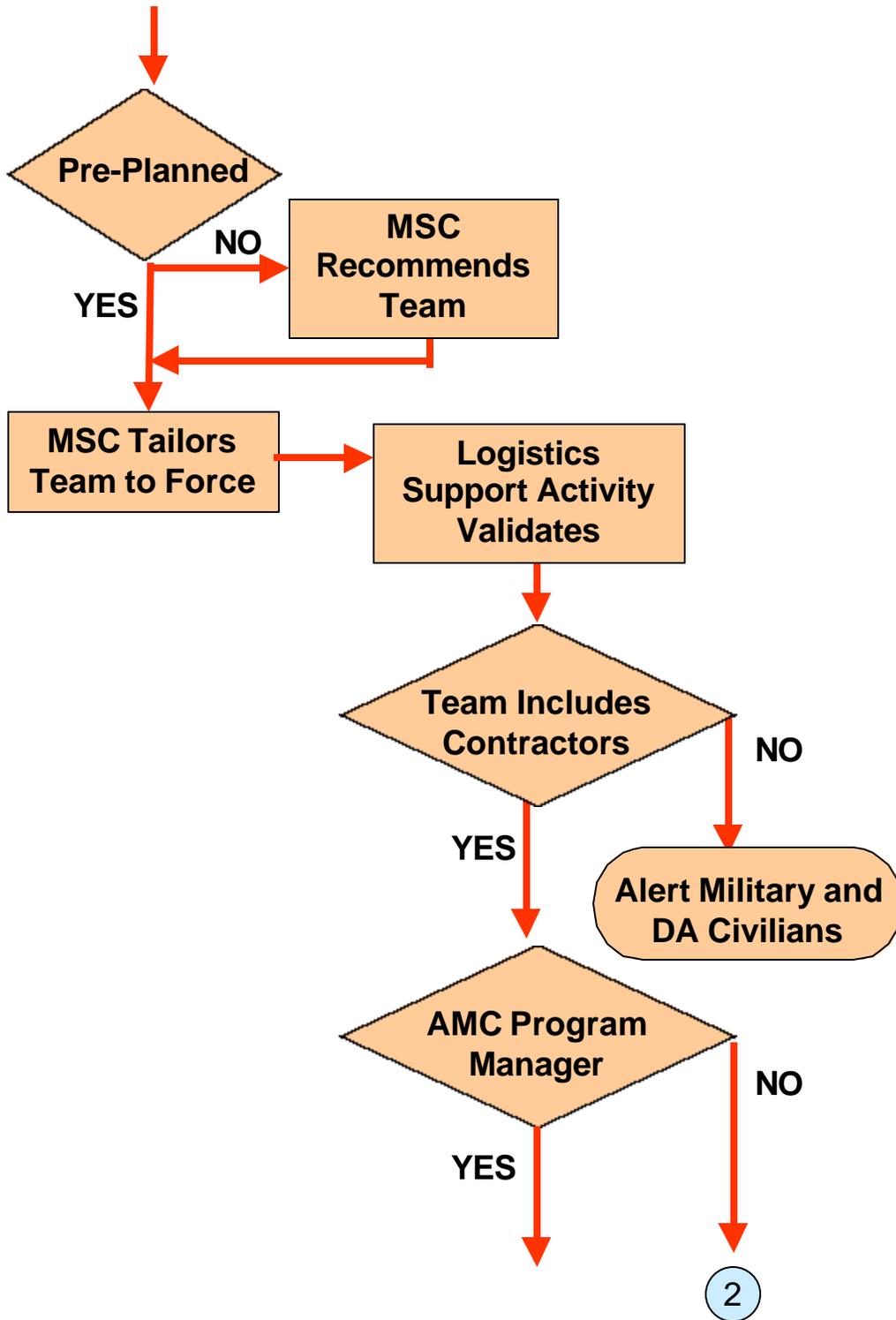
The Logistics Support Element teams are a mixture of military, DA civilians and contractor personnel. If the team as tailored does not include any contractors, the Major Subordinate Command alerts and prepares to deploy military and DA civilian personnel when called forward.

If the team does include contractors, the Major Subordinate Command must determine if there is an existing contract. If there is no existing contract that covers the required work, a new contract is required. A new contract involves a commitment of AMC resources, which the AMC Command Group must approve. The Command Group may decide to decline the mission if the mission is outside AMC's core competencies or unresourced.

Part of the process is a legal review to ensure that the proposed mission is appropriate for contractors. Contractors should not be directly involved in or directly supporting combat operations. Governmental functions that are, inherently, non-contractible are Command, Contracting and Combat.

At this point the process splits. It is different for AMC and non-AMC Program Managers.

Figure 2-4. Crisis Action Planning - Contract Identification



AMC Requirements. This branch of the process deals with AMC requirements. If there is no existing contract, then AMC must decide whether to commit resources.

After approval, the Major Subordinate Command prepares a rough cost estimate or the contracting officer may modify the contract to task the contractor. For example, in the Logistics Civil Augmentation AMC support contract, the contractor is required to furnish a rough order of magnitude (ROM) cost estimate. The cost estimate should be furnished within 1 days of tasking. Whenever possible the cost estimates should be in increments. That way the customer can choose what is affordable. The cost information is passed through the Logistics Support Element to the customer.

If an AMC Program Manager receives a tasking directly from the customer, it should ensure that missing steps (e.g., inform the Logistics Support Element and decide the composition of the team) are taken, before continuing with the process.

Non-AMC Contracts (e.g., Program Executive Office). Two branches of requirements merge. First are requirements passed directly from the customer to the Program Manager, bypassing the Logistics Support Element and the Major Subordinate Command. The requirement may even bypass the Acquisition Board. Second are requirements from the Major Subordinate Command coming from Logistics Support Element missions, which require augmentation that is not available within AMC.

Many AMC missions involve weapon systems managed by a Program Manager. The Program Manager is responsible for the program. The Program Manager must approve all modifications to the scope of work. AMC will provide contracting and on-site management (through the Logistics Support Element) as requested by the Program Manager.

Although not expected, in principle, AMC or the Program Manager could decline a mission. In that unlikely case, the Acquisition Board would attempt to identify another source.

There may or may not be a need for a cost estimate. If so, the guidance above applies. The Program Manager is responsible for the cost estimate, although the contractor may prepare the estimate as required by the contract. The cost estimate should be prepared within 24 hours and whenever possible should be in increments.

Figure 2-5. Crisis Action Planning - AMC Requirements

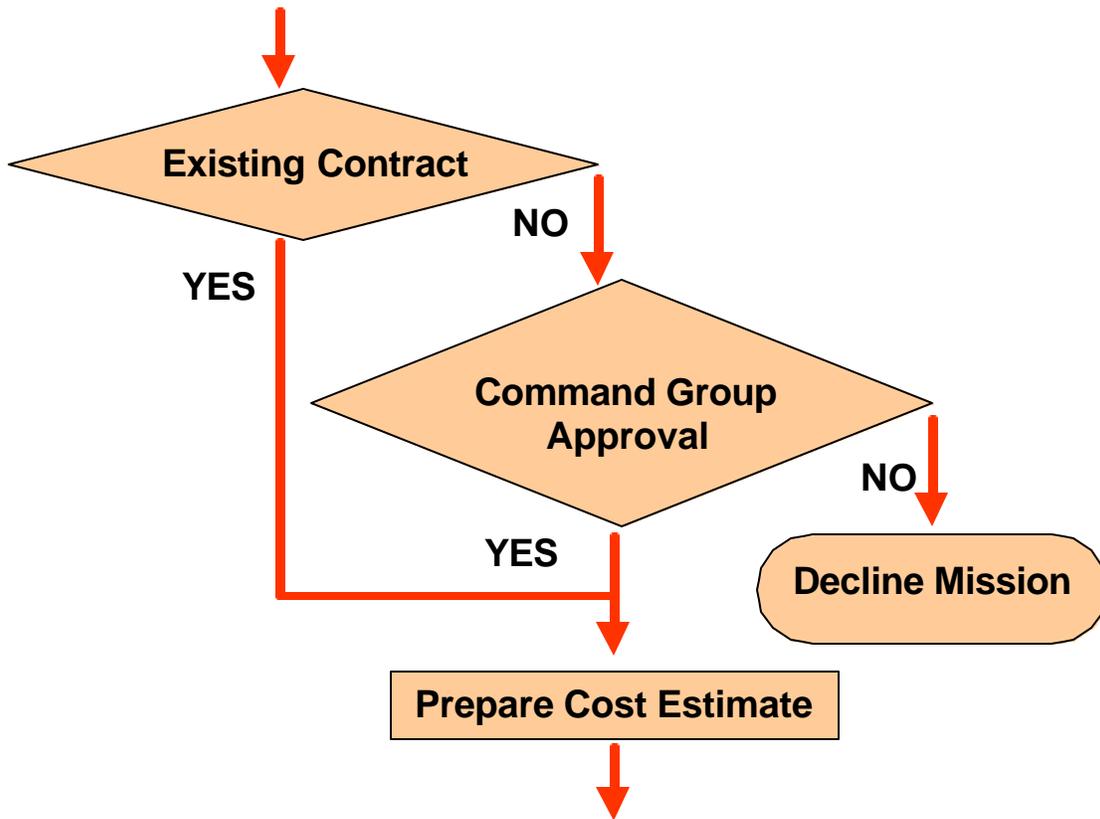
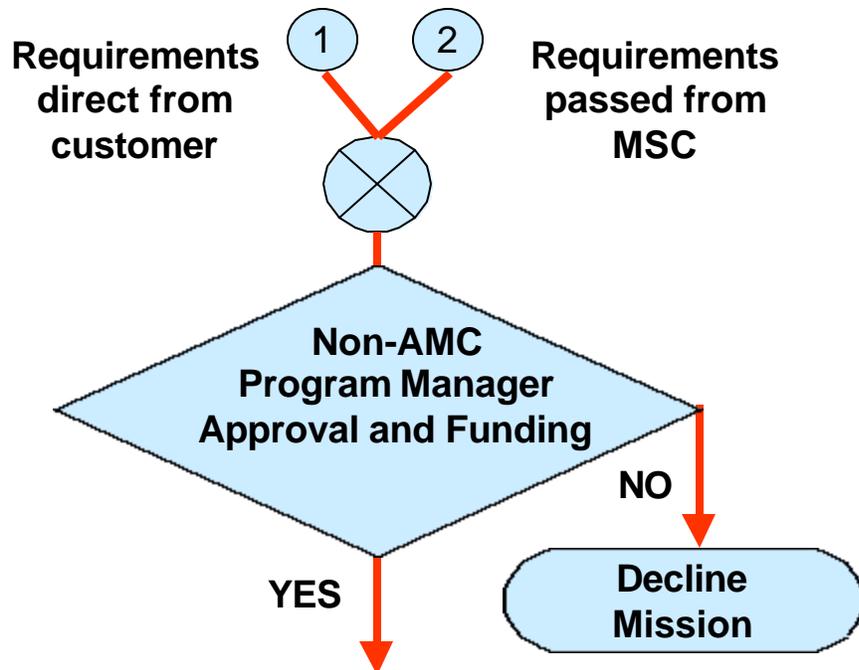


Figure 2-6. Crisis Action Planning - Non AMC Requirements



Notice to Proceed. Costs remain an important factor to the customer especially for military operations other than war. If the cost is too high, the customer may scale back the requirement or select an alternative source.

As part of the planning and approval process, the customer must look at the resources required to deploy, receive, support, and protect the contractor employees. That may involve military force structure or another contractor.

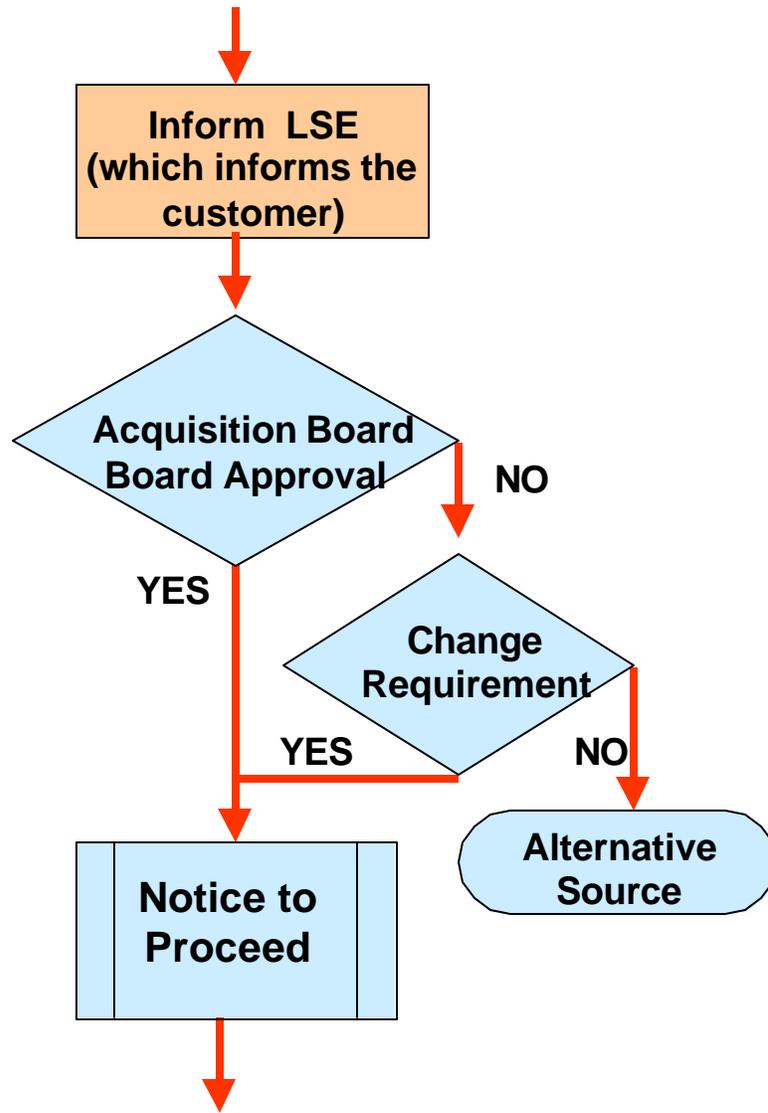
The Army Service Component Commander is ultimately responsible for policy regarding contractors in the theater. That policy is established during deliberate planning and remains applicable until replaced by policy tailored to a specific contingency. The policy is developed by the theater Principal Assistant responsible for Contracting, the G4 (logistics), G3 (operations) and the G1 (personnel). The theater Principal Assistant Responsible for Contracting has direct control of theater contracts. Out-of-theater Principal Assistants Responsible for Contracting and contracting officers should follow the theater policy as documented in the operations plans.

The Acquisition Board (or Theater Support Command) documents approval with a notice to proceed or fragmentation order (which supplements the operations order). This constitutes approval for the contract execution and a commitment to fund.

During the customer approval process, the Logistics Support Element keeps the Major Subordinate Command informed. The Major Subordinate Command should be working on a draft statement of work. The contracting officer should also keep the contractor informed so the contractor can be prepared. Once approved the customer will want the contractor on the ground as soon as possible.

Likewise, the Logistics Support Element is coordinating support with host units and area support units. Note that planning for DA civilians and contractors is difficult. The planning factors used for military personnel are misleading. For example, DA civilian and contractor personnel require large and small chemical defense garments and masks in excess of military tariffs. Also, DA civilian and contractor personnel may require different medicines and treatments, the availability of which must be considered before deciding to deploy. See Chapter 17, Medical, for special contract requirements.

Figure 2-7. Crisis Action Planning - Notice to Proceed



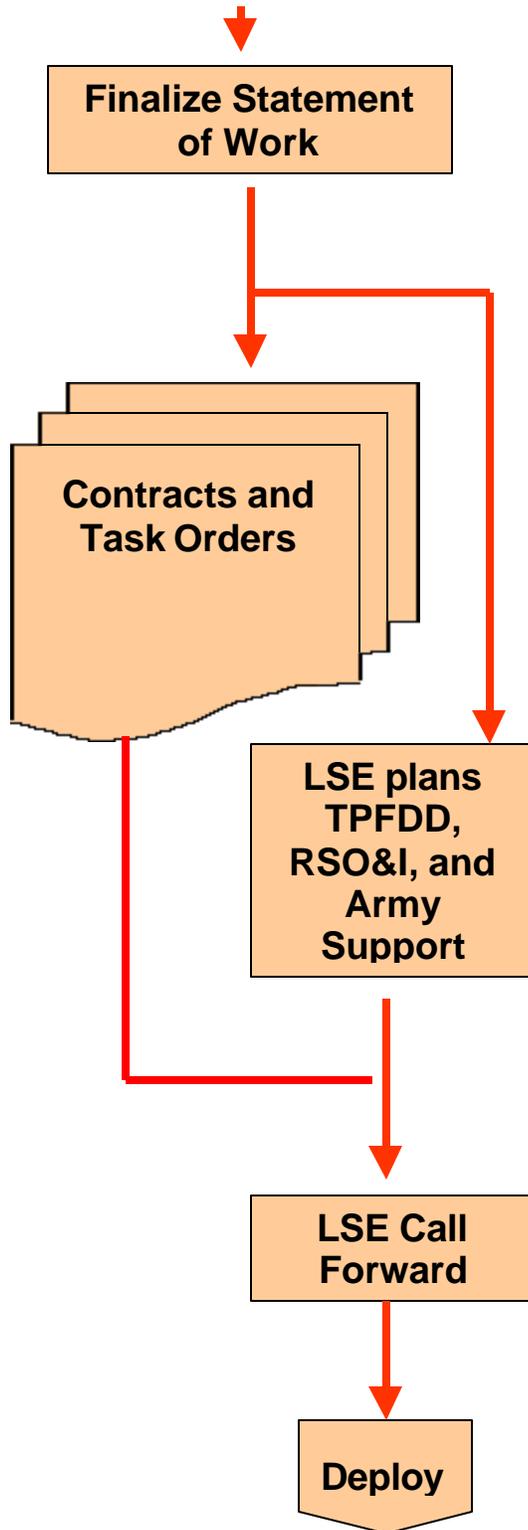
Contract Execution. For Program Executive Office managed weapon systems, the Assistant Secretary of the Army (Acquisition, Logistics and Technology) may provide guidance. As a final step in the approval process, the Program Manager should approve the draft contract, modification or task order. The contracting officer may then take the appropriate action.

Responsibility for ensuring that contractor support is available when needed is shared between the requiring activity (the supported unit), the Army Service Component Command and its contracting element, the Program Manager, and the contractor. The requiring activity bears the largest share of the responsibility because it originates the requirement and specifies when and where support is required. In doing so, it must ensure that the contractor arrives in the theater before the time that the support is required. This is accomplished through advance planning and integration of contractor deployment requirements into the contracting support plan, the time phased force and deployment data, and governing contract.

The theater Logistics Support Element will coordinate with the Army Service Component Command and the requiring activity to ensure that strategic transportation, reception, onward movement, facilities, life support, and force protection are planned and available. In accordance with the Army Service Component Command plan, the theater Logistics Support Element will call forward the team in its situation report. The Major Subordinate Command team and contractor should not deploy until called forward by the Logistics Support Element. This ensures that all the in-theater plans and resources are in place, ready to receive and operationally employ the contractor employees.

The contracting officer should expect, and be prepared to, execute any necessary modifications after deployment.

Figure 2-8. Crisis Action Planning - Contract Execution



References:

- a. AMC Mobilization and Operations Planning and Execution System (MOPES), 9 February 1999.
- b. AMC Logistics Plan 1003-96, 4 February 1998.
- c. AMC Logistics Plan 5027-96, 3 April 1998.
- d. AMC Logistics Plan 9601-98, 14 June 1999.
- e. Field Manual 63-11, Logistics Support Element Tactics, Techniques, and Procedures, October 1996.
- f. Field Manual 100-21, Contractors on the Battlefield, 26 March 2000.
- g. Field Manual 100-10-2, Contracting Support on the Battlefield, 4 August 1999.
- h. Army Regulation 715-9, Contractors Accompanying the Force, 29 October 1999.
- i. Department of the Army Pamphlet 715-16, Contractor Deployment Guide, 27 February 1998.

Suggested Special Contract Requirements: None.

Chapter 3. Management

"All U.S. Army-sponsored contractor employees in the Area of Operations shall be designated to a military unit to maintain administrative oversight and accountability. The Theater Support Command, the Logistics Support Element, or other official delegate, as appropriate, will control contractor employees, and ensure a contracting officer's representative with direct communications to the contracting officer exists."

Army Regulation 715-9, Contractors Accompanying the Force,
29 October 1999

The command and control of contractor employees is significantly different than that of DA civilians. During a crisis situation or deployment, DA civilians are under the direct command and control of the on-site supervisory chain. Within the area of operations, this chain is headed by the Theater Commander, who is the senior military commander and responsible for completion of the mission and the safety of all deployed military, DA civilians and contractor employees. The Theater Commander can direct a DA civilian employee's task assignments and instructions and initiate and effect special recognition or disciplinary actions, in accordance with Army policy and Office of Personnel Management regulatory requirements. For contractor employees, however, the command and control is tied to the terms and conditions of the contract between the respective employer and the government, and the relationship between the employer and the employee (to which the government is not a party).

The statement of work to be performed is established in the government's contract with an employer. Per this contract, it is the contractor employer's responsibility to select and hire qualified personnel to satisfy the identified task assignment. If, as the crisis situation unfolds, changes or modifications of the contract scope of work are needed, the contract must be modified. All such modifications require authorization by the contracting officer, in accordance with procurement law and policy.

Supervision of contractor personnel is performed by the respective contract employer (but the supervisor may not always

be on-site). A contracting officer's representative (i.e., the senior command representative) may also provide guidance to the contracting officer and/or employer (in coordination with the contracting officer) regarding employee performance. To resolve performance problems, the contracting officer and employer will take all appropriate action as identified in the contract.

While the government does not directly command and control contractor employees, indirect command and control are achieved through contract modifications, employer assimilation of Theater Commander directive/orders in employer-employee agreements, and attachment (with special reporting procedures) to specific military units.

Contractor employees will be expected to adhere to all guidance and obey all instructions and general orders issued by the Theater Commander or his/her representative. All instructions and guidance will be issued based upon the need to ensure mission accomplishment, personal safety, and unit cohesion and the various conditions of the contract. Examples of orders are requirements to travel in convoys, restrictions to the military base during and after duty hours and restrictions on commercial restaurants/hotels.

If the instructions and orders of the theater Commander are violated, the Theater Commander may limit access to facilities and/or revoke any special status that a contractor employee has as an individual accompanying the force. See the first three suggested special contract requirements below. If the last contract requirement listed below is included in the contract, the contracting officer may also direct that the contractor remove from the theater of operations any contractor employee whose conduct endangers persons or property or whose continued employment is inconsistent with the interest of military security or adversely affect relations with the host nation.

