CHAPTER 27(A)

SENIOR OFFICER LEGAL ORIENTATION

CIVILIANS ON THE BATTLEFIELD

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OUTLINE OF INSTRUCTION

I. REFERENCES

A. DODD 1404.10, Emergency-Essential (E-E) DOD U.S. Citizen Civilian Employees, April 10, 1992

B. DODD 1400.31, DOD Civilian Work Force Contingency and Emergency Planning and Execution, April 28, 1995

C. DODI 1400.32, DOD Civilian Work Force Contingency and Emergency Planning Guidelines and Procedures, April 28, 1995

D. AR 690-11, Use and Management of Civilian Personnel in Support of Military Contingency Operations, 26 May 2004

E. DA Pam 690-47, DA Civilian Employee Deployment Guide, 1 November 1995

F. Civilian Personnel Management Guide for Management Officials During Contingencies and Emergencies, March 2003, available at http://www.cpms.osd.mil/civ_prep/ManagementGuide.pdf

II. INTRODUCTION

A. "It is DOD policy that the DOD civilian workforce shall be prepared to respond rapidly, efficiently, and effectively to meet mission requirements for all contingencies and emergencies." DoDI 1400.32, para 4 (April 24, 1995)

III. DESIGNATING EMERGENCY ESSENTIAL POSITIONS

A. Identify E-E Positions

1. Include civilian positions overseas or in the United States that would be transferred overseas in a crisis situation.

   a. The specific crisis situation duties and responsibilities and physical requirements of each E-E position must be identified and documented to ensure that E-E employees know what is expected of them.

   b. Documentation can be:

      (1) Annotation of E-E duties in existing peacetime position descriptions;

      (2) Brief statements of crisis situation duties attached to position descriptions if materially different than peacetime duties;

      (3) Separate E-E position descriptions.

   c. Record E-E Position Designation. A statement shall be included in the position description of each E-E identified position.

      (1) Example: "This position is emergency-essential (E-E). In the event of a crisis situation, the incumbent, or designated alternate, must continue to perform the E-E duties until relieved by proper authority. The incumbent or the designated alternate may be required to take part in readiness exercises. This position cannot be vacated during a national emergency or mobilization without seriously impairing the capability of the organization to function effectively; therefore, the position is designated "key," which requires the incumbent, or designated alternate, to be screened from military recall status."

2. Ensure that civilian positions are designated "E-E" only when civilians are required for direct support to combat operations, or to combat systems support functions that must be continued and that could not otherwise be immediately met by using deployed military possessing the skills in the number and in the functions expected to be needed to meet combat operations or systems support requirements in a crisis situation.

3. Ensure that employees are identified to perform the duties of E-E positions, including the identification of alternates to cover vacant E-E positions or those in which the incumbents are unable to perform the duties or have not signed the E-E position agreement.

4. Issue E-E employees, or employees occupying positions determined to be E-E, the DD Form 489, "Geneva Convention Identity Card for Civilians Who Accompany the Armed Forces," or DD Form 1934, "Geneva Convention Identity Card for Medical and Religious Personnel Who Serve In or Accompany the Armed Forces," as appropriate.

5. Advise applicants for E-E positions that individuals selected to fill these positions are required to sign written agreements (DD Form 2365), "DoD Civilian Employee Overseas Emergency-Essential Position Agreement."

   a. The agreements document that incumbents of E-E positions accept certain conditions of employment arising out of crisis situations wherein they shall be sent on temporary duty, shall relocate to duty stations in overseas areas, or continue to work in overseas areas after the evacuation of other U.S. citizen employees who are not in E-E positions.

   b. All individuals selected for E-E positions must be exempted from recall to the military Reserves or recall to active duty for retired military.

6. Encourage incumbents of positions that become E-E to sign DD Form 2365 as soon as reasonably practicable and consistent with the needs of the military mission.

a. Those employees who decline to sign the agreement should be detailed or reassigned to non-E-E positions as soon as reasonably practicable given the exigencies of the military situation. If that is not possible, no further overseas tour extension should be approved.

7. Attempt to fill E-E positions with employees who volunteer to occupy such positions and sign the E-E agreement or direct the involuntary assignment of civilian employees to E-E positions as may be necessary to meet the exigencies of the circumstances and when unforeseen contingencies prevent prior identification of those positions as being "E-E."

8. If an employee declines to sign the agreement, but possesses special skills and expertise, which in management's view renders it necessary to send that employee on the assignment without signing the agreement, the employee may be directed on involuntary temporary duty to the location where the employee's skills are required. EE employees may be separated from employment for failure to remain in an EE position or to relocate on temporary duty or permanent change of station to an EE position. All civilian employees deploying to combat operations/crisis situations are considered EE regardless of volunteer status or the signing of the EE position agreement.

9. Notification of Anthrax Immunization Requirements. Title 10, U.S. Code, as amended by § 751 of the National Defense Authorization Act for FY 2001, requires SECDEF to prescribe regulations to ensure E-E civilians required to participate in the anthrax vaccine program are notified of the requirement and of the consequences of a decision not to participate.

a. Written notice is required. E-E civilians must sign acknowledging receipt of notification. A copy of the acknowledgement must be filed with the signed DD Form 2365 (E-E Position Agreement).

b. Notice of anthrax immunization requirements must be included in all vacancy announcements for E-E positions.

c. See Memorandum dated June 25, 2001, Assistant SECDEF for Force Management, SUBJECT: Notifying Emergency-Essential Employees Regarding Anthrax Immunization Requirements-- contains sample notification and vacancy announcement statement as follows:

(1) "This is to notify you that your position has been designated as emergency essential. You may be required, as a condition of employment, to take the series of anthrax vaccine immunizations to include annual boosters. This may also include other immunizations that may in the future be required for this position, or for a position you may fill as an emergency essential alternate. Failure to take the immunizations may lead to your removal from this position or separation from Federal service.

Acknowledgement: This is to acknowledge that I have read and fully understand the potential impact of the above statement" {employee signature and date}.

d. See Memorandum dated September 22, 2004, Under Secretary of Defense for Personnel and Readiness, SUBJECT: Expansion of Force Health Protection Anthrax and Smallpox Immunization Programs for Emergency-Essential and Equivalent Department of Defense Civilian Employees. "At this time, [DoD] Components are directed to amend their anthrax and smallpox immunization programs to accomplish the following:

(1) Vaccinate emergency-essential and equivalent civilian DoD employees assigned in or designated as early deployers (C-Day to C+20) to the Korean Peninsula for 15 or more consecutive days, to include the U.S. Pacific Command Forward Deployed Naval Forces, against smallpox and anthrax, unless medically exempted.

(2) Expand anthrax and smallpox vaccinations to include all emergency-essential and equivalent civilian DoD personnel serving in the Central Command Area of Responsibility, unless medically exempted.

IV. DEPLOYMENT PREPARATIONS

A. E-E employees shall be provided protective equipment, work related training, law of war training, and training in the Uniform Code of Military Justice, commensurate with the anticipated threat and theater policy.

1. Protective Equipment Training Requirements

a. Civilian employees should be issued (and trained in the use of) the same protective gear as is issued to military personnel in theater, to include lens inserts, if required.

2. Training for civilian employees on their responsibilities; e.g. standards of conduct, as well as coping skills if they become Prisoners Of War.

3. Civilian employees shall receive the same immunizations as given to military personnel in theater.

4. Civilian employees shall be provided appropriate cultural awareness training for the theater if such training is being provided to military personnel.

5. Civilian employees shall be issued passports, visas, and country clearances.

6. Civilian employees shall be issued any required security clearances expeditiously.

7. Civilian employees will fill out DD Form 93,"Record of Emergency Data." Components will establish procedures to store and access civilian DD 93s that are the same as or parallel to those for military personnel.

a. Components will set up procedures for civilian casualty notification and assistance that parallel those for military personnel.

8. Provisions shall be made for medical care of civilian employees in a theater of operations.

a. They shall be HIV-tested before deployment, if the country of deployment requires it.

(1) DA policy (DA DCSPER/ OTJAG decision) is that in those isolated situations when a requirement exists for mandatory HIV screening, and the test is positive, a civilian can be deployed in support of a contingency operation as long as the host country is notified and the individual is able to perform assigned duties.

b. All DOD-sponsored non-military personnel PCS or TDY outside the United States and its Territories shall have panarex or DNA samples taken for identification purposes.

(1) Dental x-rays may be substituted when the ability to take panarex or DNA samples is not available.

c. Civilians may also be issued" dog tags" for identification purposes.

(1) Components shall establish procedures to store and access such identification data that are the same as or parallel to those for military personnel.

d. Civilians shall receive medical and dental examinations and, if warranted, psychological evaluations to ensure fitness for duty in the theater of operations to support the military mission.

(1) During a contingency or emergency, civilian employees returning to the United States and its Territories from a theater of operations shall receive cost-free military physical examinations within 30 days if the medical community decides it is warranted, or required for military personnel.

e. Civilians shall carry with them a minimum of a 90-day supply of any medication they require.

f. Civilians with dependents who are in or deploying to a theater of operations are encouraged to make Family Care Plans.

