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POINT PAPER

31 March 1997

SUBJECT: Contractor Technical Experts in Germany

PURPOSE: Provide information about how a new interpretation of "technical experts" affects AMC

FACTS:

- German state authorities recently adopted a more restrictive interpretation of who qualifies for "technical expert" status under Art. 73, NATO SOFA Supplementary Agreement. This affects AMC and all DoD contracts which call for U.S. contractor employees to perform services in Germany.
- Article 73 states, "technical experts...who serve (the) Force in an advisory capacity in technical matters or for the setting up, operation or maintenance of equipment...shall be treated as members of the civilian component." It also states that persons who are "ordinarily resident" in Germany may not be considered technical experts. Unless tech expert status has been granted, U.S. contractor employees in Germany: (i) may not work in-country without a work permit granted by the German government, (ii) are subject to German income taxes, and (iii) are ineligible for certain logistic support, including commissary and PX privileges.
- Traditionally, U.S. has had broad discretion in designating contractor employees as tech experts. However, German authorities have recently begun challenging these designations. The Germans contend that in many cases the U.S. has granted tech expert status to contractor employees (i) whose duties do not require specialized technical expertise and/or (ii) who are "ordinarily resident" in Germany by virtue of long term physical residence, marriage to German spouse, or ownership of real property. The Germans' objection reflects concern over lost tax revenue and jobs for German citizens. Under the German federal system, individual states, as opposed to the national government, have primary responsibility for tax collection. Several states ("Laender") have initiated tax enforcement actions against individual contractor employees.
- There are currently about 2500 technical experts in Germany. Of these, roughly 2200 are affiliated with Army contracts. Based on a recently completed data call, we believe approximately 700 belong to AMC. STRICOM has the highest number, but all AMC MSCs are affected.
- The tech expert issue impacts AMC in several ways: First, individual contractor employees are at risk of German criminal/civil action for nonpayment of taxes and working in-country without a permit. Second, enforcement of work permit requirements could prevent contractor personnel from performing, which would

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disrupt contract support AMC provides to USAREUR. Third, AMC could incur substantial contract cost increases to the extent individual contracts allow pass through of costs related to this issue. These costs include employee tax liability as well as logistic support which contractor employees could heretofore obtain at less cost from U.S. facilities. Fourth, as noted in the last bullet, AMC will have to modify its procurement procedures to provide German authorities with advance notice and consultation on tech expert determinations in future contracts.

- USAREUR, USAFE, and USEUCOM have briefed the tech expert problem to the DA and DoD staffs. The U.S. Embassy in Bonn is conducting ongoing negotiations with German authorities. In addition, AMC is participating in a DoD working group on this issue.
- On 26 Feb 97, the Director, Defense Procurement, issued a memorandum prepared by the working group, subject: Contracts to be Performed in the Federal Republic of Germany (Germany). This memorandum supplements DFARS 225.802-70 and provides interim acquisition guidance on the tech expert issue. It requires DoD contracting activities, contemplating solicitation/award of a contract where contractor employees will have tech expert status, to follow a two-step coordination process with designated U.S. offices in Germany. The initial coordination must be completed prior to issuance of the solicitation. The second coordination, which includes by-name designation of proposed tech experts, must be completed prior to contract award. These procedures implement a July 1995 international agreement and are designed to provide German authorities with advance notice and consultation on proposed tech experts.

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