Additional Information: Following is extracted from Army Regulation 715-9, Contractors Accompanying the Force, Section 3-2d-f.

"d. Commercial contract personnel may be employed in Areas of Operations (AO) as required. . . . Most often, these personnel will be assigned duties at Echelons-Above-Division (EAD). Should the senior military commander determine that their services are required at lower echelons, they may perform their support services as far forward as needed, on a temporary

basis, consistent with the terms of the contract and the tactical situation.

e. Similar to the military chain-of-command, command and control of commercial support service personnel will be defined by the terms and conditions of the contract. The cognizant contracting officer or his/her designated representative(s) will monitor contractor performance and maintain day-to-day liaison activities. Their primary focus shall be on requesting and/or receiving the support services dictated by the needs of the combatant commander's plan. The cognizant contracting officer is the only government official with the authority to increase, decrease or materially alter a contract's scope of work,

f. The commercial firm(s) . . . will perform the necessary supervisory and management functions of their employees. Contractor employees are not under the direct supervision of military personnel. . . . The contracting officer, or their designated liaison (contracting officer's representative(COR)), is responsible for monitoring and implementing contractor performance requirements; however, contractor employees will be expected to adhere to all guidance and obey all instructions and general orders issued the Theater Commander. In the event instructions or orders of the Theater Commander are violated, the Theater Commander may limit access to facilities and/or revoke any special status a contractor employee has as an individual accompanying the force to include directing the Contracting Officer to demand that the contractor replace the individual."

References:

a. Department of Defense Instruction 3020.37, Continuation of Essential DOD Contractor Services during Crisis, 6 November 1990.

b. Field Manual 100-16, Army Operational Support, May 1995.

c. Field Manual 63-11, Logistics Support Element Tactics, Techniques, and Procedures, October 1996.

d. Army Regulation 715-9, Contractors Accompanying the Force, 29 October 1999.

Suggested Special Contract Requirements:

- ◆ The contractor shall ensure that all contractor employees will comply with all guidance, instructions, and general orders applicable to U.S. Armed Forces and DOD civilians and issued by the Theater Commander or his/her representative. This will include any and all guidance and instructions issued based upon the need to ensure mission accomplishment, force protection, safety, and unit cohesion.
- ◆ The contractor shall comply, and shall ensure that all deployed employees and agents comply, with pertinent Department of Army and Department of Defense directives, policies, and procedures, as well as federal statutes, judicial interpretations and international agreements (e.g., Status of Forces Agreements, Host Nation Support Agreements, etc.) applicable to U.S. Armed Forces or U.S. citizens in the area of operations. Disputes will be resolved by the contracting officer.
- ◆ The contractor shall take reasonable steps to ensure the good conduct of its employees.
- ◆ The contractor shall promptly resolve, to the satisfaction of the contracting officer, all contractor employee performance and conduct problems identified by the cognizant contracting officer or his/her designated representative.
- ◆ The contracting officer may direct the contractor, at the contractor's expense, to remove or replace any contractor employee failing to adhere to instructions and general orders issued by the Theater Commander or his/her designated representative.

Chapter 4. Accounting for Personnel

"The intent of contractor visibility is to know who is operating on the battlefield; where the contractor is operating; what is their support mission and relationship; and when is the support provided. This provides the [Army Service Component Command / Army Forces] ASCC/ARFOR with the information necessary to properly orchestrate both the Army forces engaged in the operation and the contractors that support them. This will ensure that contractor activities enhance the operation and do not impede or jeopardize the operational situation. Additionally, Army responsibilities for providing support to contractors dictate a need to quantify the extent of contractor operations."

Field Manual 100-21, Contractors on the Battlefield, 26 March 2000

"[T]he accountability of contractor support personnel in theater is to reside with the [Army Service Component Command] ASCC. All contractor support personnel are required to follow reporting procedures for entering and exiting the area of operations. The reporting instructions will be provided in the appropriate [operations order] OPORD or other similar document."

Army Regulation 715-9, Contractors Accompanying the Force, 29 October 1999

Personnel accountability is required for force protection, allocating resources, and administration. The Logistics Support Element is responsible for accounting for all assigned or attached personnel. During operations, the Logistics Support Element will call forward personnel managers as required to account for the growing workforce.

Military and DA civilians will be tracked by name. For contractor employees, the contractor is generally responsible for personnel accountability. The Logistics Support Element only needs to know when personnel enter and leave the theater. The contractor will have management personnel (e.g., at the base camps) and will provide information to the Logistics Support Element as required.

The exception is contractors (e.g., weapon system contractors) working forward. Because they directly affect military readiness, the Logistics Support Element must track them by name and location.

For personnel deploying through the CONUS Replacement Center, the center will establish accountability using the Replacement Operations Automation Management System (ROAMS). Standard military personnel management systems cannot be used for contractor personnel. As required, the Logistics Support Element personnel office will establish its own tracking systems.

References:

- a. Field Manual 100-10-2, Contracting on the Battlefield, August 1999.
- b. Army Regulation 715-9, Contractors Accompanying the Force, 29 October 1999.

Suggested Special Contract Requirements:

- ◆ As directed by the contracting officer or his/her representative, the contractor shall report its employees entering and leaving the area of operations.
- ◆ As directed by the contracting officer or his/her representative, the contractor shall report its employees in the area of operations by name and by location.

Chapter 5. Logistics Support Element

"Contractors and civilians provide support from within as well as from outside the theater. In theater, contractors and DOD civilians assigned to a logistics support element perform specified support functions."

Field Manual 100-5, Operations, June 1993

Contractor employees deploying to support AMC mission/operations will be administratively assigned to the Logistics Support Element for accounting purposes.

The Logistics Support Element is a multi-faceted organization, which supports military operations. It is largely a civilian organization, which deploys at the request of the supported operational commander to perform AMC missions within the area of operations. Its mission is to enhance unit/weapon system readiness by bringing U.S. based technical capabilities and resources to deployed units. It has a military command structure similar to other units, but consists of a flexible combination of military, DA civilians and contractor personnel that can be tailored to suit the needs of a particular contingency.

All personnel attached to the Logistics Support Element will be required to follow reporting procedures for entering and leaving the area of operations. The reporting instructions will be provided to contractor employees during pre-deployment processing. Contractor employees and employers are expected to use all means at their disposal to continue to provide services until released or evacuated by military authorities. See the Tour of Duty chapter for necessary special contract requirements.

In-theater support to contractor employees attached to the Logistics Support Element generally will be the responsibility of the employer. In certain circumstances, however, such as when contractor employees are operating forward or in support of essential systems, the contract between the employer and the government may provide logistical support, as determine by the Theater Acquisition Board. In these cases, the Logistics

Support Element will provide or coordinate for the required support of the attached employees.

The Logistics Support Element will monitor the deployment and redeployment of all AMC personnel, to include contract personnel, into and out of the theater of operations. The contracting officer shall ensure that the contractor administratively attaches all deployed employees to the theater Logistics Support Element. Administrative attachment usually is limited to accountability status reporting (i.e., head count). The Logistics Support Element also may be required to perform other administrative functions, such as consolidating situation reports, integrating plans, coordinating mission requirements, arranging support for contractor employees, and monitoring performance. If required, these additional tasks will be coordinated through the on-site contracting officer or contracting officer representative.

The Logistics Support Element manages contractors through the Major Subordinate Command Integrated Readiness Management Teams. The Major Subordinate Command Senior Command Representative heads the Integrated Readiness Management Team and serves as the on-site contracting officer representative for his/her command's contracts. Some contractors will be integrated into Major Subordinate Command teams. The team chain of command through the Integrated Readiness Management Team to the Senior Command Representative controls the military, DA civilian and contractor personnel assigned to the team.

However, other contractors will augment military units. They are integrated into the support unit, not a Logistics Support Element team. For AMC contracts, the Logistics Assistance Representative also attached to the military unit serves as the on-site contracting officer technical representative and reports up to the Senior Command Representative. The military unit accounts for the attached personnel and provides life support, transportation, and force protection. See Appendix B for details.

References:

- a. Field Manual 100-16, Army Operational Support, May 1995.
- b. Field Manual 63-11, Logistics Support Element Tactics, Techniques, and Procedures, October 1996.

Suggested Special Contract Requirements:

- ◆ The contractor shall place all employees deploying to support this contract under administrative control of the designated Logistics Support Element.
- ◆ The contracting officer or his/her representative (in coordination with the Logistics Support Element Commander) shall provide the contractor with all required reporting instructions and procedures.

Chapter 6. Logistics Civil Augmentation Program

"The principal LOGCAP contractor. . . began providing support of Operation Joint Endeavor in Hungary, Bosnia and Croatia on 27 November 1995. . . [They] provided a wide range of services including base camp construction, transportation, the distribution of ice and water, POL [Petroleum, Oil and Lubricants] support at selected locations, food service, laundry and tailoring, showers, latrines, trash and garbage removal, contingency equipment, the maintenance of organization clothing and equipment, and an unskilled labor pool."

Association of the U.S. Army Landpower Essay Series 99-6, Contractors on the Battlefield, May 1999, by Dr. Charles R. Shrader

The Logistics Civil Augmentation Program (LOGCAP) is a, Department of the Army, Deputy Chief of Staff for Logistics program. The program explains preplanned use of civilian contractors during operations to augment the support capabilities of selected forces and to support DOD missions. It allows commanders to preplan for contracted support and includes contingency provisions in existing contracts. LOGCAP includes both contracts planned by the theater and an umbrella contract managed by AMC. AMC manages its LOGCAP support contract under its LOGCAP program office to assist commanders' mission planning.

The LOGCAP management team is usually attached to the Logistics Support Element.

The AMC Support Contract is written for peacetime planning and contingency operations. The support contract has the capability for a wide range of construction, engineering and logistics services.

References: Army Regulation 700-137, Logistics Civil Augmentation Program (LOGCAP), 16 December 1985.

Suggested Special Contract Requirements. None. Special provisions are incorporated into the basic contract. The Program Manager has tools to generate statement of work in a contingency.

Chapter 7. Risk Assessment and Mitigation

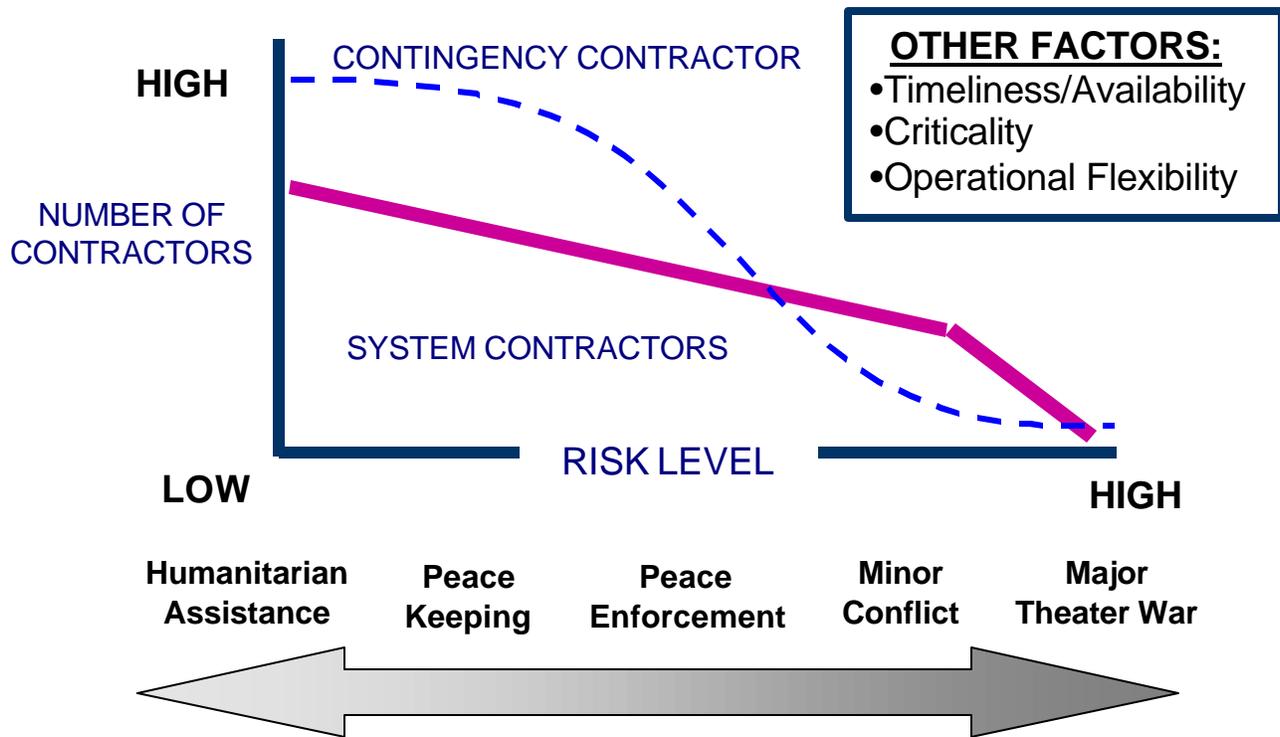
"Commanders assume additional risk when using contractors in lieu of organic CSS [Combat Service Support] assets to support mission requirements. . . . [C]ommanders must understand that contractor personnel aren't soldiers; they might refuse to deliver goods or services to potentially dangerous area, or might refuse to enter a hostile area regardless of mission criticality."

Field Manual 100-10-2, Contracting Support on the Battlefield,
4 August 1999

Doctrine requires the military to assess the risk of using contractors. The risk assessment is based on the situation - mission, enemy, troops, terrain/weather, time and civilian considerations (METT-TC). The situation ranges from permissive to intense combat. Considering only risk, contractors are a last resort but the benefits of contracting, especially in a permissive environment, may make contracts the first choice. Some of those benefits are improved living conditions for soldiers, reduced military manpower requirements, more time between deployment rotations for military units and improved relations with the host nation when the contractor hires locally.

The risk assessment considers essentiality, alternatives to contractors, and dangers to the individual. Essentiality examines the effect on the military mission. Alternatives observe active/reserve military and Department of the Army civilian capabilities, other services, host nation and coalition support. For example, weapon system contracts for technical assistance and sustainment are critical to readiness and there are few or no alternatives to contractors. On the other hand, service contracts (e.g., messing, laundry and sanitation) affect living standards but not mission accomplishment, at least in the short run. The following figure illustrates the changes to contractor augmentation across the spectrum of conflict.

Figure 7-1. Risk Assessment



"All deliberate and crisis action plans and operational orders must accommodate the continuation of services in the event of a contractor's performance failure."

Army Regulation 715-9, Contractors Accompanying the Force,
29 October 1999

There are no guarantees but if employees understand the risk, are prepared, and fairly compensated, they will more likely than not remain on the job. Mitigating the risk to individuals is discussed in other chapters on force protection and deployment processing. Incentives are discussed in the pay chapter. Removing disincentives is discussed in chapters on insurance, medical care, next of kin notification, and hostage aid. This chapter discusses how to communicate and implement operational decisions through the contract.

For benign situations, the lowest level of risk mitigation is to inform the individual employees to expect hardships from

living in the field and to understand the potential of hostile action. In order to reduce government liability, a special contract requirement may task the contractor to document that its employees were fully informed and acknowledged the risks. A slightly stronger step is to require the contractor to ensure that employees are medically, physically and psychologically prepared for the risks, danger and hardships.

For moderate risk, there must be good communications for planning and to resolve problems before they affect military readiness. Initially, the contracting officer may task the contractor to prepare a cost estimate. The contracting officer needs a direct line to the contractor (i.e, a point of contact, authorized by the contractor, to make the necessary commitment quickly. Also, the contractor must be prepared to replace personnel, who are unable or unwilling to continue working. Depending on the number of employees, the contractor should have a point of contact or an operations center to expedite replacement or other corrective action as directed by the contracting officer or contracting officer representative. The contracting officer will ensure that the requirement for a point of contact is considered in peacetime, routine contracts in order to facilitate crisis action planning and estimating costs. In addition, the contracting officer should whenever possible, identify alternative contractors.

For medium to high-risk situations, the contractor should document its plans for continuation of essential services as defined by the Army Service Component Command through the contracting officer. The plan should be a contract deliverable and, especially for service contracts, should include sources of material and personnel.

For moderate and high-risk situations, the military chain of command will increase force protection measures and begin relocating Department of the Army civilians and contractor employees to the rear area or sanctuaries, where they can continue their mission. Relocation will be phased based on essentiality of the contractor service and the flow of replacement military capabilities. If civilians who accompany the force are exposed to threats such as direct or sustained enemy fire or imminent terrorist attack, the Commander will relocate them to safe areas or evacuate them from the area of operations, as soon as possible.

It is the Commander's perspective of the threat and risk that matters. The fact that some contractor personnel perceive

a threat (maybe even leaving an area without permission) is a consideration but not a trigger for the Commander to direct a relocation or an evacuation. If contractor personnel do leave without direct permission, the Commander shall so notify the contracting officer, who will direct the contractor to provide replacements. See the fourth suggested special contract requirement below.

The military has a contractual and moral obligation to U.S. nationals who accompany the force. The military may have a contractual obligation for third country nationals brought into the area of operations. On the other hand, the host nation is primarily responsible for its citizens and third country residents (i.e., guest workers). The Army incurs an obligation only if the host is unable to protect or relocate those personnel. The obligation for host nation contractor employees is derived from operational considerations, not the terms of the contract.

For very dangerous situations, the contract may require the contractor to hire personnel with a military obligation, including retirees, individual reservists and members of troop program units. The military chain of command can bring those personnel onto active duty through Temporary Tours of Active Duty or mobilize them involuntarily to ensure continuation of essential services. Of course, such action risks loss of contractor personnel to a call-up or mobilization for other duties. Activation and mobilization are last resorts. They will be used to ensure continuity of essential services, when the civilian contractor employees are evacuated.

The following table summarizes the levels of protective measures and phased relocation of civilians accompanying the force.

Figure 7-2. Risk Mitigation Action.

Operation Risk	Peacetime	Peace Operations		War	
	LOW	LOW-MEDIUM	MEDIUM	MEDIUM-HIGH	HIGH
Description of military situation.	Peacetime operations with associated risks. Injury unlikely but possible.	Local violence and terrorist action is possible. Operational situation is stable.	As for LOW. Plus expect casualties from limited combat action. Area is unstable.	As for MEDIUM. Plus casualties from direct & indirect action directed at military force.	Open warfare with casualties inflicted by opposing forces.
Minimum security arrangements for civilians who accompany the force.	None.	Military escort if working away from main group or base.	As for LOW. Plus convoy protection. Begin evacuating non-essential civilians. Relocate to secure area.	As for MEDIUM. Plus issue protective equipment. Transport in protective vehicle. Keep civilians in secure area.	As for MED-HIGH. Plus movement is restricted but ideally within armed formation. Secure protective shelter.
Description of services provided by civilians who accompany the force.	No change to routine.	No change in procedures but contractors informed of operational situation and dangers.	Minimize staff without degrading support. Routine maintenance should be undertaken by Active Duty personnel or delayed.	Retain personnel performing essential services that do not have adequate military capabilities (e.g., weapon system sustainment).	All personnel in the Area of Operations should be military. Civilians should only be retained if it is a military necessity.

References:

a. Field Manual 100-21, Contractors on the Battlefield, 26 March 2000.

b. Department of Defense Instruction 3020.37, Continuation of Essential Contractor Services, 11 June 1990.

c. Army Regulation 715-9, Contractors Accompanying the Force, 29 October 1999.

Suggested Special Contract Requirements (in order of increasing cost for increasingly dangerous situations):

- ◆ The contractor will brief its employees regarding the potential danger, stress, physical hardships and field living conditions.
- ◆ The contractor will require all its employees to acknowledge in writing that they understand the danger, stress, physical hardships and field living conditions that are possible if the employee deploys in support of military operations.
- ◆ The contractor will conduct physical and medical evaluations of all its deployable employees at their own expense to ensure that they are capable of enduring the rigors of deployment in support of a military operation.
- ◆ The contractor will replace employees within 72 hours, or as directed by the contracting officer, at contractor expense, if the employee departs an area of operations without permission.
- ◆ The contractor will designate a point of contact for all of its plans and operations.
- ◆ The contractor will establish an operations center to plan and control contractor deployment process and resolve operational issues with the deployed force.
- ◆ The contractor will prepare plans for support of military operations as required by contract or as directed by the contracting officer.
- ◆ For badging and security purposes, the contractor will provide the Army with a list of suitable or qualified subcontractors including local vendors in an area of operations.
- ◆ As required by the operational situation, the government will relocate contractor personnel (who are citizens of the United States, aliens resident in the United States or third country nationals, not resident in the host nation) to a safe area or evacuate them from the area of operations.

- ◆ The contractor will hire a set percentage of personnel with a military obligation. The contracting officer will set the percentage based on guidance from the Army Service Component Command.

- ◆ Orders to relocate can be handled as a change in the place of performance. Evacuation orders supercede contract provisions.

Chapter 8. Classification

Some contracts will be classified, based on:

- a. The supported plan or operation.
- b. The geographic area where the service is or will be provided.
- c. The type of service provided or weapon system supported.

Security and classification will be in accordance with policy (e.g., AR 380-5, AR 380-49 and AR 380-19). Advertising, awarding, and administering classified contract has the added requirement for operations security management. The classification level of data released in conjunction with contract solicitation, award, and execution will be strictly controlled.

Likewise, the operational requirement may dictate that the contractor performs in accordance with security regulations. The goal is to identify in advance all requirements for contractor security management, secure facilities, and government security clearances for contractor employees. All known requirements should be included in the peacetime or dormant contracts. That will facilitate the transition to an operational environment. For example, in the Risk Assessment and Mitigation chapter, we discussed the need for the contractor to identify a point of contact or establish an operations center to ensure continuation of essential services. Those personnel and facilities must be approved for classified information; otherwise, the contractor will not be able to provide the designated essential service, resulting in an unacceptable risk to the operation.

Unfortunately, operational plans are rarely detailed enough regarding contractor services, locations, and the forces supported to foresee security requirements in advance. Also, the contract cost of the security requirements is often prohibitive. Thus, security requirements will often require a contract modification along with the other suggested special contract requirements in this pamphlet. To preclude gross delays, the contractor should be encouraged to perform background checks on all employees, so that they can quickly qualify for an interim security clearance.

AMC-P 715-18

References: None.

Suggested Special Contract Requirements: None.

Chapter 9. Funding

". . . commanders and staff planners must ensure that during the planning process, funding . . . for contracting support are identified and earmarked."