(1) As a condition of employment, single parents or families where both parents are emergency-essential civilians are required to prepare a family care plan. This plan will be equivalent to that required of the military located in the same geographical area. DoDD 1404.10, para. 6.4.

g. Civilians killed in a theater of operations shall be processed by Graves Registration personnel with procedures parallel to those for the military personnel.

(1) An escort officer for the remains of civilians killed is authorized; and a flag shall be purchased for the casket at Government expense.

h. Legal assistance relating to matters of deployment is available to Army civilians, notified of deployment, as well as their families. Legal assistance will be available for the period of deployment and is limited to matters related to deployment as determined by the on-site supervising attorney.

(1) Civilians deploying to or in a theater of operations shall be furnished the opportunity and assistance with making wills and any necessary powers of attorney.

B. Weapons Certification and Training

1. Under certain conditions Army civilians may be issued military firearms for their personal self-defense, subject to military regulations regarding training in proper use and safe handling of firearms. Acceptance of a military firearm is voluntary by the emergency-essential civilian. DA PAM 690-47 (para. 1-12).

a. Authority to carry military firearms is contingent upon the approval and guidance of the supported Combatant Commander. The Army Component Commander must make the decision early in the operation as to whether or not civilians may be armed.

b. Only government issued military firearms/ammunition are authorized. Familiarization training will be conducted IAW FM 23-35.

C. Clothing and Equipment Issue

1. Organization Clothing and Individual Equipment (OCIE) will be issued to emergency-essential personnel and other civilians who may be deployed in support of military operations.

a. Kevlar helmets, load bearing equipment, and chemical defensive equipment will be worn in a tactical environment in accordance with supported unit procedures.

b. Maintenance and accountability of EE clothing and equipment is the responsibility of the employee to whom the items were issued.

c. Items of personal clothing and personal care are the responsibility of the individual. Civilian employees should bring work clothing required by their particular job.

V. COMMAND AND CONTROL DURING DEPLOYMENTS

A. During a crisis situation or deployment, civilian employees are under the direct command and control of the on-site supervisory chain. Therefore, the on-site supervisory chain will perform the normal supervisory functions; for example, those related to performance evaluations, task assignments and instructions, and initiating and effecting recognition and disciplinary actions.

B. The on-site commander may impose special rules, policies, directives, and orders based on mission necessity, safety, and unit cohesion. These restrictions need only be considered reasonable in the circumstance of the deployment to be enforceable.

VI. PAY AND ALLOWANCES DURING DEPLOYMENTS

A. Civilian employees receive the same pay and allowances to which they were entitled prior to deploying, and to which they would become entitled thereafter (i.e., within grade increases).

1. There is no tax exclusion for civilian employees similar to the combat tax exclusion for military members.

B. Tour of Duty. 5 U.S.C. § 6101; 5 C.F.R. § 610.121; 5 U.S.C. § 6131. The administrative workweek constitutes the regularly scheduled hours for which a deployed employee must receive basic and premium pay. Under some conditions, hours worked beyond the administrative workweek may be considered to be irregular and occasional, and compensatory time may be authorized in lieu of overtime/premium pay.

1. The authority for establishing and changing the tours of duty for civilian employees is delegated to the in-theater commander or his representative. The duration of the duty is dependent upon the particular operation and will be established by the in-theater commander.

C. Overtime. GS employees whose basic rates of pay do not exceed that of a GS-10 step 1, will be paid at a rate of one and one-half times their basic hourly pay rate for each hour of work authorized and approved over the normal 8 hour day or 40 hour week. Employees whose rate exceeds that of a GS-10, step 1, will be paid at the rate of one and one-half times the basic hourly rate of a GS-10, step 1 or their basic rate of pay, whichever amount is *greater* (per 2004 Defense Authorization Act).

1. If overtime is not approved in advance, the employee's travel orders should have this statement in the remarks column: "Overtime authorized at TDY site as required by the Field Commander. Time and attendance reports should be sent to (name and address)." The field commander should then submit to the employee's home installation a DA Form 5172-R, or local authorization form (with a copy of the travel orders), documenting the actual premium hours worked by each employee for each day of the pay period as soon as possible after the premium hours are worked.

2. Premium Pay Limitations. Normally, the aggregate rate of pay (including base and premium pay) for any pay period is limited to the greater of the biweekly rate of pay for GS-15, Step 10 or Level V of the Executive Schedule. 5 U.S.C. § 5547. This biweekly limitation does not apply to work performed in connection with an emergency that involves a direct threat to life or property or work that is critical to the agency's mission. General Schedule employees may receive premium pay as long as the annual total (basic plus premium pay) does not exceed the greater of the annual rate for GS-15, step 10 or Level V of the Executive Schedule. By administrative extension, this emergency authority to apply the annual limitation also applies to NAF payband employees. Within DOD, the authority to determine the existence of an emergency has been delegated to officials who exercise personnel appointing authority (normally the head of an installation or activity). DOD 1400.25-M, SC 550, § 551.501(d). Wage Grade employees are not subject to the premium pay limitations described above.

D. On Call Employees. During crisis situations, the nature of the work may make it necessary to have employees "on-call" because of emergencies or administrative requirements that might occur outside the established work hours.

1. On-site commanders may designate employees to be available for such a call during off-duty times. Designation of employees for this purpose will follow these guidelines:

   a. There should be a definite possibility that the services of the designated employee might be required;

   b. On-call duties required of the employees will be brought to the attention of all employees concerned;

   c. If more than one employee could be used for on-call service, the designation should be made on a rotating basis;

2. The designation of employees to be "on-call" or in an "alert" posture will not, in itself, serve as a basis for additional compensation (i.e., overtime or compensatory time). If an employee is called in, the employee must be compensated for a minimum of two hours.

E. Leave Accumulation. Any annual leave in excess of the maximum permissible carry over is automatically forfeited at the end of the leave year. 5 U.S.C. § 6304. Annual leave forfeited during a combat or crisis situation, which has been determined by appropriate authority to constitute an exigency of the public business, may be restored for future use. 5 U.S.C. § 6304(d)(1)(B). The employee must file for leave carry over.

F. Foreign Post Differential. 5 U.S.C. § 5925. Employees assigned to work in foreign areas where the environmental conditions either differ substantially from CONUS conditions or warrant added compensation as a recruiting and retention incentive are eligible for Foreign Post Differential (FPD) after being stationed in the area in excess of 41 days.

1. FPD is exempt from the pay cap and is paid as a percentage of the basic pay rate not to exceed 25% of the basic pay.

   a. The Department of State determines areas entitled to receive FPD and the FPD rate for the area. The Department of State also determines the length of time the rate is in effect. Different areas in the same country can have different rates.

G. Danger Pay. 5 U.S.C. § 5928. Civilian employees serving at or assigned to foreign areas designated for danger pay by the Secretary of State, because of civil insurrection, civil war, terrorism or wartime conditions which threaten physical harm or imminent danger to the health or well being of a majority of employees stationed or detailed to that area, will receive a danger pay allowance (DPA).

1. The allowance will be a percentage of the employee's basic compensation at the rates of 15, 20, or 25 percent as determined by the Secretary of State. This allowance is in addition to any foreign post differential prescribed for the area but in lieu of any special incentive differential authorized the post prior to its designation as a danger pay area.

   a. The foreign post differential may be reduced by any part attributable to political violence. The combined danger pay and post differential must be at least 5 percent above the previous combined post differential and special incentive differential at the post, if any, in effect at the post prior to its designation as a danger pay area.

2. The DPA commences for employees already in the area on the date of the area's designation for danger. For employees later assigned or detailed to the area, DPA commences upon arrival in the area. For employees returning to the post after a temporary absence it commences on the date of return.

3. DPA will terminate with the close of business on the date the Secretary of State removes the danger pay designation for the area or on the day the employee leaves the post for any reason for an area not designated for the DPA.

   a. The DPA paid to Federal civilian employees should not be confused with the Imminent Danger Pay (IDP) paid to the military. The IDP is triggered by different circumstances and is not controlled by the Secretary of State.

H. Hostile Fire Pay. 5 U.S.C. § 5949. Allows payment of $150 per month, but not payable to employees already receiving danger pay allowance.

I. Life Insurance. Federal civilian employees are eligible for coverage under the Federal Employees Group Life Insurance (FEGLI) program. Death benefits (under basic and all forms of optional coverage) are payable regardless of cause of death.

1. The Office of Personnel Management (OPM) has confirmed that civilians who are deployed with the military to combat support roles during times of crises are not "in actual combat" and are entitled to accidental death and dismemberment benefits under FEGLI in the event of death. Similarly, civilians carrying military firearms for personal protection are not "in actual combat."

VII. MILITARY EXTRATERRITORIAL JURISDICTION ACT OF 2000 18 U.S.C. §3261 ("MEJA")

A. Background. Since the 1950s, the military has been prohibited from prosecuting by courts-martial civilians accompanying the Armed Forces overseas in peacetime who commit criminal offenses. Many Federal criminal statutes lack extraterritorial application, including those penalizing rape, robbery, burglary, and child sexual abuse. In addition, many foreign countries decline to prosecute crimes committed within their nation, particularly those involving another U.S. person as a victim or U.S. property. Furthermore, military members who commit crimes while overseas, but whose crimes are not discovered or fully investigated prior to their discharge from the Armed Forces are no longer subject to court-martial jurisdiction. The result is jurisdictional gaps where crimes go unpunished.

B. Solution. The Military Extraterritorial Jurisdiction Act (MEJA) closes the jurisdictional gaps by extending Federal criminal jurisdiction to civilians overseas and former military members.

C. What Is Covered.

1. Conduct that is a crime under U.S. law in special maritime and territorial jurisdiction.

2. Felony-level offenses, i.e., offenses punishable by imprisonment for more than 1 year.

3. Conduct committed outside the United States.

D. Who Is Covered.

1. Civilians while "Employed by the Armed Forces." This includes:

a. Those present or residing outside the U.S. in connection with such employment who are (a) civilian employees of the DoD, (b) DoD contractors (including subcontractors at any tier), or (c) employees of a DoD contractor (including subcontractors at any tier.

b. But NOT a national or person ordinarily resident in the host nation.

2. Civilians "Accompanying the Armed Forces." This includes:

a. Those who are residing outside the U.S. and are dependents of:

(1) Any of the above civilian employees/contractors.

(2) Any member of the Armed Forces.

b. But NOT a national or person ordinarily resident in the host nation.

3. Former military members who commit such crimes while a member of the Armed Forces overseas, but who cease to be subject to UCMJ court-martial jurisdiction (e.g., discharged from the service) and have not previously been court-martialed for such offenses.

E. Limitations.

1. Foreign Criminal Jurisdiction. If a foreign government, in accordance with jurisdiction recognized by the U.S., has prosecuted or is prosecuting the person, the U.S. will not prosecute the person for the same offense, absent approval by the Attorney General or Deputy Attorney General.

2. Military Member as Co-Actor/Conspirator. Military members subject to the UCMJ will not be prosecuted under this Act, unless the member ceases to be subject to the UCMJ, or the indictment or information charges that the member committed the offense with one or more other defendants, at least one of whom is not subject to the UCMJ (i.e., this Act provides a limited exception to exclusive military UCMJ jurisdiction).

3. Juveniles. Juveniles are subject to the Federal Juvenile Delinquency Act (18 U.S.C. §§ 5031-5042). Juvenile delinquency is an adjudication of status, not a crime. In limited cases, juveniles over 13 may be tried as an adult.

   a. Federal courts cannot proceed against juveniles without Attorney General certification to the U.S. District Court that:

      (1) State courts do not have jurisdiction (e.g. overseas offense).

      (2) Offense is a crime of violence or violates the Controlled Substances Act, AND

      (3) There is a substantial federal interest in the case or the offense to warrant the exercise of federal jurisdiction.

F. Removal to the U.S. and Initial Proceedings.

1. SECDEF is authorized to designate any DOD law enforcement person to make a probable cause arrest of persons for such U.S. felonies and promptly deliver these persons to the custody of U.S. civilian law enforcement for removal to the U.S. for judicial proceedings.

2. Limitations on Removal. The person arrested shall not be removed to another foreign country, other than where the offense was committed, or to the U.S., except when ordered by a Federal magistrate judge for:

   a. Presence in the U.S. at a detention hearing;

   b. Pretrial detention;

   c. Preliminary examination, when person is entitled to one and does not waive it; or

   d. When otherwise ordered by the Federal magistrate judge.

3. Overseas Transfer. When SECDEF determines that military necessity requires waiver of limitations on removal, then person may be removed to the nearest U.S. military installation outside the U.S. adequate to detain the person and facilitate the initial appearance required by the Act.

G. Initial Proceedings.

1. Federal magistrate judge will conduct initial appearance proceeding, which may be carried out by telephone or other voice communication means, including counsel representation.

2. Federal magistrate judge will also determine probable cause that crime was committed and person committed it, and conditions of release if government counsel does not make a motion seeking pretrial detention.

3. Federal magistrate judge will also conduct any detention hearing required under federal law, which at the request of the person may be carried out overseas by telephonic means, including any counsel representing the person.

4. The Federal magistrate judge may appoint military counsel for limited purpose of overseas initial appearance proceedings.

H. MEJA Regulation.

1. DOD has proposed uniform DOD regulations governing the apprehension, detention, delivery, and removal of persons from overseas locations to the U.S. for prosecution in Federal district courts.

2. See *proposed* regulations at 69 Fed. Reg. 4890 (Feb. 2, 2004).

VIII. CONCLUSION.

CHAPTER 27(B)

CONTRACTORS ACCOMPANYING THE FORCE (CAF)

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CONTRACTORS ACCOMPANYING THE FORCE (CAF)

I. INTRODUCTION.

DOD uses contractors to provide U.S. forces that are deployed overseas with a wide variety of services because of force limitations and a lack of needed skills. The types of services contractors provide to deployed forces include communication services, interpreters, base operations services, weapons systems maintenance, gate and perimeter security, intelligence analysis, and oversight over other contractors. The military uses contractors to support deployed forces for several reasons. One reason is that in some deployed areas, such as Bosnia and Kosovo, the executive Branch has limited the number of U.S. military personnel who can be deployed in those countries at any one time. When these limits, known as force caps, are in place, contractors replace soldiers so that the soldiers will be available to undertake activities with the potential for combat. A second reason that DOD uses contractors is because either the required skills are not available in the military or are only available in limited numbers and need to be available to deploy for other contingencies . . . Finally, DOD uses contractors to conserve scarce skills to ensure that they will be available for future deployments. Military Operations: Contractors Provide Vital Services to Deployed Forces But Are Not Adequately Addressed in DOD Plans, GAO-03-695, page 2.

II. PRIMARY REFERENCES

A. Defense Federal Acquisition Regulation Supplement § 252.225-70XX, Contractors Accompanying a Force Deployed for Contingency, Humanitarian, Peacekeeping, or Combat Operations. This outline incorporates the **proposed** changes to DFARS 252.225-70XX.

B. Army Federal Acquisition Regulation Supplement § 5152.225-74-9000, Contractors Accompanying the Force. This outline incorporates the **interim** changes to AFARS 5152.225-74-9000.

C. Army Regulation 715-9, Contractors Accompanying the Force. This outline incorporates the revised **draft** version of AR 715-9, publication pending.

D. Army Contractors Accompanying the Force (CAF) (AKA Contractors on the Battlefield) Guidebook. 8 September 2003 available at http://dasapp.saalt.army.mil/Documents/CAF%20Guidebook%20(Final).doc

E. Contractors on the Battlefield webpage. http://www.osc.army.mil/others/Gca/battle2.htm (contains links to CAF related Army Regulations; Field Manuals; Joint Publications; DOD Directives, Instructions and Regulations; DA Pamphlets & Policy Memos; and, Status of Forces Agreements).

F. US Army Material Command, Contingency Contracting and Contractor on the Battlefield Policy, Guidance, Doctrine, and Other Relevant Information; http://www.amc.army.mil/amc/rda/rda-ac/ck/ck-prime.htm (contains links to materials relevant to contingency contracting; deployments; contractors accompanying the force; suggested contracting clauses; contingency contracting articles; etc.).

G. Defense Acquisition Deskbook, Supplement on Contractor Support in Theater of Operations, 28 March 2001. (http://www.dscp.dla.mil/contract/doc/contractor.doc

H. AR 700-37 – Logistics Civil Augmentation Program (LOGCAP) 16 Dec. 1985.

III. DEFINITIONS.

A. Contractor Personnel. For CAF purposes, the term "contractor personnel" are defined as the contractor's officers and employees but does not include those persons who reside in the country where contract performance takes place. AFARS 5152.225-74-9000(2).

B. Statement of Work (SOW)/Statement of Objectives (SOO). These documents should clearly identify to the contractor what work has to be performed and outlines any special planning requirements. AR 715-9 ¶1-4. See DFARS 252.225-70XX; AFARS 5152.225-74-9000.

1. SOWs are used in situations where the agency wants to describe the activities required of the contractors. Ch. 2, AR 715-9.

2. SOO are used in situations where the agency describes the agency's objectives to be fulfilled by the contractor. Ch. 2, AR 715-9.

C. A contingency operation is a military operation that the Secretary of Defense designates as an operation in which members of the armed forces are or may become involved in military actions, operations, or hostilities against an enemy of the U.S. or against an opposing military force. Or, alternatively, a military operation that results in the call or order to active duty members of the armed services. DFARS 252.225-70XX; 10 U.S.C. 101(a)(13).

D. Independent Government Estimate. The IGE is the government's primary tool used to anticipate costs for contracted support. This document helps determine if the contractor is charging a fair and reasonable amount. Ch. 2, AR 715-9.

E. Tour of Duty. A tour of duty is the length of a deployment. Ch. 4, AR 715-9.

F. Hours of Work. Hours of work are the hours worked during a normal workday. Ch. 4, AR 715-9.

IV. ARMY AREAS OF RESPONSIBILITY FOR CONTINGENCY CONTRACTING AND CAF RELATED SUBJECTS.

A. Army Contracting Agency (ACA) is the Army's proponent for contingency contracting. ACA Implementation Plan, 5 February 2003.