Field Manual 100-10-2, Contracting Support on the Battlefield, 4 August 1999

AMC has no budgeted funds for contingency operations. The Theater Commander is responsible for funding. Therefore, before incurring any contract costs for contingency operations, the contracting officer, in consultation with the resource management and legal offices, as necessary, must ensure that appropriate contingency operations funding is currently available, or will be available, during the fiscal year. Failure to ensure the availability of contingency operations funding puts the command at risk of losing their mission funds. There must be a theater requirement and a commitment to pay (i.e., written notice to proceed or fragmentation order).

To assist the Army Service Component Command, the contracting command will provide a rough cost estimate, which includes an incremental cost for separable tasks or phases. Alternatively, the contractor can be tasked to provide the cost estimate. This works best for incremental changes within the scope of work during an operation rather than an initial modification when the requirements are not well defined.

References:

- a. AMC Mobilization and Operations Planning and Execution System (MOPES), 9 February 1999.
- b. Field Manual 63-11, Logistics Support Element Tactics, Techniques, and Procedures, October 1996.

Suggested Special Contract Requirements: Contracting officers should ensure that the following is in pre-existing peacetime contracts where there is a high probability that the services will be required during contingency operations, cost permitting. Including the following facilitates early crisis action planning with the contractor.

- ◆ The contractor will provide a cost estimate within 24 hours of a tasking by the contracting officer, or other time period as defined or determined by the contracting officer.

Chapter 10. Force Protection

"As required by the ASCC [Army Service Component Command], all contractor employees will obey general orders and force protection rules."

Army Regulation 715-9, Contractors Accompanying the Force,
29 October 1999

The Army has a moral responsibility, over and above specific contractual requirements to provide a secure working environment for contractor personnel. This chapter briefly discusses the Army's concept in providing such protection.

Comprehensive planning is the key to force protection. The Army Service Component Command's operational plan must clearly identify the exact number of contractor personnel and their time-phased location in the area of operations. Should this not be done, the area command can seriously underestimate Force Protection requirements as well as life support requirements. The Logistics Support Element is the AMC on-the-ground planning command. The Logistics Support Element will ensure that AMC contractor numbers, locations, and arrival time are placed into operational plans and coordinate with supporting area commands for force protection and life support.

The majority of contractor personnel will be at base camps and logistics bases. The Theater Support Command or Corps Support Command and their Area Support Groups will provide perimeter defense and rear area security.

Generally, there will only be small numbers of contractor personnel providing support at forward locations. However, contractor personnel may work temporarily in forward areas. In all cases, the unit supported is responsible for the Force Protection of contractor personnel in their area of responsibility. The Logistics Support Element will ensure that the supported unit knows the number and arrival date of contractor personnel and that unit's projected requirements for force protection and life support.

References: Army Regulation 715-9, Contractors Accompanying the Force, 29 October 1999.

Suggested Special Contract Requirements:

- ◆ The Army will provide force protection to contractor employees commensurate with that given to Department of the Army civilians.

Chapter 11. Status under International Law

"Persons who accompany the armed forces without actually being members thereof, such as . . . contractors, who fall into the hands of the enemy, and whom the latter think fit to detain, shall be entitled to be treated as prisoners of war, provided they have received authorization from the armed forces which they accompany, who shall provide them for that purpose with an identity card."

1949 Geneva Convention Relative to the Treatment of
Prisoners of War, Article 4

The 1949 Geneva Convention Relative to the Treatment of Prisoners of War (GPW) contains rules for the protection of captured enemy personnel.

Under the GPW, DA civilians and contractor personnel captured while accompanying military forces in the field are entitled to be protected as prisoners of war (POW) if captured by hostile forces. They are entitled to POW status regardless of whether carrying a self-defense weapon (i.e., government issued pistol) or wearing a uniform. These protections are accorded to DA civilians and authorized contractors who accompany the Armed Forces.

To confirm their status, all DA civilians and U.S. national contractor employees accompanying the Armed Forces should be issued a Geneva Convention Card (e.g., Form 489, Geneva Convention Identity Card for Civilians Who Accompany the Armed Forces). Third Country nationals may or may not require a Geneva Convention Card. Host nation personnel generally do not but under some circumstances may accompany the force and require a card.

The treatment to which a POW legally is entitled to depends on each POW's rank or grade. DA civilians or civilian contractors of rank or grade equivalency to a commissioned military officer are entitled to the same treatment as a commissioned officer of comparable grade.

It is not a violation of the law of war for DA civilians or contractor personnel to carry a weapon for personal self-defense

while accompanying a military force. Capture by an opposing force while wearing a uniform or carrying a weapon does not deprive an individual accompanying a military force of status and protections.

Over the recent past, the concepts of combatants and "noncombatants" have evolved and their application to the realities of today's contingency and warfare settings have made them somewhat outdated. As the technology of military forces has increased, so has the number of civilian personnel with the force. Their status has been inadequately addressed in the law of warfare process. The precise status of DA civilians and contractor personnel and the actions they are entitled to take remained unsettled until recently.

A few years ago, it was Army policy to refer to civilians taking direct part in hostilities or accompanying the forces as "combatants." Recent interpretations of the terms "combatants" and "noncombatants" by the U.S. Army and its counterparts in the United Kingdom, Australia, and Canada has required us to avoid labeling these civilians as "combatants." Instead, the correct term is "civilians accompanying the Armed Forces in the theater of operations as authorized members of that force." DA civilians and authorized contractor personnel are neither "combatants" nor "non-combatants."

DA civilians and contractor personnel who accompany the military are ordered or duly authorized to enter the area of operations by their government. If captured, they are entitled to prisoner of war status, as indicated above. They are at risk of injury or death from enemy hostile acts incidental to the enemy's attack of military objectives. Depending upon an individual's duties, a civilian accompanying armed forces in the field may be the object of an intentional attack.

References:

a. Field Manual 100-21, Contractors on the Battlefield, 26 March 2000.

b. Memorandum of Law, Subject: Law of War Status of Civilians Accompanying Military Forces in the Field, Army Judge Advocate General, 6 May 1999.

Suggested Special Contract Requirements: None.

Chapter 12. Mission Task Organized Force

"Current or anticipated force structure voids shall be the key determinant in selecting operational functions subject to augmentation by contract support personnel."

Army Regulation 715-9, Contractors Accompanying the Force,
29 October 1999

The military and DA civilian force structure requirements are developed in the Total Army Analysis using war-fighting models. That requirement is partially offset by host nation support, other service support and support from allies.

Contractors augment the military and DA civilian force structure. In some instances, they have also become force structure. Often there is no military or DA civilian alternative to contractors. For example, some weapon system sustainment maintenance is only available from contractors. Likewise, the Army does not have sanitation units.

The goal is to include contractor capabilities in the Total Army Analysis process. That involves counting contractors capabilities using the standard requirements code (SRC). Where appropriate, contracts should be written so that the contractor is augmenting a unit or providing the equivalent capability of a military unit.

For example, the statement of work might require the contractor to provide wheeled vehicle repair capability equivalent to a corps level sustainment unit in the area of operations. Or the contract could require the contractor to provide a capability equivalent to a standard supply and service company.

The Army is involved in a range of operations, not just major theater war. The military and DA civilian force structure is sized and filled to fight major theater wars with minimum contractor augmentation. But, for a range of military operations other than war, contractor support beyond the minimum is desirable. It permits a smaller military footprint and allows units to concentrate on training for their primary wartime mission (i.e., their core competencies and wartime

mission essential task list). Thus, contractor force structure equivalents focus on task forces organized for military operations other than war.

References: Army Regulation 715-9, Contractors Accompanying the Force, 29 October 1999.

Suggested Special Contract Requirements: None.

Chapter 13. Legal Assistance

General Rule:

Generally, the Army does not provide personal legal assistance to contractors and their employees. Consequently, contracts should not offer personal legal assistance services. The servicing legal office, during legal review of a contract, often will discourage inclusion of this support in contracts.

Contractor employees in the U.S. preparing to deploy abroad, or already deployed overseas, to perform work pursuant to any contract or subcontract with DA, generally will **not** be eligible to receive personal legal assistance from Army military or Army civilian lawyers (except when otherwise eligible for legal assistance; see AR 27-3, Legal Assistance, paragraph 2-5, for example, a family member of an active duty member of the Armed Forces of the United States).

Contractor employees should satisfy all legal requirements that they deem necessary, such as a last will and testament, guardianship arrangements for children and estate planning, with privately retained attorneys, before deployment. Payment of legal fees is a private matter between the contractor employee and the lawyer retained. The Army has no involvement.

Exceptions:

Contractor employees accompanying the Armed Forces of the United States outside the United States may receive limited legal assistance from Army lawyers when DA or DOD is contractually obligated to provide this assistance as part of their logistical support in accordance with AR 27-3 and subject to the availability of legal assistance. Therefore, the specific terms of the contract under which contractor employees are deploying must be reviewed to verify if the Army is obligated to provide legal services.

Where the Army is contractually obligated to provide legal assistance, these rules apply:

i) If the legal assistance is to be provided overseas, it must be in accordance with applicable international agreements or approved by the host nation government.

ii) Legal assistance is limited to ministerial services (for example, witnessing signatures on documents and providing notary services), legal counseling (to include the review and discussion of legal correspondence and documents), and legal document preparation (limited to powers of attorney and advanced medical directives) and help on retaining non-DoD civilian lawyers.

The main reason for including legal assistance to contractor employees in the contract is when the deployment is to an area where private lawyers are not expected to be available. In that case, the Army Service Component Command through the Logistics Support Element may recommend the provision below. If the issue must be addressed, the contracting officer may include it.

References: Army Regulation 27-3, The Army Legal Assistance Program, 10 September 1995, paragraphs 2-5(7) and 3-7.

Suggested Special Contract Requirements:

- ◆ While contractor employees are processing for deployment at the CONUS Replacement Center (CRC) or deployed in the theater of operations, the government shall provide legal assistance in accordance with these conditions:

- a. The legal assistance is in accordance with applicable international or host nation agreements.

- b. The legal assistance is limited and ministerial in nature (for example, witnessing signatures on documents and providing notary services), legal counseling (to include review and discussion of legal correspondence and documents), and legal document preparation (limited to powers of attorney and advanced medical directives), and help retaining non-DoD civilian attorneys.

Chapter 14. Central Processing and Departure Point

"Certain operations may require a deploying contractor to process through a CONUS Replacement Center (CRC). These are sites created by the Army for expeditiously preparing individuals for deployment to a combat area or theater of operations. Use of the CRC for contractor processing will be determined during operational planning and specified as a requirement in the contract."

Field Manual 100-21, Contractors on the Battlefield, 26 March
2000

"As required by the [Army Service Component Command] ASCC, all U.S. citizen contractor personnel preparation for overseas movement (POM) requirements to the area of operations from CONUS or OCONUS will be addressed in the respective [Operations Order] OPOD. Contractors will be required to meet preparation for overseas movement criteria as outlined in applicable checklists.
. . ."

Army Regulation 715-9, Contractors Accompanying the Force,
29 October 1999

"Civilian personnel being deployed to the theater of operation (DoD employees, contractors, and other categories). Before deploying, civilian personnel will process through the CRC or other designated processing center. [Major Army Commands] MACOMs, activities, and units are responsible for [Soldier Readiness Processing] SRP for deploying personnel. Civilian processing will parallel military SRP (to the extent possible). Generally, personnel will not be deployed unless properly trained and with a complete issue of all necessary equipment and clothing. Any unfulfilled training requirements or non-availability of equipment and clothing will be reported to the appropriate MACOM, which may approve exceptions on a case-by-case basis after coordination with the appropriate CINC."

Army Mobilization and Operations Planning and Execution System,
Annex E, Personnel.

The U.S. Army has created several sites within the Continental United States (CONUS) for expeditiously preparing individuals for deployment to a combatant area or theater of operations. These sites are known as Individual Deployment Sites (IDS) that are permanently operational during peacetime operations or with augmentation CONUS Replacement Centers (CRC) that are activated for mobilization only. Some overseas areas have equivalent sites. These sites provide preparation for overseas replacement to individuals. Personnel deploying as part of a military unit receive the equivalent preparation for overseas movement at the unit's home station or mobilization station.

If the Theater Commander requires personnel to receive preparation for overseas replacement, AMC policy is to process DA civilian and contractor personnel at the specified site (e.g., CONUS Replacement Center) for both deployment and redeployment. The CONUS Replacement Center or other designated site will perform pre-deployment and redeployment functions for the contractor employees and will provide any mandated supplemental training or equipment issue. Processing through the CONUS Replacement Center or other designated site is preferred because the site establishes accountability for personnel and because the site commander certifies that the personnel are prepared for deployment.

However, there are wide exceptions. DA civilian and contractor personnel with a habituated relationship with a unit process with the unit, not at the CONUS Replacement Center. Non-unit individuals deploying from overseas do not have to return to CONUS for processing; they receive necessary training, processing and equipment issue in theater. Third country nationals and host nation personnel require minimal processing, which can be done during reception and integration. The Logistics Civil Augmentation Program AMC support contractor may establish its own site for processing personnel.

If deployment processing at a military site is required, the contracting officer should identify the location, issue orders to the contractor, and identify the logistical support provided by the government at the site.

The site may equate to Place of Performance. While at the site, the government may (in accordance with the terms of the contract) provide or reimburse the contractor with all support normally provided at the Place of Performance.

As part of the deployment processing for contractor employees, the site will screen contractor personnel records, conduct theater specific briefing and training, issue theater specific clothing and individual equipment, verify that medical requirements (such as immunizations, DNA specimen collection, HIV testing and dental examination) for deployment have been met, and arrange for transportation to the theater of operations.

While processing at an Individual Deployment Site or CONUS Replacement center, the government will furnish lodging but will charge a nominal fee for meals. Transportation and travel to the site is the employer's responsibility, with appropriate government reimbursement, as dictated by the terms and conditions of the contract.

It is the responsibility of the employer to ensure that its employees receive all required processing information.

"Deploying contractor personnel may require specific training to prepare them for the environment in the theater of operations. Training requirements must be identified during operational planning and included in the contract."

Field Manual 100-21, Contractors on the Battlefield, 26 March
2000

The site will provide mission training designed to provide deploying individuals with a basic knowledge of what they can expect when they deploy into the theater of operations. Training will cover areas such as the Geneva Conventions, code of conduct, health and sanitation, legal assistance, customs and courtesies for the area of deployment, applicable Status of Forces Agreement, security, weapons familiarization and any additional training dictated by the specific circumstances of the deployment and approved by the Theater Commander.

If processing is not required, contractor employees should receive training on the identified topics by their employer before deployment.

"The CINC will determine the contractor's requirement for chemical defense equipment (CDE) and training. When approved, training and equipment will be theater specific and dependent upon the threat and the nature of the duties. CDE and training will be provided as part of any deployment processing, usually by the CRC."

Field Manual 100-21, Contractors on the Battlefield, 26 March
2000

The Theater Commander will determine the requirement for equipping and training contractor personnel with chemical defensive equipment (CDE). Training and equipment will be theater specific and dependent upon the threat and the nature of the duties. If required, the deployment processing center will issue equipment and provide familiarization training as part of the deployment processing. Appendix A includes a list of chemical defensive equipment that may be available for issue at the CONUS Replacement Center.

Proper use of the chemical protective equipment mask requires personnel to be clean-shaven. The absence of facial hair will allow the protective mask to properly seal around the face thus protecting the wearer.

Chemical Defensive Equipment issue and training normally will occur at the CONUS Replacement Center. However, stocks of equipment may not be sufficient to cover all the requirements, including periodic replacements. Some relief is available. The Logistics Civil Augmentation Program has an operational project for chemical defense equipment.

Korea (and as directed other theaters) requires protective masks to DA civilians, contractor personnel and their dependents. The theater will issue the protective equipment to contractor personnel but it may be necessary for the contract to require the contractor to provide equipment for dependents.

References:

a. CONUS Replacement Center (CRC) Handbook, Department of the Army, 1 June 1994.

b. Department of the Army Pamphlet 715-16, Contractor Deployment Guide, 27 February 1998.

c. Common Table of Allowances, CTA 50-900, "Clothing and Individual Equipment."

d. Field Manual 100-21, Contractors on the Battlefield, 26 March 2000.

e. Army Regulation 715-9, Contractors Accompanying the Force, 29 October 1999.

Suggest Special Contract Requirements:

- ◆ For any contractor employee determined by the government at the deployment processing site to be non-deployable for any reason, the contractor shall promptly remedy the problem. If the problem cannot be remedied in time for deployment, a replacement having equivalent qualifications and skills shall be provided in time for a scheduled deployment.
- ◆ The contracting officer shall identify to the contractor all required mission training and the location of the required training and successfully complete the training.
- ◆ The contractor shall ensure that all deploying employees receive all required mission training.
- ◆ The contracting officer shall inform the contractor of all Nuclear, Biological, and Chemical (NBC) equipment and Chemical Defensive Equipment (CDE) training requirements and standards.
- ◆ The government shall provide the contractor employees with CDE familiarization training commensurate with the training provided to Department of Defense civilian employees.
- ◆ The contractor will provide chemical defense equipment and training for dependents, who accompany its employees to Korea and other areas of operations as designated by the contracting officer.

Chapter 15. Travel Authorization

The contract will authorize all mission related travel by contractor employees. Invitational travel orders are no longer used to authorize travel and transportation for government contractors or contractor employees. DFAS will not pay contractor travel vouchers for any contractor's invitation travel orders issued after 1 October 1999.

Government contractors and their employees are not government employees and are, therefore, not eligible under any circumstances for "city pair" air fares or any travel-related items restricted to government employees. However, contractors traveling on official government business may receive special discounts from some hotels, car rental agencies, and from Amtrak. In order to take advantage of any discounted rates, contracting officers should provide contractors with a "Contractor Letter of Authorization/Identification" in accordance with Joint Travel Regulation, paragraph C6005,H.

Contracts should "direct fund" contractor travel through the fixed contract price, through a reimbursable contract line item, or through contractor overhead rates, depending on the contract structure/type, nature, frequency, and predictability of travel. Requiring activities should describe (or at least estimate) the anticipated travel in the original (or modified if necessary) statement of work and provide the necessary funding to cover the cost of travel.

The contracting officer will modify the contract, as required, for new travel requirements. The contractor employee should file a travel voucher with the employer for settlement. The contractor recoups the cost of employee travel through the contract just as for other contract costs in accordance with the Federal Acquisition Regulation (FAR) Part 31.205-46. In most circumstances, this means that contractors cannot be reimbursed for costs in excess of the maximum allowable per diem and mileage rates. As required, the contracting officer will prepare a Contractor Letter of Authorization/Identification.

References :

- a. Joint Travel Regulation, Chapter 6, Travel Under Special Circumstances, Part A, Invitation to Travel, paragraphs C6000 through C6005.

- b. Federal Acquisition Regulation, Part 31, Contract Cost Principles and Procedures, Subpart 31.2, Contracts With Commercial Organizations, Section 31.205, Selected Costs, Subsection 31.205-46, Travel Costs.

Suggested Special Contract Requirements: None.

Chapter 16. Standard Identification Cards

As part of the deployment processing with a unit or at an Individual Deployment Site or CONUS Replacement Center or in-theater site, contractor employees will receive the following three distinct forms of identification.

a. DD Form 1173, Uniform Services Identification Card. This card is required for access to government facilities and use of privileges afforded to military, government civilians and/or military dependents. Use of this card is valid only while serving in the theater of operations. This card will have printed on it, the specific privileges to which a contractor is entitled.

b. DD Form 489, Geneva Convention Identity Card for Civilians Who Accompany the Armed Forces. This card identifies one's status as an authorized contractor employee accompanying the U.S. Armed Forces. This card must be carried at all times when in the theater of operations.

c. Personal identification (i.e., "dog tags"). The identification tags will include the following information: full name, social security number, blood type and religious preference. These tags should be worn at all times when in the theater of operations.

In addition, other identification cards, badges, etc. may be issued, depending upon the basis for the operation. For example, when U.S. forces participate in United Nations (U.N.) or multinational peace-keeping operations, contractor employees may be required to carry items of identification that verify their relationship to the United Nations or multinational force.

If the contractor processes its employees for deployment, it is the responsibility of the employer to ensure that its employees receive required identification before deployment.

Note that the cards may be controlled items. The Army Service Component Command through the Logistics Support Element will inform the Major Subordinate Command contracting officer when the above cards and tags are required. The cards will generally be required for U.S. citizens and for personnel (whether U.S. citizens or host nation or third country nationals) who may be employed at division and lower echelons.

If not issued at the CONUS Replacement Center, the Major Subordinate Command should attempt to obtain sufficient blank forms for the contractor to issue the cards and tags. For personnel who are already in-theater or deploying from a third country, the Logistics Support Element is responsible for issuing required cards and tags during Reception, Staging, Onward-movement and Integration.

References:

- a. Army Regulation 600-8-14, Identification Cards for Members of the Uniformed Services, Their Family Members, and Other Eligible Personnel.
- b. Department of Defense Instruction 1000.1, Identity Cards Required by the Geneva Conventions, 3 June 1975.
- c. Department of Defense Instruction 3020.37, Continuation of Essential DOD Contractor Services During Crisis, 6 November 1990.
- d. CONUS Replacement Center (CRC) Handbook, Department of the Army, 1 June 1994.

Suggested Special Contract Requirements:

- ◆ The contracting officer shall identify to the contractor all identification cards and tags required for deployment.
- ◆ The contracting officer shall inform the contractor where the identification cards and tags are to be issued.
- ◆ The contracting officer shall coordinate for issuance of required identification cards and tags for all contractor employees not processing through a CONUS Replacement Center.
- ◆ The contractor shall ensure that all deploying individuals have the required identification tags and cards prior to deployment.
- ◆ Upon redeployment, the contractor will ensure that all issued controlled identification cards and tags are returned to the government.

Chapter 17. Medical

Medical Processing and Screening.

It is the responsibility of the employer to provide qualified, capable personnel to perform the contracted duties.

Just as government personnel must pass a complete medical evaluation based on the functional requirements of the job, it is highly recommended that contractor employees have a similar evaluation, based on the functional requirements of the job, in order to determine fitness for duty before deploying. Such functional requirements would be in addition to the minimum physical criteria under medical and physical standards. The standards of Chapter 3, AR 40-501 will be applied in evaluating individuals and determining fitness for deployment. Emphasis should be placed on diagnosing cardiovascular, pulmonary, orthopedic, neurologic, endocrinologic, dermatologic, psychological, visual and auditory conditions, which may preclude performing the functional requirements of the job. Additionally, contractor employees should have a thorough dental exam and complete all necessary dental work, before reporting to the CONUS Replacement Center or deploying directly.

If glasses are required, contractor employees should deploy with two pairs of glasses with a current prescription. As required, the contractor employee should provide the Army with a written prescription, before deploying, if possible, so that eyeglass inserts for use in a chemical protective mask can be prepared. Wearing of contact lenses in a field environment is not recommended.