B. Army Material Command (AMC) is the executive agent for the Army's LOGCAP contract. AR715-9 ¶1-4(l)(1).

C. The war fighting Principal Assistant Responsible for Contracting (PARC) controls all Army contracting in the theater of operations.

D. The Industrial Base Program is responsible for the systems contractors policy.

E. The Coalition Provisional Authority (CPA) is responsible for rebuilding Iraq.

V. TYPES OF CAF CONTRACTS AND CONTRACTOR EMPLOYEES.

A. CAF contracts can be grouped into three categories. This classification is important because the answer may trigger different sets of rules. The contract category may also determine where the contracting officer is located.

1. Systems Contracts – Provide logistics support to maintain and operate weapons, vehicles and information systems utilized in military operations. Usually awarded by the commands responsible for building and buying the weapons or other systems. (E.g., IT contractors supporting the Patriot Missile system, contractors helping to pilot drones). Managed by a separate, unique line of program authority found under the Program Executive Officer/Program Manager Control. The security, logistics and transportation needs of

Systems Support Contractors are the responsibility of the supported unit. AR 715-9 ¶1-4.

2. External Theater Support Contracts – Awarded by commands external to the combatant command or component command. (e.g., the Army's LOGCAP contract; contracts by the Defense Logistics Agency; the U.S. Army Corps of Engineers; and the Air Force Civil Engineer Support Agency). Not managed by the theater's Principal Assistant Responsible for Contracting (PARC). Instead, monitored by the theater of operations AMC Logistics Support Element (LSE) office which forwards contract performance reports to the office responsible for managing these contracts. Contractor is expected to provide services at the deployed location. AR 715-9 ¶1-4.

3. Theater Support Contracts – Normally awarded by contracting agencies associated with the regional combatant command (e.g., U.S. Central Command, USAREUR, etc.) and administered by contracting officers or contracting officer representatives located in theater. Can be for recurring services such as equipment rental or repair, minor construction, security, intelligence services and one-time delivery of goods and services at the deployed location. AR 715-9 ¶1-4. See also Army FM 4-100.2, Contracting Support in the Theater of Operations.

B. Contractor employees fall into one of three categories: U.S. citizens; local nationals (LNs); or third country nationals (TCNs).

VI. CONTINGENCY CONTRACT PLANNING.

A. Required Subcontractor Clauses. Army prime contractors must include DFARS clause 252.225-70XX (Contractors Accompanying a Force Deployed for Contingency, Humanitarian, Peacekeeping, or Combat Operations) and AFARS clause 5152.225-74-9000 (Contractors Accompanying the Force) in each of their subcontracts. DFARS 252.225-70XX(r), AFARS 5125.74-9000(c).

B. Plan for Contract Administration. Army planners must devote adequate resources to oversee and receive the acquisition of its commercial battlefield support services/supplies. Ch. 2, AR 715-9.

C. The Army can maximize contractor support by negotiating the terms of the contract before a deployment notification order is received. Ch. 2, AR 715-9.

1. The process for deployment, method for subsistence, and organization to execute support in theater of operations must be conveyed to

supporting contractors so that they can plan, hire the right technicians, and ensure they are ready to provide needed support. Knowing what contractor support is available ahead of time will help the operational community plan the mission. Ch. 2, AR 715-9. See DFARS 252.225-70XX, AFARS 5152.225-74-9000.

2. Three invaluable sources for planning contractor support for deployed operations are the DoD Acquisition Deskbook Supplement; AMC Pamphlet 715-8; and, FM 3-100.21 Contractors Accompanying the Force. Ch. 2, AR 715-9. See DFARS 252.225-70XX, AFARS 5152.225-74-9000.

3. MACOMs can assure contract performance by including the following as contract evaluation factors: Ch. 2, AR 715-9; AR 700-137 ¶3-2(c)(5).

   a) Contractors should have a clear understanding of the SOW.

   b) Contractors should be assured that the government will provide equipment and training as stated in the contract.

   c) Contractors should be required to submit a plan showing the capability to perform during war. This includes identifying emergency essential positions and agreements from these employees to remain on the job during war.

   d) Contractors working overseas should be assured of the same priority for dependent evacuation as military dependents. (Evacuation discussed *infra*).

   e) Contractors should be aware that insurance is available under the Defense Base Act and the Longshoreman's and Harbor Workers Compensation Act. (Insurance discussed *infra*).

D. Modular Contingency Contract Planning. Contingency contract planners are advised to prepare modular plans. "Modularity" enhances the planner's ability to mix and match various line items in the contract to meet mission requirements without having to rewrite the entire contractor support plan. "Modularity" also expedites the planning process and enables the combatant commanders to obtain effective cost estimates. Ch. 2, AR 715-9.

E. Contractor Requirements and Army Deployment Planning. Including contractors in the Time-Phased Force Deployment Data (TPFDD)[1] enables the Army to incorporate contractor personnel and equipment into unit plans and deploy all assets on schedule. Ch. 2, AR 715-9; ¶8.0, Contractor Support in Theater of Operations, Deskbook Supplement.

F. Classified Contracting. Some operational plans may require a classified contract. Classified contracting is usually more costly and should utilize the lowest security classification possible. In addition, the security management effort can be enhanced by using unclassified SOWs to describe the general type of services to be performed and classified appendixes to detail time frames, geographic areas and other classified information. Ch. 2, AR 715-9. For more information regarding classified contracting, see AR 380-5, AR 380-49, AR 380-19, AR 380-67, AR 380-380, AR 604-5, DOD 5220.22-M, and DOD 5220-R.

G. Deviations and Waivers. To provide timely support during a crisis not covered by existing OPLANS or contingency contracting clauses, Army personnel are encouraged to obtain deviations or waivers from regular procurement methods to the maximum extent possible. Ch. 4, AR 715-9 and AR 700-137.

VII. STATUS OF CAF.

A. CAF Functions. CAF can only be used to perform selected combat support and combat service support (CSS) activities. They may not perform combat activities or engage in hostilities or operate in a situation where "international law might perceive them as combatants." Vernon, *Battlefield Contractors: Facing Tough Issues*, 33 Pub. Cont. L. J. 369 (Winter 2004) at 406. Like other contractors (i.e. CONUS), CAF may not perform inherently governmental functions. See Federal Activities Inventory Reform Act (the FAIR Act), Public Law 105-270; OMB Circular A-76; DODD 4100.15; Ch. 4, AR 715-9 and AR 700-137.

B. Status of Forces Agreements (SOFAs) (CAF status vis-à-vis friendly/host nation). SOFAs are international agreements between two or more governments that provide various privileges, immunities and responsibilities and enumerate the rights and responsibilities of individual members of the deployed force. The United States does not have SOFA arrangements with every country and some SOFAs do not adequately cover all contingencies. As

[1] TPFDD is the combatant commander's statement of his requirements by unit type, time period, and priority of arrival. When considered during the planning process, it includes estimates of contractor cargo and personnel requirements and those of the combat forces supporting the operation. AR 715-9.

such, it is possible that CAF and soldiers will be treated differently by a local government. Ch. 3, AR 715-9. *Guidebook*, Topic 15.

1. Contractor employee's status will depend upon the specific provisions of the SOFA, if any, that are applicable between the U.S. and the country of deployment at the time of deployment. Ch. 3, AR 715-9.

2. Military forces can save scarce resources by advising the Department of State of any special requirements needed by contract planners before implementing a SOFA agreement. Ch. 1, AR 715-9.

3. Contractor employees may or may not be subject to criminal and/or civil jurisdiction of the host country to which they are deploying. Ch. 3, AR 715-9.

4. If an international agreement (e.g., SOFA) does not address CAF status, the contractor may be unable to perform because their employees may not be able to enter the country or the contractor could be treated as a foreign corporation subject to local laws and taxation policies. Ch. 2, AR 715-9.

5. 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.

    a) The NATO SOFA covers three general classes of sending state personnel: 1) Members of the "force," i.e., members of the armed forces of the sending state; 2) Members of the "civilian component," i.e., civilian employees of the sending state; 3) "Dependents," i.e., the spouse or child of a member of the force or civilian component that is dependent upon them for support.

    b) 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 generally must be concluded to afford contractor employees the rights and privileges associated with SOFA status. Ch. 3, AR 715-9.

6. If there is no functioning government in which the Department of State can negotiate a SOFA, contract planners must comply with the policy and instructions of the combatant commander when organizing the use of contractors in that country. Ch. 1, AR 715-9.

7. If there is any contradiction between a SOFA and an employer's contract, the terms of the SOFA will take precedence. Ch. 3, AR 715-9.

8. The following websites may help determine if the U.S. has a SOFA agreement with a particular country: http://www.jagcnet.army.mil (CLAMO section); https://aflsa..jag.af.mil/INTERNATIONAL (site requires FLITE registration and password); http://www.state.gov (this webpage also contains country studies, a quick way to learn about a country to which personnel are deploying).

C. Captivity, Hostile Detention and POW Status.

1. DOD Approach. CAF are neither combatants, nor non-combatants, they are "civilians accompanying the force." When the U.S. is a participant in an international armed conflict, CAF are entitled to be protected as EPWs if captured by a signatory to the Geneva Convention Relative to the Treatment of Prisoners of War (12 August 1949), the Hague Convention No. IV Respecting the Laws and Customs of War on Land and the Annex Thereto Embodying Regulations Respecting the Laws and Customs of War on Land (18 October 1907). See Generally, *Guidebook*, Topic 15.