Contractor employees should take spare hearing aid batteries, sunglasses, and any other supplies related to their individual physical requirements. Contractor employees should deploy with a minimum 90-day supply of any required medications, obtained at their own expense. The 90-day supply is to insure against shortages in the area of operations. Contractor employees should review both the dose and availability of medications in the foreign area with the personal physician and make any necessary adjustments before deploying. Upon arrival in the area of operations the individual must contact the supporting medical unit to ensure the future availability of medications.

The Command Surgeon shall provide a list of immunizations, both those required for entry into the area of deployment and those recommended by medical authorities, for each deployment. Contractor employees will be immunized to meet the requirements established by the theater commander's Surgeon. Prophylactic medications, such as for malaria, may also be required. Depending on the area of deployment, a recent tuberculin skin test may be required.

For identification purposes, it is recommended that contractor employees obtain a dental panograph and/or have a DNA specimen collected.

As a general rule, contractor employees will **not** be eligible to receive pre-deployment medical preparation from U.S. military medical personnel. Upon deployment, if medical screening and final preparation (e.g., immunizations) are provided, they usually will occur at the deployment processing center (IDS/CRC or in-theater equivalent).

Contractor employees should complete a thorough evaluation with a personal physician before deploying as part of a military operation.

Pre-deployment and post-deployment physical examinations are administered for the safety of the deploying individuals and to protect them in the event of a deployment related injury or illness.

Medical and Physical Standards.

"The following must be considered during the negotiating and drafting of any contract. . . . Physical/Health limitations that may preclude contractor service in a theater of operations. . . ."

Field Manual 100-21, Contractors on the Battlefield, 26 March 2000

Contractor personnel do have to meet the same medical standards that are established for DA civilian personnel. They have to be able to work under field conditions but will not be engaged in combat. It is the contractor's responsibility to ensure that its employees are medically qualified to perform all contractual requirements. If a contractor employee is unfit, the contracting officer or his/her designated representative may direct (in accordance with the fourth suggested special contract

requirement below) the contractor to replace the employee at no cost to the government. The criteria for determining physical fitness are:

- Able to lift 40 pounds.
- Able to walk one mile in 20 minutes.
- Does not require medications that are unavailable in the theater.
- Does not require medical treatment or physical therapy that is not available in the theater.
- For areas requiring anthrax vaccination, age 18 to 65.

Medical and Dental Care

"Emergency medical and dental care may be furnished to contractors. . . . If civilian services are not available, contractors may seek military support on a reimbursable basis for other than emergency care, as identified in the contract."

Field Manual 100-21, Contractors on the Battlefield, 26 March
2000

Military and/or host nation emergency medical and dental care will be available should the need arise, at a level commensurate with that afforded government employees and military personnel. However, deployed contractor personnel generally do not receive routine medical and dental care at military medical treatment facilities unless this support is specifically included in the contract with the government. In the absence of such agreements, employers should make provisions for their employees' medical and dental care. In the event that medical or dental care is provided without proper authorization under the contract, the government may require reimbursement.

The Theater Commander may authorize contractor personnel to receive medical care from military units. Generally, U.S. nationals and forward deployed weapon system contractors are the only types of personnel who will be authorized. If authorized the contractor should provide the contracting officer with an estimate of the number of personnel in order to coordinate requirements with the combatant Commander and to plan support from supporting medical units in theater.

Before deploying, contractor employees should have a clear understanding of the availability of, and personal obligation to pay for, medical and dental care.

Upon return and required de-processing at the CONUS Replacement center, if a contractor employee suspects that an illness or injury is related to the deployment, he/she should follow procedures established by his/her employer to obtain necessary medical evaluation and treatment. Any contractual entitlement to government health care during deployment will, in most all cases, be inapplicable upon return.

As a last resort, the government may provide medical and dental care to contractor employees deployed in an area where access to non-military medical and dental support is not available. The level of care provided is subject to availability.

References:

a. Army Regulation 40-562, Immunizations and Chemoprophylaxis, 1 November 1995.

b. Army Regulation 40-501, Standards of Medical Fitness, 30 August 1995.

c. Army Regulation 40-3, Medical, Dental and Veterinary Care, 15 February 1985. (Current version of AR 40-3 is dated 30 July 1999. Policy on entitlement to medical care in 1985 version remains in effect until release of AR 40-400.)

Suggested Special Contract requirements:

- ◆ The contracting officer shall provide the contractor with all physical and medical requirements and standards necessary for deployment.
- ◆ The contractor shall be responsible for providing employees who meet the physical standards and medical requirements for job performance in the designated theater of operations.
- ◆ The government may require medical screening at the CONUS Replacement Center to include DNA sampling and immunizations.
- ◆ For any contractor employee determined by the government to be non-deployable, the contractor shall promptly remedy the problem. If the problem can not be remedied, a replacement having equivalent qualifications and skills shall be provided as determined by the contracting officer.

- ◆ The government shall provide to contractor employees deployed in the theater of operations, on a cost reimbursable basis, emergency medical and dental care commensurate with the care provided to Department of Defense civilian deployed in the theater of operations.

Chapter 18. Clothing and Equipment Issue

"Contractors accompanying the force are not authorized to wear military uniforms except for specific items required for safety or security such as: chemical defense equipment, cold weather equipment, or mission specific safety equipment.

Army Regulation 715-9, Contractors Accompanying the Force,
29 October 1999

Items if personal clothing and personal care, including both casual attire and work clothing required by the particular assignment, are the responsibility of the individual contractor employee. These items will not be issued at the deployment processing center.

Contractors will not wear battle dress uniforms or similar commercial clothing. The Army Service Component Command may desire the contractor employees to present a uniform appearance. Whether or not the military commander requires uniform appearance, the government will not specify or provide a commercial uniform; the contractor and/or the contractor employees are responsible for appropriate uniforms (e.g., whites for food handlers).

If required by the Theater Commander, however, the deployment processing center (e.g., CONUS Replacement Site, overseas equivalent or contractor site) will issue organizational clothing and individual equipment (OCIE) to contractor personnel. Contractor employees will be responsible for maintaining and returning all issued clothing and equipment. If issued clothing and/or equipment is lost or damaged due to negligence, the government will require reimbursement from the respective employer.

Appendix A includes a list of organizational clothing and individual equipment that may be available for issue at the Individual Deployment Site or CONUS Replacement Center. The actual determination of items to be issued in quantities will be based on the specific circumstances of the deployment.

If required by the Theater Commander, contractor employees will also be provided protective clothing and equipment, including Nuclear, Biological, and Chemical (NBC) defensive equipment. This equipment will be issued only as necessary to

perform duties during hostilities, conditions of war, or other crisis situations.

References:

a. CONUS Replacement Center (CRC) Handbook, Department of the Army, 1 June 1994.

b. Common Table of Allowances, CTA 50-900, "Clothing and Individual Equipment."

c. Army Regulation 715-9, Contractors Accompanying the Force, 29 October 1999.

Suggested Special Contract Requirements:

- ◆ The contractor shall ensure that contractor employees possess the necessary personal clothing and safety equipment to execute contract performance in the theater of operations in accordance with the statement of work.
- ◆ The government shall provide to the contractor all required military unique organizational clothing and individual equipment. (Types of organizational clothing and individual equipment may include Nuclear, Biological, and Chemical defensive equipment.)
- ◆ The contracting officer shall identify to the contractor the organizational clothing and individual equipment issue point and issue items.
- ◆ Upon receipt of organizational clothing and individual equipment, the contractor shall assume responsibility and accountability for these items.
- ◆ The contractor or contractor employee shall sign for all issued organizational clothing and individual equipment, thus, acknowledging receipt and acceptance of responsibility for the proper maintenance and accountability of issued organizational clothing and individual equipment.
- ◆ The contractor shall ensure that all issued organizational clothing and individual equipment is returned to the government. Upon return of organizational clothing and individual equipment to the government, the contractor

shall be responsible for requesting, maintaining, and providing to the contracting officer documentation demonstrating the return of issued organizational clothing and individual equipment to government control.

- ◆ The contracting officer will require the contractor to reimburse the government for organizational clothing and individual equipment lost or damaged due to contractor negligence.

Chapter 19. Weapons and Training

"Protection for contractors involves not only active protection through the use of armed military forces to provide escort or perimeter security, but also training and equipping of contractor personnel in self-protection (NBC and weapons). Under circumstances when the threat exists and the commander has granted approval, contractor personnel may be trained and equipped to work in an NBC environment and to carry individual weapons for personal protection."

Field Manual 100-21, Contractors on the Battlefield, 26 March
2000

The government will provide force protection for contractor personnel. Government issuance of a self-defense weapon (sidearm) does not change the status of DA civilian and contractor personnel under the 1949 Geneva Convention Relative to the Treatment of Prisoners of War (GPW).

Contractor employees are not authorized to bring into the theater of active operations a personal weapon or personal ammunition. The Theater Commander must authorize possession and transportation of personal weapons and ammunition for off-duty use, such as for hunting. The government may issue sidearms (that is, a pistol) to contractor employees for their personal self-defense. The issuance of such weapons must be authorized by the Theater Commander and must comply with military regulations regarding firearms training, safe handling, accountability and storage. Pre-deployment weapons familiarization training is provided to contractor employees as part of the CONUS Replacement Center deployment processing.

The acceptance of self-defense weapons by a contractor employee is voluntary and should be in accordance with the employer's company policy regarding possession and/or use of weapons.

Weapons issue will be preceded by weapons familiarization training. Weapons usually will be issued in the theater of operations.

Contractor employees will follow the same rules of engagement as applicable to the military and DA civilians. The rules of engagement govern the use of weapons and deadly force.

Issuance of a weapon does not constitute authorization for a civilian to be assigned to guard duty, perimeter defense, or engage in offensive combat operations.

References: Field Manual 23-25, Combat Training with Pistols and Revolvers, October 1988.

Suggested Special Contract Requirements.

- ◆ The government may choose to issue weapons for self-defense to the contractor employees. Acceptance of weapons by contractor employees is at the discretion of the contractor and the contractor employees. When accepted, the contractor employee is responsible for using the weapon in accordance with the rules of engagement issued by the Theater Commander. The contractor employee is legally liable for any use that is not in accordance with the rules of engagement. Also when accepted, only military issued ammunition may be used in the weapon.
- ◆ Prior to issuing any weapons to contractor employees, the government shall provide the contractor employees with weapons familiarization training commensurate to training provided to Department of Defense civilian employees.
- ◆ The contractor shall ensure that its employees adhere to all guidance and orders issued by the theater Commander or his/her representative regarding possession, use, safety and accountability of weapons and ammunition.
- ◆ Upon redeployment or notification by the government, the contractor shall ensure that all government issued weapons and ammunition are returned to government control.
- Contractors will screen employees to ensure that employees can be issued a weapon in accordance with U.S. law (e.g., no felony conviction for any reason and no misdemeanor conviction for spousal abuse) or applicable host nation laws.

Chapter 20. Vehicle and Equipment Operation

Deployed contractor employees may be required or asked to operate U.S. military owned or leased equipment such as generators and vehicles. Safe operation of military equipment is paramount and DA regulations usually mandate special training and licensing prior to operation.

Prior to operating any military owned or leased equipment, contractor employees must be properly licensed and trained. The employer or the contracting officer can arrange for the necessary training and licensing. Training and licensing is typically provided by the unit responsible for or issuing the equipment.

Operation of military leased equipment such as a rental vehicle usually requires the equivalent civilian license. For example, to operate a leased or rented sedan, a contractor employee must have a civilian driver's license.

While operating a military owned or leased vehicle, a contractor employee is subject to all Army regulations, the local laws and regulations of the country, area, city, and/or camp in which he/she is deployed. Traffic accidents or violations usually will be handled in accordance with the local laws, the Status of Forces Agreement (SOFA), if applicable, and/or Theater Commander guidance.

If a contractor employee does not enjoy special status under the SOFA, then he/she may be subject to criminal and/or civil liabilities. Even if they have status under the SOFA, they may still be liable for criminal and /or civil penalties, usually when not acting within the scope of their employment. Under the NATO SOFA, for example, the primary right to exercise criminal jurisdiction over traffic offenses **not** in the line of duty is with the Receiving State (Host nation). One can be operating a government-owned or government procured vehicle and still be out of scope.

All contractor employees should determine their status and comply with the military and local requirements prior to operating military vehicles and equipment. The contractor or the contracting officer can arrange for the necessary training and licensing. Training and licensing are typically provided by the unit responsible for or issuing the equipment. The Individual

Deployment Sites/Central Processing Center will brief contractor personnel on local laws and SOFA agreements in regard to licensing requirements.

References: None.

Suggested Special Contract Requirements:

- * The contractor shall ensure that deployed employees possess the required civilian licenses to operate the equipment necessary to perform the contract in the theater of operations in accordance with the statement of work.
- ◆ Before operating any military owned or leased equipment, the contractor employee shall provide proof of license (issued by an appropriate governmental authority) to the contracting officer or his/her representative.
- ◆ The government, at its discretion, may train and license contractor employees to operate military owned or leased equipment.
- ◆ The contractor and its employees may be held jointly and severally liable for all damages resulting from the unsafe or negligent operation of military owned or leased equipment.

Chapter 21. Contractor Liability to Third Parties for
Property Damage, Personal Injury and Death

"It is elementary that 'the United States, as sovereign, is immune from suits save as it consents to be sued . . . and the terms of its consent to be sued in any court define that court's jurisdiction to entertain the suit."

The United States has statutorily consented to suits pursuant to the terms of the Federal Tort Claims Act. This consent to be sued, though, does not extend to the acts of independent contractors.

Broussard v. United States Of America, 989 F.2d 171
(5th Cir. 1993)

The Federal Tort Claims Act (FTCA) (Title 28, United States Code, Section 2671-80) Military Claims Act (MCA) (Title 10, United States Code, Section 2733), and the Foreign Claims Act (FCA) (Title 10, United States Code, Section 2734) all exclude claims by third parties for actions by non-U.S. Government employees. Moreover, the FTCA and MCA also exclude claims by individuals not acting within the scope of their employment.

The issue of whether a contractor is an employee of the U.S. Government is fact-dependent. In Logue v. United States, 412 U.S. 521 (1973), the Supreme Court held that the Federal Tort Claims Act adopted the common law distinction between an employer's liability for his/her own employees and the liability (or lack thereof) for the employees of a party with whom he/she contracts for a specified performance. The Court held that the "absence of authority in the principal to control the physical conduct of the contractor in performance of the contract" was determinative in concluding that there was no liability accruing to the United States. Thus, the distinction turns on the issues of control and supervision over the day-to-day activities of the individual whose performance is at issue.

Subsequent cases have applied the "strict control" test where the United States exerts day-to-day supervision and control over the "detailed physical performance of contractor."

United States v. Orleans, 425 U.S. 807, 814 (1976). Simply reserving the right to inspect the work product or specify conditions is not enough to establish someone as a federal employee. Nor is the promulgation of detailed federal safety regulations and evaluations considered a sufficient "strict control". The real test is whether the United States maintains detailed control over the primary activity for which it has contracted, not merely the peripheral, administrative acts relating to such activity.

Some factors to examine include who determines the order of work, who provides the equipment, supplies, and training necessary to perform the job, and whether the contract envisions provision of a complete project or set of services. The more detailed the project, and the more involvement of the Government in providing plans, equipment, training, and supply, the more likely the contractor will be deemed an employee for tort liability purposes. The more discretion is given to the contractor, the less likely the contractor will be deemed an employee for tort liability purposes.

Claims against contractors who commit torts within the U.S. and who are determined to be employees of the United States under the test above will be handled under the Federal Tort Claims Act as claims against the United States. Claims against contractors who commit torts within the U.S. and who are not determined to be employees of the United States under the test above will be handled under applicable state law as claims against the contractor.

Claims against contractors who commit torts outside the United States, who are determined to be employees of the United States, acting within the scope of their duty who have status under the applicable Status of Forces Agreement (SOFA) will be managed under the SOFA. The SOFA will define claimants as either third parties or non-third parties. Members of the force (military members and civilians accompanying the military, including contractors) and their dependents, in most cases, are not third parties. Tourists and businesspeople are third parties. If the claimant is a third party, the claim will be handled by the local authorities under local law. If the claimant is a non-third party, the claim is handled under the MCA and U.S. law is used to determine liability and damages. For example, if a U.S. contractor in Germany collides with a German citizen's automobile and the privately owned vehicle of a U.S. soldier assigned to Germany, the German citizen's claim against the contractor will be adjudicated by the German government

using German traffic and tort laws, while the soldier's claim will be adjudicated by the U.S. using the MCA.

If no SOFA applies, the situation will be controlled by whether the contractor is an employee of the United States or not. When a contractor is determined to be an employee, the claim will be processed by the United States under the FCA. There is no requirement under the FCA that the tort-feasor be acting within the scope of his duties. If the contractor is determined not to be an employee, the claim will be processed by the local authorities against the contractor directly. Local law is used to determine liability and damages in both cases.

Contractors whose contract authorizes use of a rental vehicle should attempt to rent such vehicle from a rental agency that participates in the Military Traffic Management Command (MTMC) rental contract. This contract provides that the rental agency is solely liable for any damage to the rental vehicle, and provides primary coverage of \$25,000 for property damage and \$100,000 per person, \$300,000 per incident for personal injury or wrongful death. A list of participating agencies that extend coverage of the rental contract to government contractors can be obtained from MTMC by mail at HQMTMC ATTN: MTPP-AT, 5611 COLUMBIA PIKE, FALLS CHURCH VA 22041-5050 or via the internet at: <http://www.mtmc.army.mil/travel/car/carlist.htm> (for US companies) and <http://www.mtmc.army.mil/travel/car/foreign.htm> (for overseas companies).

Chapter 22. Passports, Visas and Customs

Contractor employees are required to carry a valid passport at all times when deployed and traveling overseas in support of military operations. Requirements for visas will be determined by the country of deployment/travel and obtained from the appropriate embassy prior to deployment. Applications for and costs of obtaining the required passports and visas are the responsibility of the contractor employee and/or employer. Note that the official, no-fee "red" passport is for government officials and employees only.

While entering and exiting a foreign country, contractor employees will be subject to the customs processing procedures established for that country. Entrance and exit requirements are country-specific, and will be governed by any or all of the following: foreign country's laws, applicable treaties, relevant Status of Forces Agreement, and other international agreements. Details for a contractor employee's deployment will be fully explained during the deployment processing.

If deployment processing is not required, it is the responsibility of the contractor employer to provide the relevant information to the contractor employees prior to deployment.

When returning, contractor employees will also be subject to U.S. re-entry customs requirements in effect at the time of re-entry.

The government normally is responsible for payment of entry and exit duties on contractor equipment required for performance. The contractor should be encouraged to deploy with the minimum essential equipment to perform.

References:

a. CONUS Replacement Center (CRC) Handbook, Department of the Army, 1 June 1994.

b. Code of Federal Regulations, 22 CFR, Part 51, 1 April 1995.

Suggested Special Contract Requirements:

- ◆ At the contractor employee's and/or contractor's expense, the contractor employees shall obtain all passports, visas, or other documents necessary to enter and/or exit any area(s) identified by the contracting officer.
- ◆ All contractor employees shall be subject to the customs processing procedures, laws, agreements and duties of the country in which they are deploying to and the procedures, laws, and duties of the United States upon re-entry.
- ◆ The contracting officer will determine and stipulate the allowability and allocability of payment for entry/exit duties on personal items in possession of contractor employees.

Chapter 23. Reception, Staging, Onward Movement and
Integration (RSO&I)

"In order to manage contractor support assets properly, contractors undergo the same RSO&I process as military forces. This ensures that they receive the proper attention upon arrival so that they can move to their support locations. It also provides the Army, as well as the contractor with a control mechanism to assist in bringing together personnel and equipment without establishing a separate system. The primary purpose for requiring reception processing for contractors is that it establishes theater accountability and provides visibility of contractor operations."

Field Manual 100-21, Contractors on the Battlefield, 26
March 2000

At a minimum, all personnel in or arriving in the area of operation will be integrated into the military force structure. The Army Service Component Command determines the extent of Reception, Staging and Onward movement, based on the operational situation. Generally, contractor personnel will receive RSO&I (as directed by the contracting officer or his/her representative in-theater), which is commensurate with that given to military and DA civilians. Note that personnel already in the area of operations, both U.S. citizens and host nation personnel, will pass through the process very quickly compared to personnel deploying from CONUS.

Contractor personnel who arrive in the area of operations with their supported unit will receive RSO&I along with the unit. Individuals will process as directed. AMC personnel will be integrated into the Logistics Support Element.

References: Field Manual 100-21, Contractors on the Battlefield, 26 March 2000.

Suggested Special Contract Requirements:

- ◆ Upon arrival in the area of operations, contractor employees will receive Reception, Staging, Onward movement and Integration, as directed by the contracting officer or his/her designated representative.

Chapter 24. Living Under Field Conditions

"Contractor personnel . . . may be required to live under field conditions. When this is required, certain minimum standards should be established so that an acceptable quality of life is maintained."

Field Manual 100-10-2, Contracting Support on the Battlefield,
4 August 1999

Contractor employees will generally eat, sleep, and work with and enjoy all privileges available to DA civilian and military personnel (unless the contract with the government specifically mandates or prohibits certain living conditions). Before deploying, the contractor should ensure that his/her employees thoroughly understand the terms and conditions of the contract under which he/she will be deployed and the expected field environment.

During contingency deployments, military, DA civilians, and contractor employees will often be living under field conditions. Field conditions are very different from normal civilian life and are characterized by austere and communal living and working conditions and a collective responsibility for one's living area.

Contractor employees probably will experience a general lack of privacy and have little opportunity for recreation during non-working hours. Housing usually will consist of large communal tents. Food may be pre-packaged rations; consequently, special diets may not be accommodated. Showers, if available, and latrines may be communal and primitive. Initially, there may be limited opportunities to move around. The ability to telephone home also may be restricted. Mail delivery and pick-up may be delayed and laundry service may not be readily available.

While in the field environment, contractor employees will be expected to maintain a clean living area, be considerate of others and adhere to Theater Commander's rules, policies, directives, and general orders based upon mission necessity, safety, or unit cohesion.

References: None.

Suggested Special Contract Requirements:

- ◆ The government shall provide to contractor employees deployed in the theater of operations the equivalent field living conditions, subsistence, emergency medical and dental care, sanitary facilities, mail delivery, laundry service, and other available support afforded to government employees and military personnel in the theater of operations, unless otherwise specified in the contract.

Chapter 25. Morale, Welfare, Recreation (MWR)

"Deployed contractors have a responsibility to provide religious, postal, MWR, and other quality of life support to their personnel. Host nation or third-country contractors will have less responsibility for providing such services because their personnel have an established relationship with local service organizations. The military may provide this support to contractor personnel when contractor sources are not available."

Field Manual 100-21, Contractors on the Battlefield, 26 March
2000

The Army offers MWR programs to enhance quality of life, enrich living and working environments, and foster a sense of community. The availability of MWR programs in the overseas theater of operation varies with the deployment location. MWR activities that may be available in military operations include: self-directed recreation (e.g., issue of sports equipment), entertainment in coordination with United Services Organization (USO) and Armed Forces Professional Entertainment Office, military clubs, unit lounges, and some types of rest or recreation centers. Contractor employees may be eligible to use some or all MWR facilities and activities subject to the installation or Theater Commander's discretion and the suggested special contract requirements below.

U.S. citizen contractor employees may be eligible for use of Army and Air Force Exchange Service (AAFES) facilities for health and comfort items. Use of these facilities will be based on the installation or Theater Commander's discretion, the terms of the contract with the government, and the terms of the applicable Status of Forces Agreement or other agreement with the host nation.

U.S. citizen contractor employees providing goods and services in support of U.S. Armed Forces and DOD activities, and accompanying dependents, may be authorized use of the Military Postal Service (MPS) only where there is no United States Postal Service and when MPS use is not precluded by the terms of any agreement between the United States and the host government. Postal support will be limited to the country in which the contractor employee is performing and to the extent set forth in the employer's contract with the U.S. Government. Accordingly,

the contract provisions for military postal support must be reviewed and approved by the Military Postal Service Agency.

American Red Cross services, such as emergency family communications and guidance for bereavement airfare, are also available to U.S. citizen contractor personnel in the area of operations.

Another support service is the Family Support Group (FSG). The Family Support Group is an Army-sponsored community activity to assist in developing mutual concern and care among families with deployed family members. During deployment, FSG centers assist in answering family member questions and provide help in meeting their needs. As part of the CONUS Replacement Center processing, contractor employees will receive a toll-free number for the nearest FSG center to the employee's home.

Contractor employees will generally have access to all morale, welfare, recreation, and support services available to DA civilian and military personnel. The contracting officer must identify authorized services in the contract.

References:

- a. Army Regulation 215-1, Morale, Welfare, and Recreation Activities and Nonappropriated Fund Instrumentalities, 25 October 1998.
- b. Army Regulation 60-20, Army and Air Force Exchange Service Operating Policies, 15 December 1992.
- c. Memorandum, "Contracts Specifying Military Postal Privileges," Military Postal Service Agency, 13 July 1996.
- d. Department of Defense Directive 4526.6, Single Manager for Military Postal Service, 5 May 1980.
- e. Department of Defense Directive 4526.6-M, DOD Postal Manual Volume I, Appendix A, 1989.

Suggested Special Contract Requirements:

- ◆ The government shall provide to contractor employees deployed in the theater of operations, morale, welfare, and recreation services commensurate with that provided to Department of Defense civilian and military personnel deployed in the theater of operations.

Chapter 26. Status of Forces Agreement

OCONUS military operations are often affected by international agreements between the U.S. and a host nation. These operations may also be affected by international agreements with other nations if the U.S. participates as a member of a multinational organization. Such international agreements may address a wide range of issues, including tax status, freedom of movement, immunities and customs requirements, criminal and civil jurisdiction of the host nation over U.S. personnel, and the hiring of host nation personnel to support an operation. The terms of such agreements should address the privileges and immunities of contractors and individual contractor personnel.

Status of Forces Agreements (SOFA) are international agreements concluded between one or more foreign governments that provide for various privileges, immunities and responsibilities of the two government, as well as the rights and responsibilities of individual members of a sending state's force.

The United States does not have a SOFA with every country. Likewise, even when a SOFA exists, it may not adequately address the changing world environment, every issue that may arise and specific contingency operations. Moreover, SOFAs vary, just as contracts do. One SOFA may contain provisions applicable to contractors, while another SOFA may not. Therefore, a contractor employee's status will depend upon the specific provisions of a SOFA applicable between the U.S. and the country where a deployment occurs.

Accordingly, for SOFA purposes, contractor employees may find themselves treated in a different way from military personnel or DOD civilian employees. Depending on the SOFA, contractor employees may or may not be subject to the criminal and/or civil jurisdiction of the host country to which they are deploying.

The North Atlantic Treaty Organization (NATO) SOFA is generally accepted as the model for bilateral and multilateral SOFAs between the U.S. government and host nations around the world. The NATO SOFA covers three general classes of sending state personnel:

(a) Members of the "force," i.e., members of the armed forces of the sending state;

(b) Members of the "civilian component," i.e., civilian employees accompanying the force of the sending state, who are not stateless persons, nor nationals of any non-NATO country, nor ordinarily resident in the State where the force is located; and,

(c) "Dependents," i.e., the spouse or child of a member of the force or civilian component who is dependent upon that member for support.

Under the generally accepted view of the NATO SOFA, contractor employees are not considered members of the civilian component. Accordingly, special technical arrangements or international agreements must be concluded in order to afford contractor employees with certain benefits and privileges.

As part of the government furnished deployment processing, contractor employees will be briefed as to their status under a SOFA or some other form of international agreement applicable to the deployment. If processing is not required, it is the responsibility of the contractor employer to provide information to contractor employees concerning their rights and privileges in the country to which they are deploying.

If there is a conflict between the SOFA and the employment contract with the United States Government, the terms and conditions of the SOFA/international agreement will take precedence.

Under limited circumstances, an individual who performs complex tasks of a technical-military or technical-scientific nature may be designated as a technical expert. The technical expert must have a high degree of skill and/or knowledge acquired through a process of higher education or through a long period of specialized training and experience. Such work is distinguished from routine mental, manual, or physical processes, (e.g. administrative and blue-collar work).

In Germany, contractor employees can receive the benefits and privileges associated with SOFA status if they meet the requirements of articles 72 or 73 of the NATO SOFA Supplementary Agreement (NATO SOFA SA). "Technical experts ... [who] exclusively serve [the] force either in **an advisory** capacity in

technical matters or for the setting up, operation or maintenance of equipment" are considered members of the civilian component pursuant to article 73 of the NATO SOFA Supplementary Agreement.

The process to accredit contractor employees as technical experts is a bilateral process that requires the consent of German authorities. Absent proper documentation and approval by the host nation, non-host national personnel will be subject to host-nation taxes. Additionally, contractor personnel who do not qualify as technical experts will not be entitled to individual logistic support from the United States Forces, and, depending on the length of their presence in Germany may be subject to taxation on their income by German authorities **and may be required to obtain a work permit**. Personnel who are temporarily in Germany while in transit to the area of operations are not entitled to individual logistic support in Germany unless accredited as technical experts prior to their arrival.

Additional Information: Army Regulation 715-9, Contractors Accompanying the Force, 29 October 1999, expands on the Status of Forces Agreement.

"In an area of operations where an international agreement authorizes the presence of U.S. forces (stationing agreement) or regulates their status (SOFA), the status of contractors and their employees, under local law, must also be established by international agreement. Contract provisions or military regulations denoting the contractors as 'part of the force' will not suffice to establish such status. When relevant agreements do not address the issue of status for contractors and their employees, the contractor may be unable to perform [or] . . . the costs may be prohibitive. In the absence of a controlling agreement, a corporate contractor may be unable to gain entry . . . or . . . may be . . . subjected to local regulation, taxation and customs restrictions. . . . Additionally, . . . neither the contractor, nor its employees, will enjoy any immunity from local civil or criminal jurisdiction and will be ineligible to receive customs or tax-free logistic support from the U.S. forces."

References:

a. Operational Law Handbook, JA422, Judge Advocate General, 2000.

b. Agreement between the Parties to the North Atlantic Treaty Regarding the Status of Their Forces, 19 June 1951.

c. Supplemental Agreement to the NATO Status of Forces Agreement with Respect to Forces Stationed in the Federal Republic of Germany, 3 August 1959.

d. Vienna Convention on Diplomatic Relations, 18 April 1961.

e. Agreement among the States Parties to the North Atlantic Treaty and the Other States participating in the Partnership for Peace regarding the Status of Their Forces, 19 June 1995.

f. International Agreements, DOD Directive 5530.3.

g. "SOFA - Joint Endeavor," AMC Command Counsel Briefing to AMC operations center, December 1995.

h. Memorandum, "Contractor Personnel Status vis a vis Bosnia and Hungary SOFAs," Office of the Judge Advocate General, 16 December 1995.

i. Army Regulation 715-9, Contractors Accompanying the Force, 29 October 1999.

j. Field Manual 100-10-2, Contracting on the Battlefield, 4 August 1999.

Suggested Special Contract Requirements:

- ◆ After having consulted with the serving legal office, the contracting officer shall advise the contractor on all applicable Status of Forces Agreements (SOFA) and other similar related agreements.
- ◆ The contractor shall adhere to all relevant provisions of applicable Status of Forces Agreements (SOFA) and other similar related agreements.
- ◆ (For Germany) The contractor is responsible for documenting technical expert status, as required.

Chapter 27. Uniform Code of Military Justice

"Contractor employees are not subject to military law under the [Uniform Code of Military Justice] UCMJ when accompanying U.S. forces, except during a declared war. Maintaining discipline among contractor employees is the responsibility of the contractor's management structure, not the military chain of command."

Field Manual 100-21, Contractors on the Battlefield, 26 March
2000

Military criminal law is defined by the Uniform Code of Military Justice (UCMJ). Military criminal law is similar to civilian criminal law in the United States. For example, most offenses, which are crimes under civilian law, are also crimes under military law; on the other hand, some offenses are peculiar to military law (e.g., absence without leave and violation of a lawful order). There are also similarities in the procedural rights of the accused under military law and civilian law.

UCMJ applicability is determined by the status of the individual at the time that the crime was committed. Active duty soldiers and retired members of a regular component of the Armed Forces who are entitled to pay, are subject to the UCMJ at all times, on and off post. Reserve component soldiers, once activated, are subject to the UCMJ. Once subject to the UCMJ, all individuals are treated the same, like regular soldiers. Department of the Army civilians and contractor employees are subject to military law when serving with or accompanying an armed force only "in time of war". The United States Supreme Court has ruled in time of war to mean a congressionally declared war. Under current law, contractor employees will not be subject to the UCMJ in a typical contingency operation. As discussed in the Chapter 3, Management, the Theater Commander has the discretion to revoke privileges and/or remove the employee from the theater.

Pending legislation might subject dependents, DA civilians and contractor personnel subject to the UCMJ by expanding UCMJ jurisdiction over them when they are serving with and accompanying the Armed Forces overseas during a contingency

operation. Additionally, another legislative proposal seeks to extend extraterritorial application of federal criminal laws under Title 18 of the United States Code over anyone, who while serving with, employed by or accompanying the Armed Forces outside of the United States, engages in conduct that would constitute a criminal offense punishable by imprisonment for more than 1 year if the conduct had occurred within the United States. The accused can be tried by the Department of Justice in a U.S. district court and shall be guilty of a like offense and subject to a like punishment. This provision applies in any overseas location and is not limited to contingency operations or declared wars.

References:

a. "Lack of Extraterritorial Jurisdiction Over Civilians: A New Look at an Old Problem", Military Law Review, 1995, Volume 148, Pages 114-185.

b. United States v. Averette, 19 USCMA 363, 41 CMR 363, 3 April 1970.

Suggested Special Contract Requirements: No special instruction necessary.

Chapter 28. Captivity, Hostile Detention and Prisoner of War Status

Contractor employees accompanying U.S. Armed Forces may be subject to attack incidental to an enemy attack of a military objective. If captured by a hostile force, a contractor employee's status will depend upon the type of conflict, applicability of any international agreements and the character of the capturing force.

The full protections granted to "prisoners of war" under the Geneva Convention Relative to the Treatment of Prisoners of War, 12 August 1949 (GPW) apply only during an international armed conflict and to governments. Accordingly, the GPW is inapplicable in military operations other than war (MOOTW). Non-government organizations, such as guerrillas or terrorists, are not legally bound by the GPW. As a matter of policy, however, the U.S. Government and the International Committee of the Red Cross will call upon a captor to apply the standards of the GPW when U.S. personnel are captured or detained.

Contractor employee protections for MOOTW will depend on the specific operation. Contractor employees will be briefed on applicable protections and techniques for handling captivity situations as part of the government furnished deployment processing.

When the U.S. is a participant in an international armed conflict, contractor employees are entitled to be protected as prisoners of war (POWs). To ensure proper treatment, contractor employees will be provided with an identity card, most notably the Geneva Conventions Identity Card (DD Form 489).

Details concerning contractor employees' rights as POWs will also be explained at the time of deployment. This information is provided as part of the standard deployment processing.

References: Geneva Convention Relative to the Treatment of Prisoners of War, 12 August 1949.

Suggested Special Contract Requirements: No special instructions necessary.

Chapter 29. Pay

A contractor employee's salary and other remuneration are subject to the terms and conditions of the employee-employer agreement. Contractor employees are not entitled to receive any special pay, cash benefits, or other financial incentives directly from the government.

The government is not a party to the employee-employer relationship. Any questions which contractor employees have regarding pay should be discussed with their employer.

Pay is a risk mitigation factor. The contractor may have to offer its employees additional pay in a dangerous situation, which may require an adjustment in the contract. Also, whenever possible the contract should encourage the contractor to structure pay of its employees such that a significant portion of the compensation is paid for successful completion of a tour of service. Such a pay plan encourages the contractor employee to remain on the job even in hazardous conditions.

References: None.

Suggested Special Contract Requirements:

- ◆ In the event the contractor must pay additional compensation above that contemplated under the contract, to retain or obtain personnel to perform in a theater of operations during a declared contingency, the contractor shall be entitled to an equitable adjustment under this contract. The contractor shall furnish proper data to the contracting officer to substantiate any adjustment to the contract. Failure to agree to an amount of any such adjustment shall be a dispute within the meaning of the clause entitled "Disputes" as contained in this contract.
- ◆ To ensure continuation of essential services, the contractor shall structure pay of deployed employees such that half the compensation is in the form of a bonus for successfully completing the assigned tour. However, the bonus will not be denied because death or because of government or opposing force actions, including government ordered evacuation or captivity by opposing forces.

Chapter 30. Awards

Local commanders or other locally authorized individuals may recognize individual contractor personnel who participate in military missions/operations for their contributions by the following means:

- a. Major Army Command (MACOM) Certificate of Appreciation.
- b. MACOM Plaques.
- c. Letter to contractor's employer outlining individual achievements.

Recommend coordination with the respective contracting officer if this approach is undertaken.

For significant achievements when higher level recognition is warranted, the Civilian Award for Humanitarian Service is authorized for any U.S. citizen who performs humanitarian actions, deeds, or achievements. In regards to contractors, however, this award can only be given for actions, deeds, or achievements unrelated to contractual duties or obligations. Additional information regarding recognition is outlined in directives and/or AR 672-20. Under no circumstances are government monetary awards authorized for contractor personnel.

Any government recognition does not prevent the contractor employer from also recognizing the contractor employee's actions or deeds.

References: None.

Suggested Special Contract Requirements: None.

Chapter 31. Tour of Duty/Hours of Work

"Tour of duty" is defined as the length of deployment. "Hours of work" is defined as the hours worked during a normal workday. A contractor employee's tour of duty and hours of work are established by the employer and the terms and conditions of the contract between the employer and the government. See the suggested special contract requirements below. The operational situation requires some flexibility to adjust the tour and hours. Any changes to the tour of duty/hours of work will be in the form of a contract modification signed by the contracting officer.

Prior to departure, all contractor employees should clarify their tour of duty and hours of work status with their employer. Only the employer and the contracting officer can change an employee's tour of duty and hours of work. This action requires a modification to the contract under which the contractor employee has been deployed.

References: None.

Suggested Special Contract Requirements:

- ◆ The contracting officer shall provide the contractor with the anticipated duration of the deployment.
- ◆ The contractor, at his/her own expense, may rotate contractor employees into and out of the theater.
- ◆ The contracting officer shall approve all changes to personnel.
- ◆ The contracting officer shall provide the contractor with the anticipated daily or weekly work schedule.
- ◆ The contractor shall comply with all duty hours and tours of duty identified by the contracting officer.
- ◆ The contracting officer may modify the work schedule to ensure the government's ability to continue to execute its mission.

Chapter 32. On-Call Duty

Due to the urgency of most contingencies, it may be necessary to have contractor employees "on-call." On-call requirements, hours and compensation rate, therefore, will be included as special terms and conditions of an employer's contract with the government.

Before departure, contractor employees should clarify any "on-call" questions with their employer.

The contingency environment may require contractor employees to be "on-call." The Government should make every effort to avoid this situation. If "on-call" duty can not be avoided, the Contracting Officer must ensure that the contractor receives adequate compensation. However, the contractor must understand that the situation may warrant this type of duty and must make every effort to provide the necessary support. "On-Call" is defined as reasonably available to perform. The parameters of reasonably available include response time and location. Whenever operationally possible, the parameters will be included in the contract (e.g., standard parameters throughout the theater).

References: None.

Suggested Special Contract Requirements:

- ◆ The contractor shall be reasonably available to work (i.e., "on-call) during other than "regular hours" to perform high priority tasks.
- ◆ The contracting officer, or his/her designated representative, will identify the parameters of "reasonable availability" and all remuneration for "on-call" duty.

Chapter 33. Workers' Compensation

Depending on the specific facts of the contract covering the deployment and precise nature of the work done, contractor employees deployed overseas to perform work under a contract (or a subcontract) with the United States may qualify, if injured or killed while overseas, for workers' compensation under the Defense Base Act (DBA). Contractor employees should verify from their employer whether the employer's contract with the government is of such a nature as to permit coverage by these federal statutes.

Where applicable, the DBA extends the workers' compensation benefits of the Longshore and Harbor Workers' Compensation Act (LHWCA) to any injury or death of any employee engaged in any covered situation.

The LHWCA provides a comprehensive program to compensate for partial or total disability, personal injuries, necessary medical services and medical supplies, death benefits, loss of pay, and burial expenses for persons covered by it. Generally, compensation generally is payable irrespective of fault as a cause for the injury.

Another statute that provides Workers' Compensation benefits for contractor employees deploying overseas is the War Hazards Compensation Act (WHCA). Under this act, a person injured or killed by a "war-risk hazard" as defined in the law will be compensated in some respects as if he/she were a full time civilian employee of the government. In other respects, the employee will receive the compensation required by the LHWCA.

Additionally, under the terms of the WHCA, a person missing from his/her place of overseas employment or taken as a hostage or a prisoner by a hostile force will be considered totally disabled, and will receive the commensurate disability compensation.

Pursuing benefits and remedies under these laws is up to the contractor employee and or employers.

References:

a. Defense Base Act, Title 42, U.S. Code, Chapter 11 [42 U.S.C. 1651-1654], "Compensation for Disability or Death to Persons Employed at Military, Air and Naval Bases Outside United States."

b. Longshoremen's and Harbor Workers' Compensation Act, Title 33 U.S. Code [33 U.S.C. 901 et seq.].

c. William M. O'Keefe, Appellant vs. Pan American World Airways, et al., Appellees, United States Court of Appeals, Fifth Circuit, 16 October 1964, 338 F.2d 319 (1964).

d. Code of Federal Regulations, 20 CFR, Parts 701-704.

e. War Hazards Compensation Act, Title 42, U.S. Code, Chapter 12, [42 U.S.C. 1701-1717], "Compensation for Injury, Death, or Detention of Employees of Contractors with the United States outside United States."

f. Title 5 U.S. Code, Chapter 81 [5 U.S.C. 8101-8107, 8147], "Compensation for Work Injuries."

g. Code of Federal Regulation, 20 CFR, Part 61, "Claims for Compensation Under the War Hazards Compensation Act".

h. Federal Acquisition Regulation, FAR 28.305, "Overseas workers' compensation and war-hazard insurance."

i. Federal Acquisition Regulation, FAR 28.309, "Contract clauses for workers' compensation insurance."

j. Federal Acquisition Regulation, FAR 52.228-3, "Workers' Compensation Insurance (Defense Base Act)."

k. Federal Acquisition Regulation, FAR 52.228-4, "Workers' Compensation and War-Hazard Insurance Overseas."

l. DOD Federal Acquisition Regulation, DFAR 228.370, "Contract clauses."

m. DOD Federal Acquisition Regulation, DFAR 252-228-7000, "Reimbursement for war-hazard losses."

n. DOD Federal Acquisition Regulation, DFAR 252-228-7003, "Capture and detention."

o. Federal Acquisition Regulation, FAR 31.205-19, "Insurance and indemnification."

p. George Takara, Appellant, vs. C. F. Hanson, et al., Appellees, United States Court of Appeals, Ninth Circuit, 23 November 1966, 369 F2d 392 (1966).

Additional Information:

The **Defense Base Act (DBA)**, Title 42 U.S. Code, Chapter 11 (42 U.S.C. 1651-1654] "Compensation for Disability or Death to Persons Employed at Military, Air and Naval Bases Outside United States", where applicable, extends the workers' compensation benefits of the Longshore and Harbor Workers' Compensation Act (LHWCA) [33 U.S.C. 901 et seq.] to any injury or death of any employee engaged in any DBA-covered employment under certain contracts. There are several instances of covered employment set forth in the DBA.

The covered situations, as listed in 42 U.S.C. 1651(a)(1) through (6), are work performed:

"(1) at any military, air or naval base acquired after January 1, 1940 by the United States from any foreign government; or

(2) upon any lands occupied or used by the United States for military or naval purpose in any Territory or possession outside the continental United States (Guantanamo Bay, Cuba; and the Canal Zone), or

(3) upon any **public work (emphasis added)** in any Territory or possession outside the continental United States, ...

(4) under a contract entered into with the United States or any executive department, independent establishment or agency thereof ... or any subcontract, or subordinate contract with respect to such contract, where such contract is to be performed outside the continental United States and at places not within the areas described in subparagraphs (1)-(3) of this subdivision, for the purpose of engaging in public work, . . .

(5) under a contract approved and financed by the United States or any executive department, independent establishment, or agency thereof . . .or any subcontract or subordinate contract . . . where such contract is to be performed outside the continental United States . . . ;

(6) outside the continental United States by an American employer providing welfare or similar services for the benefit of the Armed Forces pursuant to appropriate authorization by the Secretary of Defense. . .irrespective of the place where the injury or death occurs, and shall include any injury or death occurring to any such employee during transportation to or from his place of employment, where the employer or the United States provide the transportation or the cost thereof."