2. Risks. CAF who "engage in hostilities" risk being treated as combatants (and thus being targeted, etc.). Further, they risk being treated as "unprivileged belligerents" (and treated as war criminals?). Vernon, *Battlefield Contractors: Facing Tough Issues*, 33 Pub. Cont. L. J. 369 (Winter 2004) at 404-421.

3. The above protections only apply during an international armed conflict. In a non-"international armed conflict," protection for CAF personnel will depend on the specific circumstances of the operation. Ch. 5, AR 715-9.

4. CAF will be briefed on applicable protections, techniques for handling captivity situations and CAF rights as EPWs while in-processing at the CRC/IDS. Ch. 5, AR 715-9.

D. Iraq: CPA, Coalition Contractors, Subcontractors and Their Employees.

1. Criminal, Civil and Administrative Jurisdiction. Contractor and sub-contractor Coalition personnel, who do not normally reside in Iraq, are subject to the exclusive jurisdiction of their Parent State. These CAF are not subject to Iraqi criminal jurisdiction. Coalition Provisional

Authority Order Number 17, § 2. (available at http://www.cpa-iraq.org/regulations).

2. Licensing; Registration of Employees; Business and Corporate Laws; Acts Performed in an Official Capacity; and, Acts Not Performed in an Official Capacity. Coalition contractors, their subcontractors and all of their employees, who do not normally reside in Iraq, are not subject to Iraqi jurisdiction in matters relating to the terms and conditions of their contract in relation to the Coalition Provisional Authority (CPA). Coalition Provisional Authority Order Number 17, § 3. (available at http://www.cpa-iraq.org/regulations).

3. Claims Against Contractors in Iraq. Claims for property loss, property damage, personal injury, personal illness and death against any persons employed by the CPA shall be submitted to and dealt with by the Parent State. Coalition Provisional Authority Order Number 17, § 6. (available at http://www.cpa-iraq.org/regulations).

VIII. ADMINISTRATIVE ACCOUNTABILITY OF CAF

A. CONUS Replacement Centers (CRCs) and Individual Deployment Sites (IDS).

1. All CAFs must process through a CRC or an IDS before deploying. The terms of the contract will determine how CAFs will use these facilities. DFARS 252.225-70XX(n); Ch. 3, AR 715-9; *Guidebook*, Topic 2.

2. When CAF personnel in-process at a CRC/IDS, the government is responsible for providing lodging and will provide meals for a nominal fee. Transportation to the CRC/IDS is the contractor's responsibility and is reimbursable only if the contract authorizes reimbursement. Ch. 3, AR 715-9; *Guidebook*, Topic 2. Travel orders for CAF are prepared by the supported installation. Ch. 3, AR 715-9.

3. CAF are required to be fully immunized; have all required security background checks completed; have all required vehicle licenses; all passports, visas, etc.; and, any other requirements specified by the contracting officer's representative before deploying DFARS 252.225-70XX(g), AFARS 5152.225-74-9000(c), Ch. 3, AR 715-9; *Guidebook*, Topic 3.

a) Contractor is responsible for obtaining all passports, visas and other documents necessary for its personnel to enter/exit the AO. AFARS 5152.225-74-9000(g); *Guidebook*, Topic 2.

4. CAF personnel are required to complete and leave a next of kin card/emergency data card with the contracting officer's designated official and hand carried to the AO. AFARS 5152.225-74-9000(c), AR 715-9; *Guidebook*, Topic 10.

5. Contractor performed processing is preferred when a contractor is deploying a large number of personnel. Government performed processing is preferred when a contractor is deploying a small number of personnel. AR 715-9.

B. Contractor Responsibilities for Accountability

1. Contractors must maintain a current list of all personnel deployed in the AO and furnish this information to the contracting officer. DFARS 252.225-70XX(e), AFARS 5152.225-74-9000(c). Contractors are required to maintain identification records (e.g., DNA/dental) of their CAF personnel. AR 715-9.

2. Contractor is required to maintain a plan proscribing how it will replace employees and identify all mission essential positions. DFARS 252.225-70XX(f), AFARS 5152.225-74-9000(c); *Guidebook*, Topic 12.

C. <u>AMC's Logistics Support Element (LSE).</u> CAF may be assigned to AMC's Logistics Support Element (LSE) for accountability purposes. Personnel assigned to the LSE are required to follow reporting procedures when entering, moving within, and exiting the AO. In-theater support to CAF personnel attached to the LSE will be provided by the employer, unless the contract states otherwise or the contract employee operates forward of the LSE. AFARS 5152.225-74-9000(c); AR 715-9; *Guidebook*, Topic 18.

D. <u>CIVTRACKS</u> is a web-based tracking system that allows commanders to track and maintain accountability of civilians (i.e., contractor employees) in a theater of operations. CIVTRACKS requires each individual to enter, via the internet, their name, duty location, telephone number, status, etc. into the computer program. CIVTRACKS may be modified in the future to enable civilians to input their data with a passage of their Common Access Card (CAC) through a computer scanner. Memorandum from the DA, Deputy Chief of Staff, G-1, 31 May 2002. *Guidebook*, Topic 17.

1. Access to CIVTRACKS (with a password) is available at: https://cpolrhp.belvoir.army.mi/civtracks

2. The contact for CIVTRACKS is the Assistant G-1 for Civilian Personnel Policy and Program Development Division:
   Assistant G-1 for Civilian Personnel Policy and Program Development Division, ATTN: DAPE-CP-PPM
   200 Stovall Street, Alexandria, VA 22332-0300
   or CIVTRACKS@asamra.hoffman.army.mil

IX. COMMAND AND CONTROL AND DISCIPLINE OF CAF PERSONNEL.

A. The command and control of contractor employees is significantly different than that of DA civilians. Ch. 4, AR 715-9.

B. For contractor employees command and control is tied to the terms and conditions of the government contract. Contractor employees are not under the direct supervision of military personnel in the chain of command. The Contracting Officer is the designated liaison for implementing contractor performance requirements. Ch. 4, AR 715-9. *See* also, FAR Part 42; AR 700-137.

1. Contract Changes in Ordinary Circumstances. The contracting officer or the administrative contracting officer are the only government officials with the authority to increase, decrease or materially alter a contract's scope of work or statement of objectives. FAR Part 42; Ch. 2, AR 715-9 (under Statement of Work).

2. CAF personnel cannot command, supervise, administer or control Army or DA personnel. Contracted personnel shall not be supervised or directed by military or DA civilian personnel. Only the designated COR shall communicate the Army's requirements to the contractor and prioritize the contractor's activities consistent with the contract. AR 715-9; AR 700-137. See FAR 37.104, prohibition on personal services contracts.

3. Contract Changes in Emergency Situations – Proposed DFARS Clause. Outside the U.S., when the contracting officer is not available and emergency action is required because a terrorist or enemy action or natural disaster could cause serious injury or death, the ranking military commander may direct the CAF to undertake any action except engaging in armed conflict with the enemy. DFARS 252.225-

70XX(q). The contractor may submit a request for equitable adjustment. DFARS 252.225-70XX(q).

4. Contract Changes in Transportation, Logistical and Support Requirements – Proposed DFARS Clause. When contractor employees deploy, they are required to comply with the combatant commander's instructions regarding transportation, logistical and support requirements. The commander's instructions trump any conflicting terms in the contract. The contractor may submit a request for equitable adjustment. DFARS 252.225-70XX(p).

5. Contract Changes in Transportation, Logistical and Support Requirements – Interim AFARS Clause. Contractor personnel . . . will comply with all orders, directives, and instructions of the combatant command relating to non-interference in military operations, force protection, health, and safety. AFARS 5152.225-74-9000(b).

6. Contractors and its employees are required to comply with: U.S., host country and local laws; treaties and international agreements (e.g., SOFA); applicable U.S. regulations directives, instructions, policies, and procedures; orders, directives, and instructions issued by the combatant commander relating to force protection, security, health, safety, or relations and interaction with local nationals; and, all applicable UCMJ provisions. DFARS 252.225-70XX(d); AFARS 5152.225-74-9000(a)(3).

7. While the government does not directly command and control contractor employees, key performance requirements should be reflected in the contract. For example, combatant commander directives, orders and essential standard operating procedures can be incorporated into the government contract. If those requirements should change, the contract can be modified by the contracting officer to satisfy the commander's new requirements. DFARS 252.225-70XX; AFARS 5152.225-74-9000(b); AR 715-9.

8. Contractor employees are required to adhere to all guidance and obey all instructions and general orders issued by the combatant commander. All instructions and guidance will be issued based upon the need to ensure mission accomplishment, personal safety, and unit cohesion. If the instructions and orders of the combatant commander are violated, the combatant commander may limit access to facilities and/or revoke any special status that a contractor employee has as an individual accompanying the force. DFARS 252.225.70XX(e), AFARS 5152.225-74-9000(b).

9. The contracting officer may also direct that the contractor remove from the theater of operations any contractor employee who fails to comply with the above instructions, orders and directives. Any command directed repatriation, via the contracting officer, will be at the contractor's expense. DFARS 252.225.70XX(e); AFARS 5152.225-74-9000(b).

C. Discipline of Contractor Employees. Maintaining discipline of contractor employees is the responsibility of the contractor's management structure, not the military chain of command. Ch. 4, AR 715-9 (under Discipline and Commander's Authority).

1. The process for removal of contractor employees from the theater of operations is dependent upon the policies issued by the combatant commander and the extent to which those policies are incorporated in the terms of the contract, and are exercised through the contracting officer. Ch. 4, AR 715-9 (under Discipline and Commander's Authority).

2. Commanders can indirectly influence the discipline of contractor personnel through temporary or permanent revocation or suspension of clearances, restriction from installations or facilities, or revocation of exchange privileges. Ch. 4, AR 715-9 (under Discipline and Commander's Authority).

3. Criminal activity. Contractor employees are not subject to military law under the UCMJ when accompanying U.S. forces, except during a declared war. When a contractor is involved in criminal activity, international agreements and the host nation's laws take precedence. In the absence of host nation involvement, the commander may be able to use the Military Extraterritorial Jurisdiction Act to deal with felonies (see below). Ch. 4, AR 715-9 (under Discipline and Commander's Authority).

4. Retired military members are subject to the UCMJ. Thus, a retired service member working as CAF or a civil servant is subject to the UCMJ. Ch. 4, AR 715-9 (under Discipline and Commander's Authority).

D. Military Extraterritorial Jurisdiction Act of 2000. 18 U.S.C. §3261.

1. Background. Since the 1950s, the military has been prohibited from prosecuting by courts-martial civilians accompanying the Armed Forces overseas in peacetime who commit criminal offenses. Many

Federal criminal statutes lack extraterritorial application, including those penalizing rape, robbery, burglary, and child sexual abuse. In addition, many foreign countries decline to prosecute crimes committed within their nation, particularly those involving another U.S. person as a victim or U.S. property. Furthermore, military members who commit crimes while overseas, but whose crimes are not discovered or fully investigated prior to their discharge from the Armed Forces are no longer subject to court-martial jurisdiction. The result is jurisdictional gaps where crimes go unpunished. Proposed 32 CFR 153.2 and Appendix A to part 153, currently found at 69 Fed. Reg. 4890, *Criminal Jurisdiction Over Civilians Employed By or Accompanying the Armed Forces Outside the United States, Certain Service Members, and Former Service Members* (2 Feb 04).

2. Solution. The Military Extraterritorial Jurisdiction Act (MEJA) closes the jurisdictional gaps by extending Federal criminal jurisdiction to civilians overseas and former military members. Proposed 32 CFR part 153.5.

3. What Is Covered.

   a) Conduct committed outside the United States, that

   b) Would be a crime under U.S. law in U.S. special maritime and territorial jurisdiction,

   c) Punishable by imprisonment for more than 1 year. 18 USC § 3261; Proposed 32 CFR part 153.5(a)(1).

4. Who Is Covered. See, Proposed 32 CFR part 153.5(a)(2)-(a)(6).

   a) Civilians while "Employed by the Armed Forces." This includes:

      (1) Those present or residing outside the U.S. in connection with such employment who are (a) civilian employees of the DoD, (b) DoD contractors (including subcontractors at any tier), or (c) employees of a DoD contractor (including subcontractors at any tier).

      (2) But NOT a national or person ordinarily resident in the host nation.

b) Civilians "Accompanying the Armed Forces." This includes:

(1) Those who are residing outside the U.S. and are **dependents** of: Any of the above civilian employees/ contractors; any member of the Armed Forces; any civilian employed by DoD.

(2) But NOT a national or person ordinarily resident in the host nation.

c) Former military members who commit such crimes while a member of the Armed Forces overseas, but who cease to be subject to UCMJ court-martial jurisdiction (e.g., discharged from the service) and have not previously been court-martialed for such offenses.

5. Who is Not Covered. Tourists, students and civilian employees of a non-DoD agency and civilians accompanying another agency or business and not employed by or accompanying the Armed Forces; Citizens of the host nation; Juveniles who are below the minimum age of prosecution in U.S. District Court. Proposed 32 CFR part 153.5(a)(7). Juveniles are subject to the Federal Juvenile Delinquency Act (18 U.S.C. §§ 5031-5042).

6. Limitations.

a) Foreign Criminal Jurisdiction. If a foreign government, in accordance with jurisdiction recognized by the U.S., has prosecuted or is prosecuting the person, the U.S. will not prosecute the person for the same offense, absent approval by the Attorney General or Deputy Attorney General. 18 USC § 3261.

b) Military Member. Military members subject to the UCMJ will not be prosecuted under this Act, unless the member ceases to be subject to the UCMJ, or the indictment or information charges that the member committed the offense with one or more other defendants, at least one of whom is not subject to the UCMJ (i.e., this Act provides a limited exception to exclusive military UCMJ jurisdiction). 18 USC § 3261.

7. The Proposed Rule implementing MEJA contains detailed instructions regarding:

a) Investigation, arrest, detention, and delivery of persons to host nation authorities. Proposed 32 CFR part 153.5(b).

b) Representation. Proposed 32 CFR part 153.5(c).

c) Initial Proceedings. Proposed 32 CFR part 153.5(d).

d) Removal of persons to the United States or other Countries. Proposed 32 CFR part 153.5(e).

X. SUPPORT TO CONTRACTORS ACCOMPANYING THE FORCE

A. Minimize Support. The Army strives to minimize military support to contractors. The Army may use other contractors or host nation resources to support contractors. DFARS 225.7402-1, AR 715-9, AR 700-137.

B. Letters of Authorization or Invitation Travel Orders detail what privileges each contractor employee is entitled to. AR 715-9, Chapter 3 has a sample Letter of Authorization. Depending on the terms of each contract, contractor employees may be entitled to the following support: investigative and security clearance requirements; shots and passports; training; transportation; equipment and equipment maintenance; communication; billeting and rations; evacuation procedures; contract administration; laundry services; medical support; civil affairs coordination. DFARS 225.7402-1; DFARS PGI 225.7402-1; AR 715-9; AR 700-137; and, *Guidebook*, Topic 13.

C. Government Subsistence – Meals, Lodging, Medical, Dental, MWR, Chaplain, etc. If authorized in the Letter of Authorization or elsewhere in the contract, or if directed by the combatant commander or his representative, contractor employees will be provided Government subsistence. However, absent specific authorization, the contractor shall be responsible for all subsistence required for their employees (but these costs may be reimbursable under the contract). *Guidebook*, Topic 14.

1. What "Should" be in the Contract / Who Decides. DFARS 225.802-70 and proposed AFARS 5125.74-9000 require the contracting office to verify the logistical and operational support that will be available for deployed contractor personnel. The requirements office also must be involved in determining these details to ensure the budget, funding, and scope of work accurately considers these elements. The AMC LSE, unit COR, or ACO is your primary coordination expert for what support is available in the specific work location. The norm is for these services to be provided to contractor personnel, commensurate with services provided to Army civilian personnel, in theater. If

subsistence availability changes during performance (e.g. meals, billeting) the PCO should be made aware of possible pricing and allowability impacts, whether up or down. *Guidebook*, Topic 14.

D. Organizational Clothing and Equipment.

1. CAF are not authorized to wear military uniforms except for specific safety or security items (e.g., chemical defense equipment; cold weather equipment; mission specific safety equipment). DFARS 252.225-70XX(h); AFARS 5152.225-74-9000(d); *Guidebook*, Topic 6.

2. Contractors may be issued some protective Organizational Clothing and Individual Equipment (OCIE) according to the theater to which deployed, but they will not be issued Battle Dress Uniforms (BDUs) or Desert Camouflage Uniforms (DCUs), boots, etc. without a Department of the Army waiver. Requests for exception will be submitted to the Office of the Deputy Chief of Staff, G-4 (DALO-PLS), 500 Army Pentagon, Washington, D.C., 20310-0500 for consideration. The contractor is encouraged to require a uniform appearance among their employees, but the use of current U.S. Armed Forces uniforms is prohibited. These policies are in place for their protection, to distinguish them from combatants. AR 715-9 and AR 700-137. See also, DFARS 252.225-70XX(h) and AFARS 5152.225-74-9000(d); *Guidebook*, Topic 6; Ch. 3, AR 715-9 (under Preparation for Deployment).

3. The decision of contractor personnel to wear any issued OCIE is voluntary, however, the Combatant Commander, subordinate JFC and/or ARFOR Commander may require contractor employees to *be prepared* to wear Chemical, Biological, and Radiological Element (CBRE) and High-Yield Explosive defensive equipment. Other examples of equipment the government may provide are communications equipment, firefighting equipment, and medical and chemical detection equipment. *Guidebook*, Topic 6.

4. The contract must specify that the contractor is responsible for storage, maintenance, accountability, and checking and performing routine inspection, of Government furnished property and procedures. The contract must also specify contractor responsibilities for training and must specify the procedures for accountability of Government furnished property. AR 700-137. See DFARS 252.225-70XX(h), AFARS 5152.225-74-9000(d); *Guidebook*, Topic 6.