The DBA defines "public work" to mean:

"any fixed improvement or any project, whether or not fixed, involving construction, alteration, removal or repair for the public use of the United States or its allies, including but not limited to projects or operations under service contracts and projects in connection with the national defense or with war activities, dredging, harbor improvements, dams, roadways, and housing, as well as preparatory and ancillary work in connection therewith at the site or on the project." [42 U.S.C. 1651(b)(1)].

Depending upon the facts of a particular case, most contractor employees deploying overseas would be covered by 42 U.S.C. 1651(a)(4) as their work would be covered within the definition of a "public work."

The courts have broadly interpreted the term "public work." For example: While returning home from a social visit, after regular working hours, a scooter accident resulted in the death of a government contractor's recreation supervisor on Grand Turk Island. This death arose out of scope and in course of employment. It was compensable to his widow under 42 U.S.C. 1651(a)(4) and thus under the DBA and the LHWCA. This is because Grand Turk had a tracking station, and, in fact, the decedent was on Grand Turk Island as an employee of Pan American under a government contract for a Cape Canaveral missile tracking

project. See O'Keefe v. Pan American World Airways Inc., 338 F.2d 319 (1964), cert. denied, 380 U.S. 951.

The **Longshore and Harbor Workers' Compensation Act** (LHWCA)[33 U.S.C. 901 et seq.] is incorporated by reference into the Defense Base Act. The LHWCA provides a comprehensive scheme to compensate workers for partial or total disability; personal injuries; necessary medical services and medical supplies; death benefits; loss of pay; and burial expenses for persons covered by it. "Compensation shall be payable irrespective of fault as a cause for the injury". [33 U.S.C. 904(b)]. Thus, any contractor employee covered by 42 U.S.C. 1651(a)(4) who is injured or killed while deployed overseas for the purpose of performing "public work" will receive these benefits.

In 20 CFR, Parts 701-704, the U.S. Department of Labor has issued detailed regulations concerning the implementation of the DBA and the LHWCA.

Another statute that provides benefits for contractor civilian employees deploying abroad, to places such as former Yugoslavia, is the **War Hazards Compensation Act** (WHCA) [42 U.S.C. 1701-1717]. Certain civilian contractor employees, deploying abroad to perform certain work under a contract (or a subcontract) with the United States, if injured or killed or taken prisoner while abroad, will qualify in certain instances for compensation. 42 U.S.C. 1701(a) provides for coverage under the following circumstances:

"In case of injury or death resulting from injury -

(1) to any person employed by a contractor with the United States, if such person is an employee specified in Chapter 11 of this title [Defense Base Act, see above], and no compensation is payable with respect to such injury or death under such chapter; or

(2) to any person engaged by the United States under a contract for his personal services outside the continental United States; or

(3) to any person employed outside the continental United States as a civilian employee paid from nonappropriated funds administered by the Army and Air Force Exchange Service ... or conducted for the mental, physical and morale improvement of

personnel of the Department of Defense and their dependents; or

(4) to any person who is an employee specified in section 1651(a)(5) of this title [Mutual Security Act situations], if no compensation is payable with respect to such injury or death under chapter 11 of this title or to any person engaged under a contract for his personal services outside the United States approved and financed by the United States under the Mutual Security Act of 1954. . .; or

(5) to any person employed or otherwise engaged for personal services outside the continental United States by an American employer providing welfare or similar services for the benefit of the Armed Forces pursuant to appropriate authorization by the Secretary of Defense.

and such injury proximately results from a war-risk hazard whether or not such person then actually was engaged in the course of his employment, the provisions of subchapter 1 of chapter 81 of Title 5 . . . shall apply as if the person so employed were a civil employee of the United States and were injured while in the performance of his duty, and any compensation found to be due shall be paid from the compensation fund established pursuant to section 8147 of Title 5."

The crucial issue then becomes for a person who arguably fits such descriptions, the injury from a "war risk hazard"? The WHCA defines a "war-risk hazard" broadly, as

"any hazard arising during a war in which the United States is engaged; during an armed conflict in which the United States is engaged, whether or not war has been declared; or during an armed conflict between military forces of any origin, occurring within any country in which a person covered by this chapter is serving; from . . .any missile... the use of any weapon, explosive or other noxious thing by a hostile force or person or in combating an attack or an imagined attack by a hostile force or person, including rebellion or insurrection against the United States or any of its Allies; or . . .the operation of

vessels or aircraft in a zone of hostilities or engaged in war activities." [42 U.S.C. 1711(b)].

A person covered by the WHCA and injured or killed by a "war-risk hazard" will be treated as if he were a full time civilian employee of the United States government in some respects, but in other respects, the employee will receive the compensation required by the LHWCA [42 U.S.C. 1702].

On the other hand, a person covered by the WHCA and found to be missing from his place of overseas employment or taken as a hostage or a prisoner by a hostile force will be considered totally disabled, and receive the commensurate disability compensation. [42 U.S.C. 1701(b)].

The cost for benefits paid under the WHCA by the contractor-employer to a covered person who is injured, taken prisoner or killed by "war-risk hazard" may be reimbursed to the contractor-employer by a special employer compensation fund. Claim for such reimbursement shall be filed with the Secretary of Labor under regulations promulgated by the Secretary of Labor. In 20 CFR Part 61, the U.S. Department of Labor has issued regulations concerning the implementation of the WHCA. 20 CFR, Part 61 sets forth the rules applicable to the filing, processing, and payment of claims for reimbursement and workers' compensation benefits under the WHCA.

FAR 28.305(c) provides:

"When the Defense Base Act applies . . . , the benefits of the Longshoremen's and Harbor Workers' Compensation Act are extended through the operation of the War Hazards Compensation Act . . . to protect the employees against the risk of war hazards (injury, death, capture, or detention). When by means of an insurance policy or a self-insurance program, the contractor provides the workers' compensation coverage required by the Defense Base Act, the contractor's employees automatically receive war-hazard risk protection."

The DBA itself [42 U.S.C. 1651(e)] and FAR 28.305(d) provides that the head of the relevant agency can recommend to the Secretary of Labor that the Secretary of Labor waive the applicability of the Defense Base Act to "any contract, subcontract, work location, or classification of employees." It is left to the complete discretion of the Secretary of Labor as

to when or whether to grant a waiver. [See 42 U.S.C. 1651(e) and FAR 28.305(e)].

In cases of a waiver of the DBA, as described above, the FAR requires

"the contractor shall provide workers' compensation coverage against the risk of work injury or death and assume liability toward the employees and their beneficiaries for war-hazard injury, death, capture or detention. The contract shall provide either that the costs of this liability or the reasonable costs of insurance against this liability shall be allowed as a cost under the contract." [FAR 28.305(e)]

FAR 28.309 directs the contracting officer how to handle contract clauses for these situations:

"(a) The contracting officer shall insert the clause at 52.228-3, Workers' Compensation Insurance (Defense Base Act), in solicitations and contracts when the Defense Base Act applies . . . and the contract will be a public-work contract performed outside the United States... " or . . .

(b) The contracting officer shall insert the clause at 52.228-4, Workers' Compensation and War-Hazard Insurance Overseas, in solicitations and contracts when the contract will be a public-work contract performed outside the United States and the Secretary of Labor waives the applicability of the Defense Base Act applies, a clause similar to this clause (including this sentence) imposing upon those subcontractors this requirement to comply with the Defense Base Act."

As prescribed in FAR 28.309(b) and 52.228-4, the contract officer should insert the following clause in solicitations and contracts when the DBA has been waived by the Secretary of Labor and the contract will be a public-work contract performed outside the United States:

"(b) This paragraph applies if the Contractor or any subcontractor under this contract employs any person who, but for a waiver granted by the Secretary of Labor, would be subject to the War Hazards Compensation Act (42 U.S.C. 1701 et seq.). On behalf

of employees for whom the applicability of the Defense Base Act (and hence that of the War Hazards Compensation Act) has been waived, the Contractor shall, subject to reimbursement as provided elsewhere in this contract, afford the same protection as that provided in the War Hazards Compensation Act, In all other respects, the standards of the War Hazards Compensation Act shall apply, e.g., the definition of war-hazard risks (injury, death, capture, or detention as the result of a war hazard as defined in the Act), proof of loss, and exclusion of benefits otherwise covered by workers' compensation insurance or the equivalent.... unless the Contractor elects to assume directly the liability to subcontractor employees created by this clause, the Contractor shall insert, in all subcontracts under this contract to which the War Hazards Compensation Act would apply but for the waiver, a clause similar to this paragraph (b) (including this sentence) imposing upon those subcontractors this requirement to provide war-hazard benefits." [FAR 52.228-4(b)]

As prescribed in DFAR 228.370(a), the DFAR 252.228-7000 clause should be added to the contract for reimbursement for war-hazard losses making them allowable contract costs when FAR 52.228 - is used and the head of the contracting activity decides not to allow the contractor to buy insurance for war hazard losses.

As prescribed in DFAR 228.370(d), the DFAR 252.228-7003 clause "Capture and Detention" should be added to the contract when the contractor employees are subject to capture and detention and may not be covered by the WHCA. DFAR 252.228-7003 provides the following: "If pursuant to an agreement entered into prior to capture, the Contractor is obligated to pay and has paid detention benefits to a captured person, or the person's dependents, the government will reimburse the Contractor"

Suggested Special Contract Requirements: No special instructions necessary. Adequate guidance is available in existing acquisition regulations.

Chapter 34. Hostage Aid

When and where the Secretary of State, in consultation with the Secretary of Labor, declares that U.S. citizens or resident aliens of the United States rendering service overseas have been placed in a "captive" status as a result of a "hostile action" against the U.S. government, a wide range of benefits accrue to that person and that person's dependents. For example, captives can continue to receive their full pay.

Captives can claim some, but not all, of the benefits of the Soldiers' and Sailors' Civil Relief Act. Persons designated as a captive or their family members are eligible for physical and mental health care benefits at U.S. government expense. A spouse or unmarried dependent of a designated captive is eligible for certain education benefits. If a designated captive ultimately dies from hostile action caused by his/her relationship to the U.S. government, the Secretary of State may provide death benefits to the captive's survivors.

Any person possibly affected (e.g., family members and dependents) may petition the Secretary of State to make the declaration of coverage. Pursuing benefits and remedies under these laws is up to the contractor employee and/or the employee's family members, dependants or employer.

References:

a. Victims of Terrorism Compensation Act, Title 5 U.S. Code [5 U.S.C. 5569- 5570].

b. Code of Federal Regulations, 22 CFR, Part 192, "Victims of Terrorism Compensation."

c. Soldiers' and Sailors' Civil Relief Act, Title 50 U.S. Code [50 U.S.C. app. 501, et seq.].

Additional Information:

The Victims of Terrorism Compensation Act (VTCA) codified at 5 U.S.C. 5569-5570, and its implementing regulations, 22 CFR, Part 192, provide that the Secretary of State, in consultation with the Secretary of Labor, shall declare when and where persons in the U.S. Civil Service or a citizen or resident alien of the United States rendering personal service abroad to the

United States similar to the services of a member of the Civil Service, as a result of "hostile actions abroad, have been placed in a "captive" status as a result of such person's relationship to the U.S. government. [22 CFR 192.1(a)]

"Captive" means a missing status, which arises because of a hostile action and is a result of the individual's relationship with the Government [22 CFR, Parts 192.3(d) and (e)]. In any particular case, the determination of whether "hostile action" for the purpose of the VTCA is involved is left to the Secretary of State's discretion.

An individual rendering personal service to the United States similar to the service of any individual in the Civil Service is defined in the regulations to include "contract employees and other individuals fitting that description" [22 CFR, Part 192.3(g)]. However, all Department of Army civilian employees (DACs) deployed abroad, and non-DACs in specialized personal service contract arrangements (such as translators) are often "contract employees", within the meaning of the VTCA and may be covered by the VTCA.

Designated captives can continue to receive their full pay [22 CFR, Part 192.11]. Captives can claim many of the benefits of the Soldiers' and Sailors' Civil Relief Act (50 U.S.C. app. 501 et seq.) [22 CFR, Part 192.21]. A person designated captive or his/her family members are eligible for physical and mental health care benefits at U.S. government expense [22 CFR, Part 192.31]. A spouse or unmarried dependent of a designated captive is eligible for certain education benefits [22 CFR, Part 192.40]. If a designated captive ultimately dies from hostile action caused by his/her relationship to the U.S. government, the Secretary of State may provide death benefits to the captive's survivors [22 CFR, Part 192.51].

The Soldiers' and Sailors' Civil Relief Act provides that civil lawsuits and other actions can be stayed pending a soldier's absence. Generally, this Act applies only to "persons in the military forces" [50 U.S.C. app. 51 191)]. However, the VTCA provides captives to be treated as if they were persons in the military forces for many purposes. As a result of the VTCA, the captive's long-term absence does not impair his/her rights under civil law or procedure.

Suggested Special Contract Requirements: No special instructions necessary. Adequate guidance is available in current acquisition regulations.

Chapter 35. Veterans' Benefits

In very limited cases, an established group of civilian employees or contract workers, providing service to the United States in a manner that is determined to be active military service, can receive veterans' benefits.

The Secretary of Defense makes this determination after finding that such a group fulfills the statutory requirements. In making the determination, the Secretary of Defense may take into consideration the extent to which:

- a. Such a group received military training and acquired a military capability or the service performed by such group was critical to the success of a military mission,
- b. The members of such a group were subject to military justice, discipline and control,
- c. The members of such a group were permitted to resign,
- d. The members of such a group were susceptible to assignment for duty in a combat zone, and
- e. The members of such a group have reasonable expectations that their service would be considered active military service.

Pursuing benefits and remedies under these laws is up to the contractor employee and/or employer.

References:

- a. Public Law 95-202 as amended by Public Law 96-466 and 102-93, Active Duty Service for Civilian and Contractor Groups [Veterans' Benefits for Certain Contractor Groups' Service].
- b. Title 38 U.S. Code, Chapter 1 [38 U.S.C. 106], "Certain service deemed to be active service."
- c. Code of Federal Regulations, 32 CFR, Part 47.

Additional Information:

Public Law 95-202 as amended by Public Law 96-466 and Public Law 103-83, codified at 38 U.S.C. 106 annotation, as amended, provides that in certain limited cases, an established group of civilian employees or contract workers, who provided service to the United States in a manner considered active military service, can be designated to receive veterans' benefits. Before a group of persons can receive Veterans' benefits, the group must be declared by the Secretary of Defense to be such a group that fulfills the statutory requirements.

In 32 CFR, Part 47, the Secretary of Defense has issued regulation concerning the implementation of Public Law 95-202 as amended by Public Law 96-466 and Public Law 103-83, codified at 38 U.S.C. 106 annotation. 32 CFR Part 47 sets forth the rules applicable to the filing, processing, and deciding group claims for designation as a contractor group qualified to receive veterans' benefits.

Suggested Special Contract Requirements: No special instructions necessary.

Chapter 36. Health and Life Insurance

The Army has no statutory obligation to provide a contractor employee with any health and/or life insurance as a result of the overseas deployment. Unless identified in the contract, the Army is not obligated to contribute to the cost of an employee's health and/or life insurance. The contracting officer may perform a cost benefit analysis when considering whether to include the special contract requirements below.

Health and life insurance policies often contain a "war risk" clause that may adversely affect benefits under the policy while deployed overseas.

The contractor employee and/or the contractor employer on behalf of the employee may obtain health and/or life insurance without "war risk" clauses from the private commercial market. This decision is between the contractor employee and employer.

It is the contractor employee and/or employer's responsibility to ascertain, whether, and to what extent, if any, the benefits of the health and/or life insurance policy may be adversely affected by the deployment. Furthermore, it is the responsibility of the contractor employee and/or employer to decide what remedial actions can or should be taken as a result.

Protecting or pursuing health and/or life insurance benefits and remedies under individual or corporate insurance policies is up to the contractor employee and/or employer.

The contracting officer may include, as part of the contract, requirements for the contractor to provide supplemental health and life insurance to contractor employees.

Most military medical units cannot accomplish third party billing when deployed. Thus, when the military provides non-emergency treatment on a reimbursable basis, the individual or (depending on the contract employee's agreement with the company) the employer is responsible for payment.

References: None.

Suggested Special Contract Requirements:

- ◆ The contractor shall ensure that health and life insurance benefits provided to its deploying employees are in effect in the theater of operations.

Chapter 37. Next of Kin Notification

"Additionally, as Executive Agent for mortuary affairs, the Army will personally, or effect the notification of next of kin for U.S. citizens OCONUS contracted to accompany the force.

Army Regulation 715-9, Contractors Accompanying the Force,
29 October 1999

"When the contractor employee involved is a U.S. citizen, the military will notify the employee's next of kin in accordance with the requirements specified in Army Regulation (AR) 100-81. The employing contractor will notify employee next of kin who are citizens of the host nation or a third-country nation.

Field Manual 100-21, Contractors on the Battlefield, 26 March
2000

In the event that a DA civilian or contractor employee (who is a U.S. citizen) assigned or deployed outside the Continental United States (OCONUS) dies or becomes missing, the Army will personally notify the employee's primary and secondary next of kin. If the contractor employee becomes seriously ill or injured, the Army will telephonically notify the employee's primary next of kin. The Logistics Support Element will report deaths, illness and injuries in its situation report to ensure that the contracting officer is informed.

Notification actions by DA are dependent upon each contractor employee completing, and updating as necessary, the DD Form 93 (Record of Emergency Data Card). As a part of deployment processing at the designated site, contractor employees will be asked to complete this form. A copy will be maintained at the deployment site; a copy will be forwarded to DA Casualty and Memorial Affairs Operations Center (CMAOC); and a copy will be hand carried by the contractor employee to the theater of operations. The employee must ensure that the next of kin information is accurate and complete. Telephone numbers should be provided for each next of kin listed on the DD Form 93. If a contractor employee has not completed a DD Form 93 during deployment processing, the employee should ask appropriate management personnel for guidance.

In some cases, the contractor employer may send a company representative to accompany the Army notification officer. The contractor employer representative may also assist the next of kin in obtaining and applying for appropriate benefits and entitlements.

References:

a. Army Regulation 600-8-1, Army Casualty Operations/ Assistance/Insurance, 20 October 1994.

b. Army Regulation 715-9, Contractors Accompanying the Force, 29 October 1999.

Suggested Special Contract Requirements:

- ◆ Before deployment, the contractor shall ensure that each contractor employee completes a DD Form 93, Record of Emergency Data Card, and returns the completed form to the contracting officer's representative or the designated government official.

Chapter 38. Redeployment

"Orderly withdrawal or termination of contractor operations ensures that essential contractor support remains until no longer needed and that the movement of contractor equipment and personnel does not inadvertently hinder the overall redeployment process. For contractors returning to CONUS, the redeployment planning and execution process is similar to that of military forces. . . . Contractors from the host nation or other third country nations do not require the same level of redeployment processing as those returning to CONUS, but do require conscious consideration as to when and how they will exit the theater of operations."

Field Manual 100-21, Contractors on the Battlefield, 26 March
2000

Upon completion of the deployment, or other authorized release, the government will provide contractor employees transportation from the theater of operations to the location from which they deployed, unless otherwise directed.

At the return processing center, contractor employees will be required to return any issued clothing and equipment with a Report of Survey being conducted for any lost, damaged or destroyed clothing and equipment as referenced in Chapter 18 , Clothing and Equipment Issue. Contractor employees may also receive a post-deployment medical briefing on signs and symptoms of diseases to watch for, such as tuberculosis.

The amount of time spent at the return processing center will be the minimum required to complete the necessary administrative procedures.

Transportation of contractor employees from the return processing center to the home destination is the employer's responsibility. Government reimbursement to the employer for travel will be determined by the contract.

If government furnished deployment processing is required for redeployment, the contracting officer will identify the location (e.g., CONUS Replacement Center), issue orders to the contractor, and identify the logistical support, if any, provided by the government at the site.

References: CONUS Replacement Center (CRC) Handbook, Department of the Army, 1 June 1994.

Suggested Special Contract Requirements:

- ◆ Upon notification of redeployment, the contracting officer shall authorize contractor employee travel from the theater of operations to the designated CONUS Replacement Center (CRC) or individual deployment site.
- ◆ The contractor shall ensure that all government-issued clothing and equipment provided to the contractor or the contractor's employees are returned to government control upon completion of the deployment.
- ◆ The contractor shall provide the contracting officer with documentation, annotated by the receiving government official, of all clothing and equipment returns.

Chapter 39. Government Furnished Material / Services

"It is the general policy of the government that contractors will furnish all equipment and services required for the performance of a contract. However, the government can provide equipment and services when necessary to achieve significant savings, standardization, expedited performance, or when it is otherwise in its best interests. The requirement for the military to provide government furnished equipment and services to a contractor is influenced by potential savings, military unique equipment or services, and the degree of government control over the equipment or services."

Field Manual 100-21, Contractors on the Battlefield, 26 March
2000

"Each contract will specify what support, property, and training the Army will furnish to the contractor prior to execution. It is the Army's desire to minimize military support to contractors. The level of Army support . . . depends upon the particular situation and location the contractor is tasked to support. . . . [T]he Army may decide to use other contractors or host nation resources to support contractors. . . .

The contract must specifically address . . . responsibility for storage, maintenance, accountability, and testing of all property, equipment, information, and services furnished by the Government....

For purposes of accountability and tracking, during operations-other-than-war, property, equipment, information, and services furnished to the contractor(s) by the Government shall be reported to the applicable MACOM(s) [Major Army Command]."

Army Regulation 715-9, Contractors Accompanying the Force,
29 October 1999

The peacetime default is for the contractor to provide its employees with all the material and services required to fulfill the contract and for the contractor employee to be responsible, possibly on a reimbursable basis, for life support including medical care, recreation, transportation, housing, sanitation,

and food. During operations as determined by the Acquisition Board, the military may control the sources for support. There may not be any commercial infrastructure or the military may desire to allocate scarce commercial resources to control the flow of people and materiel and to prevent competition for scarce commercial resources.

Generally, the military will provide life support to contractor employees who are forward performing critical functions. The military will only support third country and host nation employees as a last resort, when there are no other sources.

Weapon system contractors will usually receive life support from the military. They work forward, where the military will control resources. They will be low density, making it unaffordable for the contractor to deploy resources. They perform critical functions, often with no military alternative, requiring life support and force protection, which are not available in the commercial infrastructure.

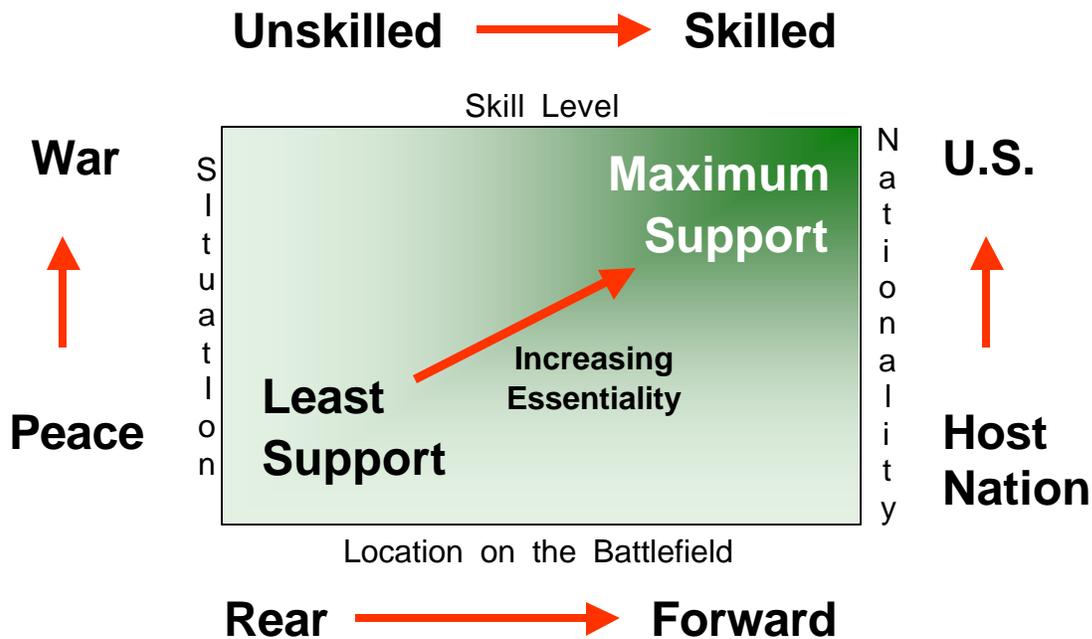
The Army Service Component Command authorizes military support to contractors and contractors employees, based on the situation and acceptable risk and contract terms. The theater Principal Assistant Responsible for Contracting provides additional guidance. Government furnished material and services must be planned, both requirements and sources, as well as documented in contracts.

When the military provides life support it will be on a reimbursable basis whenever possible, and commensurate with the support given to DA civilians.

The Logistics Support Element property book officer will account for all contractor equipment.

The following figure illustrates how several factors affect the amount of support that the Army provides to contractors. Support includes life support, transportation to the theater and within the theater, government furnished material and force protection.

Figure 38-1. Factors Affecting the Level of Support Given to Contractor Personnel



Mission Materiel. The Logistics Support Element does not have an equipment pool for Major Subordinate Command teams including contractors. The teams are likely to require tool kits, bench stock and heavy equipment, the teams may also require generators, light sets, vehicles, tents/shelters computers and communications, beyond what is available from the Logistics Support Element. The Program Manager or Major Subordinate Command is responsible. When teams or individuals augment a military unit in a habituated relationship, the units should plan necessary support. The Logistics Support Elements and Logistics Support Activity will assist with planning.

The exception is the Army Prepositioned Stock hand-off team. Equipment is documented on the strategic Logistics Support Element table of distribution and allowances and stored on the prepositioned ships.

Life Support Materiel. The Logistics Support Activity has limited life support materiel packages and is attempting to

obtain sufficient stocks of tents, generators, vehicles and communications for planned deployments.

Services. If the Army Service Component Command authorizes life support to contractors, it should also provide the necessary resources, whether force structure or coalition or other contractors. Supported units with a habituated relationship should provide life support to attached personnel. The Logistics Support Elements and Logistics Support Activity will assist with planning.

As required, the Logistics Civil Augmentation Program support contractor has a plan to build and operate a base camp for the Logistics Support Element including contractor personnel.

". . . Personnel may have their right to free exercise of religion impinged depending on the location and nature of the conflict. . . necessary to accommodate religious sensibilities of the host nation. . . . Chaplains assigned to battlefield units will provide religious support to contracted support personnel at every echelon."

Army Regulation 715-9, Contractors Accompanying the Force,
21 October 1999

Chaplain. The Logistics Support Element has an augmentation chaplain and chaplain assistant. When deployed they will support military, DA civilians and contractor personnel. Logistics Support Element personnel, especially those who are forward with a habituated relationship with a supported unit, will receive chaplain support from the unit.

References:

a. Army Regulation 715-9, Contractors Accompanying the Force, 29 October 1999.

b. Field Manual 100-21, Contractors on the Battlefield, 26 March 2000.

Suggested Special Contract Requirements: None.

Chapter 40. Contractible Functions

"Depending on the operational situation (METT-TC) and its associated risks, there are a wide variety of support functions on the battlefield that potentially can be provided or augmented by a contractor. All functions other than those inherently governmental in nature (such as, actual combat, the discretionary exercise of government authority, and monetary transactions and entitlement), or functions covered by HNS [Host Nation Support] agreements, may be suitable for contractor support. Many of these are functions that are not uniquely military and are readily available in the commercial sector."

Field Manual 100-10-2, Contracting Support on the Battlefield,
4 August 1999

"Contracted support service personnel will not command, supervise, administer, or control Army or Department of the Army Civilian (DAC) personnel."

Army Regulation 715-9, Contractors Accompanying the Force,
29 October 1999

Some functions are inherently governmental. Office of Federal Procurement Policy Letter 92-1 and the Office of Management and Budget Circular A-76, Revised Supplemental Handbook list government contracting, command/control of military and government employees, and combat as inherently governmental functions.

It is an inherently governmental function to bind the United States to take or not to take some action by contract, policy, regulation, order, authorization or otherwise. However, contractors can provide administrative support to government contracting.

Likewise command and control includes commitment of resources and cannot be contracted. Contractors provide a service with deliverables as defined in the statement of work, not open ended, undefined tasks such as command and control.

Nor can the government contract for mercenaries to fight its wars or use contractors in direct support of soldiers involved in combat. Depending on the situation (Mission, Enemy, Troops, Terrain/weather, Time and Civilian Considerations) most Combat Service Support functions can be contracted but most Combat Support is inherently governmental. For example, the Army can contract for installation guards but contractors cannot be used for tactical perimeter defense. In the first instance, the service is protecting property (the installation); in the second, the forbidden service is protecting personnel.

For AMC that means that many Logistics Support Element positions are inherently governmental and must be filled by military or DA civilians. The government positions include the Logistics Support Element Commander and special staff, the Integrated Readiness Management Team for each Major Subordinate Command, the Senior Command Representative for each Major Subordinate Command, the Logistics Assistance Office, the LOGCAP management team, the contracting officer and the attorney.

From FM 100-10-2, the following functions can be contracted:

- a. Development and production contractors may provide follow-on maintenance and technical support to the systems they have developed and built. This support includes sustainment maintenance on specified equipment and weapon systems and subsystems and associated software, and extends over the entire lifecycle of the system, in peace and war. Contractors (other than system contractors) may also be involved in routine maintenance, repair, rebuild, and overhaul.
- b. The full range of supply and field services may be provided through contract support. Contractors in a theater of operations may provide item management, stockage, and delivery of all classes of supply.
- c. All modes of transportation support at the strategic, operational and tactical levels can be obtained through contract.
- d. Contractor support of communications generally occurs at the operational and strategic level.
- e. Contractors may be employed to renovate or build new facilities and housing to support military forces in the theater.

References:

- a. Field Manual 100-10-2, Contracting Support on the Battlefield, 4 August 1999.
- b. Army Regulation 715-9, Contractors Accompanying the Force, 29 October 1999.
- c. Federal Acquisition Regulation, Part 7.5.
- d. Office of Management and Budget Circular Number A-76, Revised Supplemental Handbook, March 1996.

Suggested Special Contract Requirements: None.

Chapter 41. Program Manager

[Major Army Commands] "MACOMs must review all deliberate and crisis action plans, operational orders, and program requirements to formulate a global strategy for acquiring certain battlefield support service capabilities during operations-other-than-war and wartime. The resulting strategy and support service personnel resources should then be incorporated into all deliberate and crisis action plans, operational orders, and program requirements.

Army Regulation 715-9, Contractors Accompanying the Force,
29 October 1999

This section summarizes what must be addressed by the contract. The Theater Commander and the Army Service Component Commander, with advice from the Principal Assistant Responsible for Contracting, are ultimately responsible and document their decisions in operations plans. The theater Logistics Support Element will advise AMC commands and activities when guidance is tailored to a specific situation. The Program Manager or Integrated Materiel Management Center at the AMC Major Subordinate Command is responsible for drafting the requirement for the contracting officer.

The following must be considered during the negotiating and drafting of any contract that requires the employment/deployment of civilian contractors to support U.S. Army operations/weapon systems:

1. Areas of deployment (to include potential hostile areas) and their associated risks.
2. Physical/ Health limitations that may preclude contractor service in a theater of operations.
3. Contractor personnel reporting and accountability systems to include plans to address contractor personnel shortages due to injury, death, illness, or legal action.
4. Specific training or qualification(s) that will be required by civilian contractors to perform within a theater of operations, e.g. vehicle licensing, chemical, and weapons for self-protection.

5. Reimbursement for government provided services, e.g. medical/dental.

6. Interface between government and contractor Management Information Systems (MIS).

7. A plan to transition from peacetime operations to operations during conflict, war, or Military Operation Other Than War, and a subsequent plan to transition back to peacetime.

8. A plan to transition mission accomplishment back to the government if the situation requires the removal of contractors.

9. Preparation for Overseas Movement (POM), points of Embarkation/Debarcation for U.S. contractors, deployment/re-deployment into/from theater, and deployment of contractor personnel through the specified CONUS Replacement Center.

10. When Status of Forces Agreements (SOFAs) do exist, they may not specifically address the status of contractor personnel. Contractor personnel status will depend on the nature of the specific contingency operations and those applicable SOFA provisions.

References:

a. Department of the Army Policy Memorandum - Contractors on the Battlefield, 12 December 1997, as reproduced in Field Manual 100-10-2, Contracting on the Battlefield, August 1999.

b. Army Regulation 715-9, Contractors Accompanying the Force, 29 October 1999.

Suggested Special Contract Requirements: None.

Chapter 42. Contracting Officer

"Any contracting officer deployed forward shall continue to operate under their existing warrant until such time that the warrant is revoked or voided by the appropriate authority. Contracting Officers shall provide a copy of their existing warrant to the [theater] Principle Assistant for Contracting (PARC) within 45 days upon entering the theater of operations."

Army Regulation 715-9, Contractors Accompanying the Force,
29 October 1999

Major Subordinate Commands must accomplish contract development, award and modification using organic resources. During contract award, contracting officers should, at a minimum, consider the following to ensure that required services continue during operations other than war and wartime operations:

- 1) The offerors should have a clear understanding of the Government's requirements.
- 2) Government furnished materiel, equipment, information and services must be clearly identified.
- 3) Offerors must submit a plan for assuring their capability to perform in operations other than war and in wartime operations, including identification of contractor emergency-essential positions and necessary agreements obtained from those employees to remain on the job during operations other than war and wartime operations.
- 4) Offerors should be informed of insurance available under the Defense Base Act and Longshoremen's and Harbor Workers Compensation Act.

The remainder of the chapter deals with the role of contracting officers and contracting officer representatives who deploy into the area of operations.

The Logistics Support Element augmentation has a contracting officer, class A agent and a legal advisor who purchase material and services locally. They will deploy in the initial party. In addition to contingency contracting, they

will also facilitate communications between the operators (Theater Principal Assistance Responsible for Contracting and the Logistics Support Element) and the weapon system or external support contracting officer at a Major Subordinate Command.

AMC does not generally deploy weapon system and external support contracting officers. They remain at their Major Subordinate Command and respond to guidance from the theater primarily through the theater Logistics Support Element.

Major Subordinate Commands will appoint contracting officer representatives or contracting officer technical representatives whenever they deploy contractors. The contracting officer representatives will be assigned to the Logistics Support Element. They will have direct communications to the contracting officer. Often the Logistics Assistance Representatives will serve as contracting officer technical representatives and the Senior Command Representative will be the contracting officer representative. That facilitates management of contractor employees attached to units, standardization within the theater and consolidated communications between the Logistics Support Element and the Major Subordinate Command.

Additional Information: The following responsibilities of the contracting officer representative are extracted from Field Manual 100-10-2, Contracting on the Battlefield, August 1999:

A contracting officer's representative is the contracting officers designated representative who assists in the technical monitoring and administration of a contract. The contracting officer representative is the requiring activity's or supported unit's link to the contractor, using the contract administration/management process. This individual is designated in writing and must be qualified (according to the requirements established in the Federal Acquisition Regulations and Defense Federal Acquisition Regulation Supplement) to perform the duties and responsibilities delegated by the contracting officer.

A contracting officer's representative's specific duties and responsibilities are delegated, in writing, by the contracting officer. Typically, a contracting officer's representative will be responsible for assisting the contracting officer in the following areas:

- Maintaining liaison and direct communications with both the contractor and the contracting officer.
- Monitoring the contractor's performance, notifying the contracting officer of deficiencies observed during surveillance, and recommending appropriate corrective action.
- Verifying that the contractor has performed the technical and management requirements of the contract.
- Performing all necessary inspections.
- Verifying that the contractor has corrected all correctable deficiencies.
- Performing acceptance for the government of supplies and services received.

Although the contracting officer's representative provides a vital link between the military and the contractor, there are certain limits to his/her authority. A contracting officer's representative is prohibited from:

- Making any agreement with the contractor requiring the obligation of public funds.
- Making any commitments or changes that affect price, quality, quantity, delivery, or other terms and conditions of the contract.
- Encouraging the contractor by words, actions, or a failure to act to undertake new work or an extension of existing work beyond the contract period.
- Authorizing a contractor to obtain property for use under a contract.
- Interfering with the contractor's management prerogative by "supervising" contractor employees or otherwise directing their work efforts.
- Modifying the tour of duty or hours of work.

References:

- a. Army Regulation 715-9, Contractors Accompanying the Force, 29 October 1999.
- b. Field Manual 63-11, Logistics Support Element Tactics, Techniques, and Procedures, October 1996.
- c. Field Manual 100-21, Contractors on the Battlefield, 26 March 2000.
- d. Federal Acquisition Regulation Part 1.
- e. Defense Federal Acquisition Regulation Supplement, Part 201.

Suggested Special Contract Requirements: None.

Appendix A. Preparation for Deployment

1. If required, the following OCIE items may be issued to the contractor employees at the CONUS Replacement Center. All issued items must be returned to the CONUS Replacement Center.

a. Individual Equipment:

- Canteens - Belt
- Duffel bag - Sleeping bag
- Blankets - Waterproof Bags
- First Aid Case

b. Chemical Defense Clothing and Equipment:

- Protective Mask and Optical Inserts
- Overgarments, Chemical
- Hood, Protective Mask
- Overshoes
- Gloves and inserts
- Decontaminating Kit

c. Extreme Weather Clothing and Equipment: Appropriate clothing and equipment will be issued based on the weather conditions in the theater of operations.

2. The following items must be obtained prior to deployment. The recommended source or responsibility for providing each item is also provided.

Item	Responsibility
- Uniform Services Identification Card (DD Form 1173)	CRC
- Geneva Conventions Identity Card (DD Form 489)	CRC
- Passport	Employee/Employer
- Visa (if required)	"
- Immunization Shots (if required)	"
- Dental Panograph (if required)	"
- DNA Sampling (if required)	"
- HIV Testing (if required)	"

3. The following items are recommended prior to deployment:

Item	Responsibility
- Personal Identification tags ("dog tags")	CRC
- Record of Emergency Data (DD Form 93)	CRC
- Applicable SOFA Training	CRC/Employer

- Understanding of Specific Contract Restrictions and Privileges	Employee/Employer
- Personal Will	Employee
- Power of Attorney	"
- Family Care Plan	"
- Direct Deposit	"
- Physical Exam	Employee/Employer
- Review/Update of Health and Life Insurance	"
- Personal Medications (90 day supply)	Employer
- Medical Tags	"
- Extra Pair of Eye Glasses	"
- Personal Hygiene Items (tooth paste, deodorant, etc.)	"
- Disposable Razors/Shaving Kit	"
- Towels and Wash Cloths	"
- Shower Shoes	"
- Underwear (enough for 2 weeks)	"
- Socks (to be worn with boots)	"
- Safety Shoes (if required)	"
- Sewing Kit	"
- Re-usable plastic Bags (various sizes)	"
- Telephone Calling Card	"
- Personal Credit Card	"
- Stationery and Stamps	"
- Radio (battery powered) FM/Short Wave	"
- Extra Batteries	"
- Pocket Knife	"
- Extra Civilians Clothes (5 sets - 2 for casual, 3 for work)	"
- Blank Checks (Banking facilities may or may not be available)	"
- Local Currency	"

Appendix B. Management of Contractors Attached to Military Units

"Weapons system support contracts should encourage the establishment of habitual relationships when practical. This encourages the development of a relationship that fosters team building between the contractor and the military unit; permits processing contractors as part of the unit for deployments; and encourages incorporation of contractor personnel and equipment into the time-phased force deployment data (TPFFD)."

Field Manual 100-21, Contractors on the Battlefield, 26
March 2000

Concept of Operations. Prior planning and on-site management are the thrusts of this concept (similar to the LOGCAP management).

Peacetime. The theater Logistics Support Elements currently manage AMC contractors in-theater and, as approved by the Program Managers, will manage other contractors in the theater. The Logistics Support Element planning cell will work with the Army Service Component Command to document contractor support requirements in operations plans. The Logistics Support Element will pass those requirements to the applicable commands and Program Managers. The Logistics Support Element will ensure that planned contractor deployments, whether by commercial or military means, are included in the time phased force and deployment data and the transportation coordinator-automated information management system (TC-AIMS).

As approved by the Program Managers and contracting officer, the Major Subordinate Command Senior Command Representative assigned to the theater Logistics Support Elements can serve as the contracting officer's representative and Logistics Assistance Representatives will serve as contracting officer technical representatives. The Logistics Assistance Representatives will be the technical advisor for the supported units, assist the unit to manage its attached contractors, and report to the Senior Command Representative.

Instead of appointing the Senior Command Representative, Program Managers may deploy their own personnel. For programs without a corresponding AMC commodity command, the Program

Manager may attach a control cell to the Logistics Support Element.

Initial Operations. Some contractor personnel and Logistics Assistance Representatives will deploy with the early entry force. Until the Logistics Support Element arrives, the Logistics Assistance Representatives will communicate with the contracting officer's representative at home station.

In accordance with Operations Plans, the Logistics Support Element will mobilize and deploy its Jump Tactical Operations Cell (JTOC) and core teams, during the warning phase, before operations commence. Thus, critical contractor management capabilities are expected to be on the ground before C-Day. The JTOC includes the Logistics Support Element Commander, planners, legal advisor, contracting officer, communications, staff and, as required, the LOGCAP team tailored to support the contingency. The core includes critical weapon system sustainment. Contractors and Logistics Support Element reserve component augmentation may deploy as part of the core, although most will deploy later in the main body.

The Logistics Support Element will survey and verify facilities, force protection and life support arrangements. The Logistics Support Element Commander will quickly call forward additional Logistics Assistance Representatives and commodity management teams with the Senior Command Representatives.

Managing the Flow. The Logistics Support Element Commander will manage the flow of contractor personnel into the theater. The theater Logistics Support Element will coordinate Reception, Staging, Onward movement and Integration. The Logistics Support Activity will ensure that personnel data and an accurate Deployment Equipment List are developed and included in the TC-AIMS to arrange for TRANSCOM transportation. The Program Manager or Major Subordinate Command will ensure that proper documentation, including technical expert status, Letter of Authorization/Accreditation, Military Air Authorization Memo, and corporate identification cards.

As required, the Logistics Support Element will call forward non-unit contractor personnel in accordance with the time phased force and deployment data, using Logistics Support Element derivative Unit Identification Codes. Call forward is by message through the AMC operations center to the applicable commodity commands and Program Managers. The AMC operations center will coordinate training at the CONUS Replacement Center

(for personnel deploying from CONUS). Program Managers will not direct contractors to deploy non-unit personnel without a call forward from the Logistics Support Element. If contractor personnel do arrive unexpectedly, the Logistics Support Element will establish control as soon as possible.

Units may deploy with their habitual contractors. In that case, the unit manages the flow and preparation for overseas movement. The Logistics Support Element will coordinate through the unit's Logistics Assistance Representatives, who also deploy with their supported unit.

Policy. The Logistics Support Element will follow policy established by the theater Principal Assistant Responsible for Contracting and Theater Support Command. It is expected that theater plans will address contractor missions, locations, uniforms, weapons, training, and general orders. The Assistant Secretary of the Army (Acquisition, Logistics and Technology) may also provide direction to CONUS-based weapon system Program Managers and Principal Assistant Responsible for Contracting. As approved by the Program Manager, contracting officers will modify contracts to comply with the theater mission requirements and policy direction. The Logistics Support Activity will advise and assist Program Managers and commands regarding contract provisions with the goal of standardizing management and treatment of contractors.

Management Team. The Logistics Support Element Commander will call forward the Main, which includes Major Subordinate Command Integrated Readiness Management Teams. The Logistics Support Element Commander is a voting member of the theater Acquisition Review Board. The Logistics Support Element contracting officer and legal officers will advise the Commander and management teams. The National Program Office (NPO) / National Maintenance Manager (NMM) representatives will advise regarding capabilities and coordinate sustainment resources. The Senior Command Representatives serve as contracting officer's representatives and advise the Logistics Support Element Commander regarding the capabilities and performance of contractors supporting their commodities. They will freely communicate with the contracting officer.

As required, the Logistics Support Element may call forward the contracting officer to facilitate on-site contract modifications. The Logistics Assistance Representatives continue to serve as contracting officer's technical representative. They provide technical guidance, coordinate

contractor requirements, and report contractor performance to their Senior Command Representative.

As required, the Logistics Support Element may call forward additional contracting officer technical representatives to augment the Senior Command Representatives and Logistics Assistance Representatives. Weapon system contractors may be integrated into Major Subordinate Command teams for area support. The Major Subordinate Command team leader will report requirements and performance back through their chain of command to the Senior Command Representatives. They will also coordinate life support, transportation and force protection with the supporting unit. Program Managers and other Major Army Commands may attach personnel to the Logistics Support Element.

New Requirements. During an operation, new requirements for weapon system support may arise. The Acquisition Review Board must approve all new requirements. The senior logistician heads the Board and the Logistics Support Element Commander is a member.

After assessing organic capability and theater contracting, the Board may decide to use an existing weapon system contract. Operational necessity precludes calling forward the Program Managers. Therefore, the Logistics Support Element Commander will communicate new requirements to the appropriate command and Program Manager. The Program Manager will verify that the new requirement is within the scope of work and direct necessary contract modifications. The Program Manager will furnish a rough cost estimate within 48 hours. The Logistics Support Element will advise the Acquisition Review Board and facilitate any necessary negotiations. With the board's approval, the Logistics Support Element will call forward the support. The Program Manager will provide initial funding. The board's approval constitutes a commitment for the theater to reimburse costs.