5. Contractor employees will be responsible for maintaining all issued items and must return them to the issuer upon redeployment. In the event that issued clothing and/or equipment is lost or damaged due to negligence, a report of survey will be initiated IAW AR 735-5, Chapters 13 and 14. According to the findings of the Survey Officer, the government may require reimbursement from the contractor. AR 715-9, AR 700-137. See DFARS 252.225-70XX(h), AFARS 5152.225-74-9000(d); *Guidebook*, Topic 6; Ch. 3, AR 715-9 (under Preparation for Deployment).

E. Weapons & Force Protection. Pursuant to FM 3-100.21, Paragraph 6-4, "Protecting contractors and their employees on the battlefield is the commander's responsibility. When contractors perform in potentially hostile or hazardous areas, the supported military forces must assure the protection of their operations and employees. The responsibility for assuring that contractors receive adequate force protection starts with the combatant commander, extends downward, and includes the contractor." See also AR 715-9.

1. Weapons and Training. Pursuant to FM 3-100.21, paragraph 6-29, "The general policy of the Army is that contractor employees will not be armed." However, Individual Deployment Sites (IDS) or CONUS Replacement Centers (CRC) may issue sidearms to contractor employees for their personal self-defense. The issuance of such weapons must be authorized by the Combatant Commander and must comply with military regulations regarding firearms training and safe handling. Weapons familiarization is provided to contractor employees as part of the IDS/CRC deployment processing. DFARS 252.225-70XX(i); AFARS 5152.225-74-9000(e). The acceptance of self-defense weapons by a contractor employee is voluntary and should be in accordance with the gaining theater and the contractor's company policy regarding possession and/or use of weapons. *Guidebook*, Topic 7.

(1) Pursuant to FM 3-100.21, paragraph 6-29, "Contractor employees may only be issued military specification sidearms, loaded with military specification ammunition." DFARS 252.225-70XX(i); AFARS 5152.225-74-9000(e).

(2) Contractor employees will not possess privately owned weapons. DFARS 252.225-70XX(i), AFARS 5152.225-74-9000(e).

(3) When the military provides weapons to contractors or their employees, there must be adequate screening and background checks to prevent violations of the Lautenberg Amendment. 18 U.S.C. 922(d)(9).

2. CAF personnel are expected to follow all force protection rules. Force protection rules include rules governing the use of showers; the purchase of food and drinks on the economy; prohibitions against visiting places identified as "off-limits"; escort requirements; medical procedures; and required uniforms. Ch. 5, AR 715-9.

3. The security, logistics and transportation needs of Systems Support Contractors are the responsibility of the supported unit. AR 715-9.

4. Contractors are responsible for providing force protection and counter-terrorism awareness training to their employees similar to that provided to US Government employees. DFARS 225.74 and DFARS 252.225-7043.

F. Legal Assistance. 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 legal assistance from military or DA civilian lawyers. AR 27-3, para. 2-5 a.(7); Ch. 4, AR 715-9.

1. Contractor employees should satisfy all legal requirements that they deem necessary, such as a will, guardianship 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. Ch. 4, AR 715-9.

2. Exceptions:

a) If contractor employees are accompanying the Armed Forces of the United States outside the United States, they may receive certain legal assistance from Army lawyers when DA or DOD is contractually obligated to provide this assistance as part of their logistical support. AR 27-3, para. 2-5 a.(7); Ch. 4, AR 715-9.

b) The specific terms of the contract under which contractor employees are deploying must be reviewed to verify if DA is obligated to provide legal service. AR 27-3, para. 2-5 a.(7); Ch. 4, AR 715-9. SJAs should recommend eliminating legal

assistance contractual obligations whenever the contractor's contracts are reviewed or renegotiated. AR 27-3, para. 2-5 a.(7).

3. Where DA is under contractual obligation to provide legal assistance, the following rules apply:

a) 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 in some way. AR 27-3(2-5), AR 715-9.

b) Legal assistance is limited to ministerial service (for example notarial 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 civilian lawyers. AR 27-3(2-5), AR 715-9.

c) NOTE: Contract employee status is irrelevant if the person is an authorized recipient of legal assistance services, e.g. Retiree or family member otherwise authorized legal assistance services.

G. Identification Cards. Contractor employees will receive the following three distinct forms of identification:

1. Common Access Card (CAC). Required for access to facilities and use of privileges afforded to military, government civilians and/or military dependents. Ch. 3, AR 715-9 (Common Access Cards); *Guidebook*, Topic 4.

2. DD Form 489 (Geneva Conventions Identity Card for Persons who Accompany the Armed Forces). Identifies one's status as a contractor employee accompanying the U.S. Armed Forces. Must be carried at all times when in the theater of operations. Pursuant to the Geneva Convention Relative to the Treatment of Prisoners of War, article 4(4), if captured, contractors accompanying the force are entitled to prisoner of war status. Ch. 3, AR 715-9; *Guidebook*, Topic 4. (*See* discussion of Status, *supra*.)

3. Personal identification 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. Ch. 3, AR 715-9; *Guidebook*, Topic 4.

4. In addition, other identification cards, badges, etc., may be issued depending upon 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 U.N. or multinational force. AR 715-9.

5. If their employer processes contractor employees for deployment, it is the responsibility of the employer to ensure its employees receive required identification prior to deployment. AR 715-9.

H. Medical Screening.

1. Contractors are required to ensure its employees meet the physical requirements for theater, established by the combatant commander. DFARS 252.225-70XX(g); AFARS 5152.225-74-9000(c); AR 715-6; *Guidebook*, Topic 5.

2. As part of the pre-deployment process, Individual Deployment Sites (IDS) or CONUS Replacement Centers (CRC) medical and dental personnel verify that all requirements for deployment are met. Screening will include HIV testing, pre- and post-deployment evaluations, dental screenings, and TB skin test. A military physician will determine if the contract employee is qualified for deployment to the AO and will consider factors such as age, medical condition, job description, medications, and requirement for follow-up care. FM 3-100.21, para. 3-39. *See* also DFARS 252.225-70XX(g), AFARS 5152.225-74-9000(c).

I. Medical and Dental Care. Military and/or host nation emergency medical and dental care will be available to contractors should the need arise, at a level commensurate with that afforded government employees and military personnel. Ch. 4, AR 715-9 (Medical & Dental Care).

1. 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, contractors should make provisions for their employees' medical and dental care Ch. 4, AR 715-9 (Medical & Dental Care).

2. The Army medical department may provide pharmaceutical support to deploying employees of system and external support contractors. See FM 3-100.21, para. 5-35 – 5-37. Contractor employees are required to bring a 90-day supply of personal medications in the AO. *Guidebook*, Topic 5.

J. Vehicle and Equipment Operation. Deployed contractor employees may be required or asked to operate U.S. military, government owned or leased equipment such as generators and vehicles. Contractor personnel may also be required to obtain a local license for the country they are being deployed to, i.e. German driver's license. AFARS 5152.225-74-9000(f); *Guidebook*, Topic 8.

1. All CAF must be trained and licensed to operate necessary equipment. AFARS 5152.225-74-9000(f). Although the contractor can arrange the training, the military unit responsible for issuing the equipment usually provides the training. CRC/IDS briefs CAF on local laws and SOFA agreements regarding licensing requirements. Ch. 4, AR 715-9 (Vehicle and Equipment Operation).

2. Contractor-owned/leased vehicles shall meet all requirements established by the combatant commander and be maintained in a safe operating condition. AFARS 5152.225-74-9000(f); *Guidebook*, Topic 8.

3. While operating a military owned or leased vehicle, a contractor employee is subject to 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, and/or combatant commander guidance. Ch. 4, AR 715-9 (Vehicle and Equipment Operation).

4. If a contractor employee does not enjoy special status under the Status of Forces Agreement, then he/she may be subject to criminal and/or civil liabilities. Therefore, the employee or contractor may be held liable for damages resulting from negligent or unsafe operation of government, military vehicles and equipment. Ch. 4, AR 715-9 (Vehicle and Equipment Operation).

K. MWR Support. Contractor employees working within the theater of operations may be eligible to use some or all MWR facilities and activities subject to the installation or Combatant Commander's discretion and the terms of the contract. Ch. 6, AR 215-1.

1. 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 Combatant Commander's discretion, the terms of the contract with the government, and the terms of the applicable Status of Forces Agreement. Ch. 2, AR 60-20.

L. Military Postal Service (MPS). U.S. citizen contractor employees, and any accompanying dependents, are entitled to use the MPS only where there is no U.S. Postal Service available and the contract between the U.S. Government and contractor does not preclude the contractor's employees from using the MPS. Ch. 4, AR 715-9. Contract clauses authorizing a contractor employee to use the MPS must be reviewed and approved by the MPS agency. Ch. 4, AR 715-9.

M. American Red Cross (ARC) Services. ARC services such as emergency family communications and guidance for bereavement airfare are available to CAF in the area of operations. Ch. 4, AR 715-9.

N. Family Support Groups. CAF personnel are encouraged to form their own FSGs or may involve their family with the FSG group of the military unit to which they are attached. Ch. 4, AR 715-9.