Administration. The Logistics Support Element will coordinate contract administration with the Defense Contract Management Division - International. Their personnel may be attached to the Logistics Support Element. The Logistics Support Element will account for attached weapon system contractor personnel and equipment. The Logistics Support Element will report contractor operations in their consolidated Situation Report. Logistics Support Element personnel will assist units to assess contractor performance. The Logistics

Support Element Commander will serve on award fee boards as required or as appropriate.

Logistics. Because of the low density and high cost, weapon system contractor self-sufficiency is inefficient and expensive. The Army will generally provide transportation and life support to contractor personnel in the field. Government furnished services as specified in the contract may be provided by other, lower cost, contractors.

The AMC and Logistics Support Element will not plan or acquire equipment or services unless the Program Manager or supported unit requests and funds the support. For contractors in a habituated relationship, the unit will usually provide and account for equipment issued to the contractor. However, as requested by the customer unit (or Program Manager for non-habituated contractors), the Logistics Support Element will account for contractor equipment. AMC will encourage leasing instead of purchase.

Redeployment. Generally, military units will redeploy as soon as possible. Contractors will remain to retrograde materiel. In fact, contractor support may peak post-conflict. The Logistics Support Element will remain in the theater to continue their AMC missions and manage contractor operations as above.

Responsibilities.

a. Logistics Support Activity will serve as the Program Manager for the Logistics Support Element. Logistics Support Activity will maintain the Logistics Support Element contingency Table of Distribution and Allowances, including contractor capabilities and equipment requirements. Logistics Support Activity will develop and propagate policy and procedures regarding the Logistics Support Element, Program Manager, Major Subordinate Command, and contractor team. Logistics Support Activity will advise and assist Program Managers and commands with contingency contract provisions for the scope of work. Logistics Support Activity will validate call forward of contractor personnel. Logistics Support Activity will coordinate deployment operations at home station and final destination.

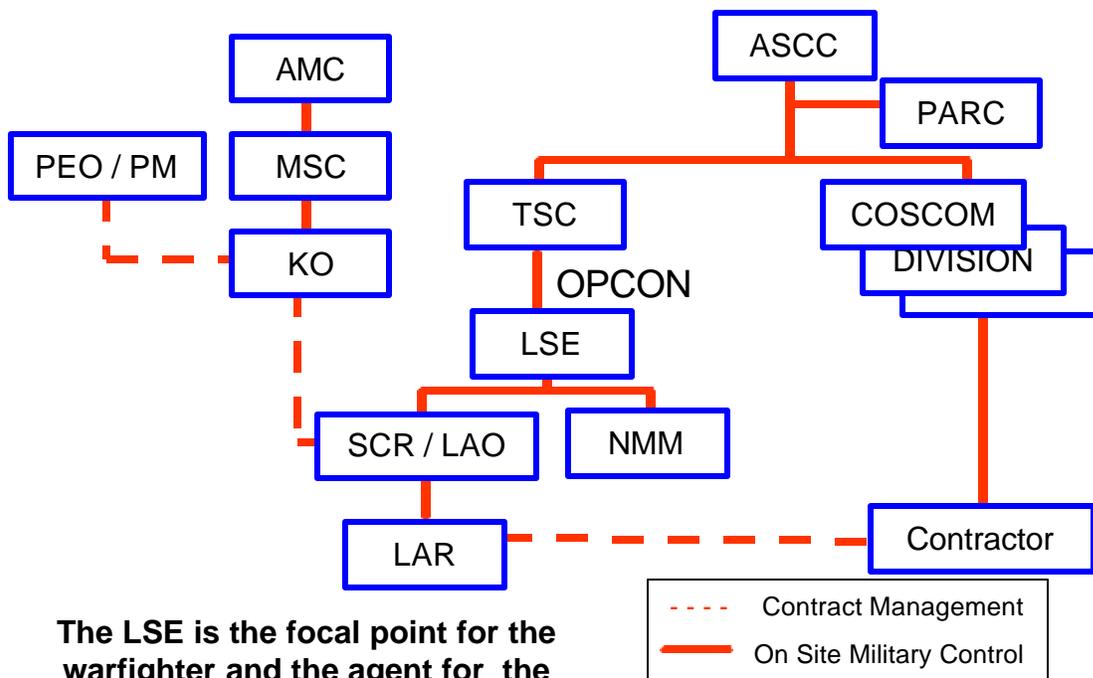
b. Theater Logistics Support Elements will plan and manage contractors in their area.

c. The Program Managers will assist the Logistics Support Element and as required deploy personnel for on-site management. They will inform the Logistics Support Element when contractors deploy. They will provide funding as required.

d. Defense Contract Administration Directorate - International, as specified by the Program Manager, provide administrative contracting officer or administrative contracting officer representative support in the area of operations.

Task Organization. The theater Logistics Support Elements, Logistics Support Activity, and National Maintenance Manager (NMM) have coordination authority with the Program Managers. The Logistics Support Element through its assigned Senior Command Representative has contracting officer's representative authority to manage contractors attached to the Corps Support Command (COSCOM) and units (e.g., divisions). The Logistics Assistance Office and Logistics Assistance Representatives assist the customer to assess contractor performance. The following chart illustrates control and contract management structure.

Figure B-1. Task Organization - What the Customer Sees



The Logistics Support Element is under the operational control and subordinate to the Theater Support Command. During operations, it is augmented with teams from AMC commands and activities including National Maintenance Manager, Logistics Assistance Representatives, and Logistics Civil Augmentation Program.

Appendix C. Compilation of Suggested Contract Special Requirements

"To ensure the support contract services are provided at the desired levels of quality and timeliness, special emphasis should be placed upon the choice of contract type, the contract selection process, and the performance of proactive contract administration. However, of most importance is the establishment of clear and concise contract requirements in either a Statement of Work (SOW) or Statement of Objectives (SOO)."

Army Regulation 715-9, Contractors Accompanying the Force,
29 October 1999

This appendix addresses the deployment of contractor personnel into the theater of operations in support of a contingency. It offers suggested special contract considerations for inclusion in Section H, "Special Contract Requirements," of contracts between the government and contractors. The suggestions cover areas not discussed in current Federal and Department of Defense Acquisition Regulations. The suggestions are intended for use by a Contractor to either modify an existing contract or prepare a new contract to ensure continued performance during a contingency. Additional background material for these suggestions are provided in the main body of this guide.

This appendix does not address the deployment of contractor personnel supporting a contingency operation when they are deployed outside of the contract defined theater of operations. For example, deployments to Germany to support operations in Bosnia are generally not covered by the suggested contract considerations provided in this appendix. Instead, this type of deployment may be more appropriately addressed under the standard contract "Changes" clause as a change to the place of performance or delivery.

The suggested contract considerations provided in this appendix are not all inclusive nor are all items required for all situations. The contracting officer must determine which to use based upon the situation and be cognizant of their cost implications. Each contingency evolves differently because the

theater commanders issue different guidance that impacts the deployment of contractors into their theater of operations. Often, the contracting officer will need clarification on specific requirements applicable to their contract. Within AMC, contracting officers may seek necessary clarification through the Headquarters, U.S. Army Materiel Command operations center.

Following is a list of suggested special contract requirements to include in peacetime contracts in order to facilitate the transition to war.

Figure C-1. Recommended Special Contract Requirements for Peacetime Contracts.

Below is a list of suggested contractual language tailored to both general and specific situations. The suggestions have been grouped and ordered according to the general category layout found in the body of the Contractor Deployment Guide. Additional miscellaneous contract requirements are provided at the end of the appendix. The suggested language may need to be tailored for specific contractual requirements or situations.

Introduction.

- ◆ The government may direct the contractor to perform in support of a contingency or exercise, as provided by law or defined by the applicable Army Service Component Command. Services may be performed in the identified area of operations, also known as theater of operations, or in support of the contingency or exercise, but not in the area of operations.
- ◆ In the event that the contractor deploys individuals into the area of operations in support of a contingency or exercise, the following items and conditions will apply:

Management.

- ◆ The contractor shall ensure that all contractor employees will comply with all guidance, instructions, and general orders applicable to U.S. Armed Forces and DOD civilians and issued by the Theater Commander or his/her representative. This will include any and all guidance and instructions issued based upon the need to ensure mission accomplishment, force protection and safety.

- ◆ The contractor shall comply, and shall ensure that all deployed employees and agents comply, with pertinent Department of Army and Department of Defense directives, policies, and procedures, as well as federal statutes, judicial interpretations and international agreements (e.g., Status of Forces Agreements, Host Nation Support Agreements, etc.) applicable to U.S. Armed Forces or U.S. citizens in the area of operations. Disputes will be resolved by the contracting officer.
- ◆ The contractor shall take reasonable steps to ensure the good conduct of its employees.
- ◆ The contractor shall promptly resolve, to the satisfaction of the contracting officer, all contractor employee performance and conduct problems identified by the cognizant contracting officer or his/her designated representative.
- ◆ The contracting officer may direct the contractor, at the contractor's expense, to remove or replace any contractor employee failing to adhere to instructions and general orders issued by the Theater Commander or his/her designated representative.

Accounting for Personnel.

- ◆ As directed by the contracting officer or his/her representative, the contractor shall report its employees entering and leaving the area of operations.
- ◆ As directed by the contracting officer or his/her representative, the contractor shall report its employees in the area of operations by name and by location.

Logistics Support Element.

- ◆ The contractor shall place all employees deploying to support this contract under administrative control of the designated Logistics Support Element.
- ◆ The contracting officer or his/her representative (in coordination with the Logistics Support Element Commander) shall provide the contractor with all required reporting instructions and procedures.

Risk Assessment and Mitigation.

- ◆ The contractor will brief its employees regarding the potential danger, stress, physical hardships and field living conditions.
- ◆ The contractor will require all its employees to acknowledge in writing that they understand the danger, stress, physical hardships and field living conditions that are possible if the employee deploys in support of military operations.
- ◆ The contractor will conduct physical and medical evaluations of all its deployable employees at their own expense to ensure that they are capable of enduring the rigors of deployment in support of a military operation.
- ◆ The contractor will replace employees within 72 hours, or as directed by the contracting officer, at contractor expense, if the employee departs an area of operations without permission.
- ◆ The contractor will designate a point of contact for all of its plans and operations.
- ◆ The contractor will establish an operations center to plan and control contractor deployment process and resolve operational issues with the deployed force.
- ◆ The contractor will prepare plans for support of military operations as required by contract or as directed by the contracting officer.
- ◆ For badging and access purposes, the contractor will provide the Army with a list of suitable or qualified subcontractors including local vendors in an area of operations.
- ◆ As required by the operational situation, the government will relocate contractor personnel (who are citizens of the United States, aliens resident in the United States or third country nationals, not resident in the host nation) to a safe area or evacuate them from the area of operations.

- ◆ The contractor will hire a set percentage of personnel with a military obligation. The contracting officer will set the percentage based on guidance from the Army Service Component Command.

Funding.

- ◆ The contractor will provide a cost estimate within 24 hours of a tasking by the contracting officer, or other time period as determined by the contracting officer.

Force Protection.

- ◆ The Army will provide force protection to contractor employees commensurate with that given to Department of the Army civilians.

Legal Assistance.

- ◆ While contractor employees are processing for deployment at the CONUS Replacement Center (CRC) or deployed in the theater of operations, the government shall provide legal assistance in accordance with the following conditions:
 - a. The legal assistance is in accordance with applicable international or host nation agreements.
 - b. The legal assistance is limited and ministerial in nature (for example, witnessing signatures on documents and providing notary services), legal counseling (to include review and discussion of legal correspondence and documents), and legal document preparation (limited to powers of attorney and advanced medical directives), and help retaining non-DoD civilian attorneys.

Central Processing and Departure Point.

- ◆ For any contractor employee determined by the government at the deployment processing site to be non-deployable for any reason, the contractor shall promptly remedy the problem. If the problem cannot be remedied in time for deployment, a replacement having equivalent qualifications and skills shall be provided in time for a scheduled deployment.

- ◆ The contracting officer shall identify to the contractor all required mission training and the location of the required training.
- ◆ The contractor shall ensure that all deploying employees receive all required mission training and successfully complete the training.
- ◆ The contracting officer shall inform the contractor of all Nuclear, Biological, and Chemical (NBC) equipment and Chemical Defensive Equipment (CDE) training requirements and standards.
- ◆ The government shall provide the contractor employees with CDE familiarization training commensurate with the training provided to Department of Defense civilian employees.
- ◆ The contractor will provide chemical defense equipment and training for dependents, who accompany its employees to Korea and other areas of operations as designated by the contracting officer.

Standard Identification Cards.

- ◆ The contracting officer shall identify to the contractor all identification cards and tags required for deployment.
- ◆ The contracting officer shall inform the contractor where the identification cards and tags are to be issued.
- ◆ The contracting officer shall coordinate for issuance of required identification cards and tags for all contractor employees not processing through a CONUS Replacement Center.
- ◆ The contractor shall ensure that all deploying individuals have the required identification tags and cards prior to deployment.
- ◆ Upon redeployment, the contractor will ensure that all issued controlled identification cards and tags are returned to the government.

Medical.

- ◆ The contracting officer shall provide the contractor with all physical and medical requirements and standards necessary for deployment.
- ◆ The contractor shall be responsible for providing employees who meet the physical standards and medical requirements for job performance in the designated theater of operations.
- ◆ The government may require medical screening at the CONUS Replacement Center to include DNA sampling and immunizations.
- ◆ For any contractor employee determined by the government to be non-deployable, the contractor shall promptly remedy the problem. If the problem can not be remedied, a replacement having equivalent qualifications and skills shall be provided as determined by the contracting officer.
- ◆ When applicable, the government shall provide to contractor employees deployed in the theater of operations, on a cost reimbursable basis, emergency medical and dental care commensurate with the care provided to Department of Defense civilian deployed in the theater of operations.

Clothing and Equipment Issue.

- ◆ The contractor shall ensure that contractor employees possess the necessary personal clothing and safety equipment to execute contract performance in the theater of operations in accordance with the statement of work.
- ◆ The government shall provide to the contractor all required military unique organizational clothing and individual equipment. (Types of organizational clothing and individual equipment may include Nuclear, Biological, and Chemical defensive equipment.)
- ◆ The contracting officer shall identify to the contractor the organizational clothing and individual equipment issue point and issue items.

- ◆ Upon receipt of organizational clothing and individual equipment, the contractor shall assume responsibility and accountability for these items.
- ◆ The contractor or contractor employee shall sign for all issued organizational clothing and individual equipment, thus, acknowledging receipt and acceptance of responsibility for the proper maintenance and accountability of issued organizational clothing and individual equipment.
- ◆ The contractor shall ensure that all issued organizational clothing and individual equipment is returned to the government. Upon return of organizational clothing and individual equipment to the government, the contractor shall be responsible for requesting, maintaining, and providing to the contracting officer documentation demonstrating the return of issued organizational clothing and individual equipment to government control.
- ◆ The contracting officer will require the contractor to reimburse the government for organizational clothing and individual equipment lost or damaged due to contractor negligence.

Weapons and Training.

- ◆ The government may choose to issue weapons for self-defense to the contractor employees. Acceptance of weapons by contractor employees is at the discretion of the contractor and the contractor employees. When accepted, the contractor employee is responsible for using the weapon in accordance with the rules of engagement issued by the Theater Commander. The contractor employee is legally liable for any use that is not in accordance with the rules of engagement. Also when accepted, only military issued ammunition may be used in the weapon.
- ◆ Prior to issuing any weapons to contractor employees, the government shall provide the contractor employees with weapons familiarization training commensurate to training provided to Department of Defense civilian employees.
- ◆ The contractor shall ensure that its employees adhere to all guidance and orders issued by the theater Commander or

his/her representative regarding possession, use, safety and accountability of weapons and ammunition.

- ◆ Upon redeployment or notification by the government, the contractor shall ensure that all government issued weapons and ammunition are returned to government control.
- Contractors will screen employees to ensure that employees can be issued a weapon in accordance with U.S. law (e.g., no felony conviction for any reason and no misdemeanor conviction for spousal abuse) or applicable host nation laws.

Vehicle and Equipment Operation.

- ◆ The contractor shall ensure that deployed employees possess the required civilian licenses to operate the equipment necessary to perform the contract in the theater of operations in accordance with the statement of work.
- ◆ Before operating any military owned or leased equipment, the contractor employee shall provide proof of license (issued by an appropriate governmental authority) to the contracting officer or his/her representative.
- ◆ The government, at its discretion, may train and license contractor employees to operate military owned or leased equipment.
- ◆ The contractor and its employees may be held jointly and severally liable for all damages resulting from the unsafe or negligent operation of military owned or leased equipment.

Passports, Visas and Customs.

- ◆ At the contractor employee's and/or contractor's expense, the contractor employees shall obtain all passports, visas, or other documents necessary to enter and/or exit any area(s) identified by the contracting officer.
- ◆ All contractor employees shall be subject to the customs processing procedures, laws, agreements and duties of the country in which they are deploying to and the

procedures, laws, and duties of the United States upon re-entry.

- ◆ The contracting officer will determine and stipulate the allowability and allocability of payment for entry/exit duties on personal items in possession of contractor employees.

Reception, Staging, Onward Movement and Integration.

- ◆ Upon arrival in the area of operations, contractor employees will receive Reception, Staging, Onward movement and Integration, as directed by the contracting officer or his/her designated representative.

Living under Field Conditions.

- ◆ The government shall provide to contractor employees deployed in the theater of operations the equivalent field living conditions, subsistence, emergency medical and dental care, sanitary facilities, mail delivery, laundry service, and other available support afforded to government employees and military personnel in the theater of operations, unless otherwise specified in the contract.

Morale, Welfare, Recreation.

- ◆ The government shall provide to contractor employees deployed in the theater of operations, morale, welfare, and recreation services commensurate with that provided to Department of Defense civilians and military personnel deployed in the theater of operations.

Status of Forces Agreement.

- ◆ After having consulted with the servicing legal office, the contracting officer shall advise the contractor on all applicable Status of Forces Agreements (SOFA) and other similar related agreements.
- ◆ The contractor shall adhere to all relevant provisions of the applicable Status of Forces Agreements (SOFA) and other similar related agreements.

- ◆ (For Germany) The contractor is responsible for documenting technical expert status, as required.

Pay.

- ◆ In the event the contractor must pay additional compensation above that contemplated under the contract, to retain or obtain personnel to perform in a theater of operations during a declared contingency, the contractor shall be entitled to an equitable adjustment under this contract. The contractor shall furnish proper data to the contracting officer to substantiate any adjustment to the contract. Failure to agree to an amount of any such adjustment shall be a dispute within the meaning of the clause entitled "Disputes" as contained in this contract.
- ◆ To ensure continuation of essential services, the contractor shall structure pay of deployed employees such that half the compensation is in the form of a bonus for successfully completing the assigned tour. However, the bonus will not be denied because of death or because of government or opposing force actions, including government ordered evacuation or captivity by opposing forces.

Tour of Duty / Hours of Work.

- ◆ The contracting officer shall provide the contractor with the anticipated duration of the deployment.
- ◆ The contractor, at his/her own expense, may rotate contractor employees into and out of the theater provided there is not degradation in mission results.
- ◆ The contracting officer shall approve in advance all changes to personnel.
- ◆ The contracting officer shall provide the contractor with the anticipated daily or weekly work schedule.
- ◆ The contractor shall comply with all duty hours and tours of duty identified by the contracting officer or his/her designated representative.
- ◆ The contracting officer, or his/her designated representative, may modify the work schedule to ensure the government's ability to continue to execute its mission.

On-Call Duty.

- ◆ The contractor shall be reasonably available to work (i.e., "on-call) during other than "regular hours" to perform high priority tasks.
- ◆ The contracting officer, or his/her designated representative, will identify the parameters of "reasonable availability" and all remuneration for "on-call" duty.

Health and Life Insurance.

- ◆ The contractor shall ensure that health and life insurance benefits provided to its deploying employees are in effect in the theater of operations.

Next of Kin Notification.

- ◆ Before deployment, the contractor shall ensure that each contractor employee completes a DD Form 93, Record of Emergency Data Card, and returns the completed form to the contracting officer's representative or designated government official.

Return Procedures.

- ◆ Upon notification of redeployment, the contracting officer shall authorize contractor employee travel from the theater of operations to the designated CONUS Replacement Center (CRC) or individual deployment site.
- ◆ The contractor shall ensure that all government-issued clothing and equipment provided to the contractor or the contractor's employees are returned to government control upon completion of the deployment.
- ◆ The contractor shall provide the contracting officer with documentation, annotated by the receiving government official, of all clothing and equipment returns.

Glossary - List of Acronyms

AMC	Army Materiel Command
ARFOR	Army Forces
ASCC	Army Service Component Command
C2	Command and control
CINC	Command-In-Chief
COR	Contracting officer representative
COTR	Contracting officer technical representative
COSCOM	Corps Support Command
DA	Department of the Army
DAC	Department of the Army civilian
DCAD-I	Defense Contracting Administrative Directorate International
DNA	Deoxyribonucleic acid
DOD	Department of Defense
DFAR	Defense Federal Acquisition Regulations
EAD	Echelons Above Division
FAR	Federal Acquisition Regulations
FM	Field Manual
FSG	Family Support Group
KO	Contracting officer
LAO	Logistics Assistance Office
LAR	Logistics Assistance Representative
LHWCA	Longshore and Harbor Workers' Compensation Act
LOGCAP	Logistics Civil Augmentation Program
LOGPLAN	Logistics plan
LOGSA	Logistics Support Activity
LSE	Logistics Support Element
MACOM	Major Army Command
METT-TC	Mission, Enemy, Troops, Terrain/weather, Time and Civilian considerations
MPS	Military Postal Service
MSC	Major Subordinate Command
MWR	Morale, welfare and recreation
NBC	Nuclear, Biological, and Chemical
NMM	National Maintenance Manager
OPCON	Operational Control
OPLAN	Operations plan
OPORD	Operations order

PARC	Principal Assistant Responsible for Contracting
PEO	Program Executive Office
PM	Program Manager
POL	Petroleum, oil and lubricants
POW	Prisoner of war
RSO&I	Reception, staging, onward-movement and integration
SCR	Senior Command Representative
SITREP	Situation report
SOFA	Status of Forces Agreement
SRP	Soldier Readiness Processing
TDA	Table of distribution and allowances
TPFDD	Time phased force and deployment data
TSC	Theater Support Command
UN	United Nations
U.S.	United States
USC	United States Code
UCMJ	Uniform Code of Military Justice
VTCA	Victims of Terrorism Compensation Act
WHCA	War Hazards Compensation Act