O. Religious Support. CAF are entitled to receive Army chaplain religious support. The Army can restrict the right to the free exercise of religion by CAF. The location and nature of the conflict will determine these parameters. Ch. 4, AR 715-9.

P. Mortuary Affairs. Contractors who are in direct support of military operations and who die in the line of duty are eligible to receive mortuary affairs support on a reimbursable basis. The nature and extent of that support is governed by OPLANs/OPORDs and contractual documents. FM 3-100.21, para. 5-45..

1. The contractor is responsible for the in-person notification to the next of kin when a contractor employee's dies; is injured and requires evacuation; is listed as missing; or, if the employee is captured. DFARS 252.225-70XX(j). The Army will facilitate notification to the next of kin notification if a U.S. citizen contractor employee accompanying the force OCONUS dies or goes missing. The Army will do this by ensuring that the contractor notifies the employee's primary and secondary next of kin. Ch. 5, AR 715-9 (Next of Kin Notification); *Guidebook*, Topic 10.

2. Contractors are responsible for evacuating the bodies of their deceased employees. DFARS 252.225-70XX(k); *Guidebook*, Topic 10.

3. An Army officer may work with the next of kin applying for appropriate benefits and entitlements. Ch. 5, AR 715-9 (Next of Kin Notification).

4. CAF personnel are required to leave a next of kin card/emergency data card with the contracting officer's designated official and hand carried to the AO. AFARS 5152.225-74-9000(c), Ch. 5, AR 715-9 (Next of Kin Notification).

Q. Evacuation of Personnel. When the combatant commander orders a mandatory evacuation of personnel, the government will provide, as available, assistance to U.S. and third country personnel. DFARS 252.225-70XX(l), DODI 3020.37.

R. Hostage Aid. When the Secretary of State declares that U.S. citizens or resident aliens are in a "captive status" as a result of "hostile action" against the U.S. government, CAF personnel and his/her dependents become entitled to a wide range of benefits. Ch. 5, AR 715-9.

1. Potential benefits include: continuation of full pay and benefits; select remedies under the Soldiers' and Sailors' Civil Relief Act; physical and mental health care treatment; education benefits to spouses or dependents of unmarried captives; and, death benefits. Eligible persons must petition the Secretary of State to receive benefits. Responsibility for pursuing these benefits rests with the contractor employee, the employee's family members or the contractor. Ch. 5, AR 715-9.

XI. OTHER CONTRACTOR ISSUES DURING DEPLOYMENTS.

A. Living under field conditions. Generally, a contractor employee's living conditions, privileges, and limitations will be equivalent to those of the units supported unless the contract with the Government specifically mandates or prohibits certain living conditions.

B. Tours of Duty and "On-Call" Requirements. A contractor employee's Tour of Duty is established by the employer and the terms and conditions of the contract between the employer and the government. Ch. 4, AR 715-9; *Guidebook*, Topic 9.

1. Emergency based on-call requirements, if any, will be included as special terms and conditions of an employer's contract with the Government. Ch. 4, AR 715-9.

2. Only the contracting officer and the employer, via contract modification, can change an employee's tour of duty or hours of work. Ch. 4, AR 715-9.

C. Life and Health Insurance.

1. Unless the contract states otherwise, the Army is not statutorily obligated to provide health and/or life insurance to a contractor employee. Policies that cover war time deployments are usually available from commercial insurers. Ch. 4, AR 715-9.

2. Contractors and their employees bear the responsibility to ascertain how a deployment may affect their life and health insurance policies and to remedy whatever shortcomings a deployment may cause. DFARS 252.225-70XX(m); Ch. 4, AR 715-9.

D. Workers' Compensation-type Benefits:

1. Several programs are available to ensure "workers comp" type insurance programs cover contractor employees while deployed and working on USG contracts. See generally, FAR 28.305 and AR 715-9. Pursuing any of the following benefits is up to the contractor employee or the contractor. Ch. 5, AR 715-9 (Workers' Compensation); *Guidebook*, Topic 11.

a) Defense Base Act (DBA) 42 USC §§ 1651-54, FAR 28.309 and 52.228-3; DFARS 228.305 and 228.370(a). Requires contractors to obtain workers compensation insurance coverage or to self-insure with respect to injury or death incurred in the scope of employment for "public work" contracts or subcontracts performed outside the United States. AR 715-9. See, Royal Indem. Co. v. Puerto Rico Cement Co., 142 F.2d 237, 239 (1st Cir. 1944), *cert. denied*, 323 U.S. 756 (1944) (holding that a construction employee working on a military base in Puerto Rico was covered by the DBA because the purpose of the DBA was to extend the benefits of the Longshore and Harbor Worker's Compensation Act to areas overseas and to obtain insurance at reasonable rates); Berven v. Fluor Co., 171 F. Supp. 89 (S.D.N.Y. 1959) (explaining the statute covers individuals employed at any military, air, or

naval base or contracts for the purpose of engaging in a public work); S*ee also*, University of Rochester v. Hartman, 618 F.2d 170, 173 (2d Cir. 1980) (holding that a service contract lacking a nexus with overseas construction project or work connected with national defense does not constitute "public work" within the meaning of 42 U.S.C. § 1651(a)(4)); O'Keeffe v. Pan American World Airways Inc., 338 F.2d 319 (5th Cir. 1964), *cert. denied*, 380 U.S. 951 (1965) (holding that the frolic and detour rule for scope of employment analysis must be applied more broadly in the context of DBA claims because the statute was intended to avoid harsh results); Republic Aviation Co. v. Lowe, 164 F.2d 18 (2d Cir. 1947), *cert. denied*, 333 U.S. 845 (1948).

(1) DBA, FAR Clause 52.228-3, is required in all DoD service contracts performed, entirely or in part, outside the U.S and in all supply contracts that require the performance of employee services overseas. Office of the Under Secretary of Defense Memo, 8 December 2003.

b) Longshoreman and Harbor Worker's Compensation Act (LHWCA) 33 USC §§ 901-950, DA PAM. 715-16, para. 10-5c to 10-5d. Applicable by operation of the DBA. The LHWCA provides compensation for partial or total disability, personal injuries, necessary medical services/supplies, death benefits, loss of pay and burial expenses for covered persons. Statute does not focus on fault. AR 715-9; ; *Guidebook*, Topic 11.

c) War Hazards Compensation Act (WHCA) 42 USC §§ 1701-17, FAR 52.228-4, DFARS 228.370(a). Huskisson v. Hawaiian Dredging Co., 212 F.2d 219, 220-21 (7th Cir. 1954); T&G Aviation, Inc., ASBCA No. 40428, 01-1 BCA ¶ 31,147 (ASBCA, 2000). WHCA provides that any contractor employee who is killed in a "war risk hazard" will be compensated in some respects as if the CAF were a full time government civilian employee. WHCA benefits apply regardless of whether the injury or death is related to the employee's scope of employment. AR 715-9; ; *Guidebook*, Topic 11.

d) Federal Tort Claims Act (FTCA) 28 USC §§ 1346, 2671-80 (May provide an avenue for recovery.)

2. Capture & Detention. DA Pam 715-19, para. 11-1; DFARS 252.228-7003. Provides for government reimbursement for wages/salary paid to a detained, captured, or missing.

E. Work Hours.

1. The KO must consider the work hours/duty day for a given contractor in a deployed setting.

2. DFARS 252.222-7002 requires contractors to comply with local laws, regulations, and labor union agreements governing work hours.

3. The "Eight-Hour Law" (40 USC §§ 321-26) does not apply to overseas locations. FAR 22.103.1 allows for longer workweeks if such a workweek is established by local custom, tradition, or law.

4. SOFAs or other status agreements may impact work hours/workweek issues.

F. CAF Pay. A contractor employee's pay and benefits are governed by the employee's contract with the contractor. The U.S. Government is not a party to this employee-employer relationship. CAF personnel are not entitled to collect any special pay, cash benefits or other financial incentives directly from the U.S. Government. Ch. 4, AR 715-9.

G. Veteran's Benefits. In very limited circumstances, CAF who provide service to the U.S. that is "determined to be active military service" can receive veteran's benefits. The Secretary of Defense makes this determination after finding that the statutory requirements are fulfilled. Ch. 4, AR 715-9.

H. Continued Performance During a Crisis.

1. During non-mandatory evacuation times, Contractors shall maintain personnel on location sufficient to meet contractual obligations. DFARS 252.225-70XX(l).

2. U.S. DEP'T OF DEFENSE, INSTRUCTION 3020.37, CONTINUATION OF ESSENTIAL DOD CONTRACTOR SERVICES DURING A CRISIS (6 Nov. 1990) (administrative reissuance incorporating Change 1, 26 Jan. 1996). The Instruction requires contractors to use all means available to continue to provide services deemed essential by DOD. The DODI is guidance for commanders; it does not bind contractors in any way. See also, *Guidebook*, Topic 13.

3. There is no "desertion" offense for contractor personnel. Commanders should plan for interruptions in services, if the contractor appears to be unable to continue support.

I. Redeployment of CAF.

1. Environmental Protection Issues. Contractors are required to clean up and leave their area of operation in accordance with U.S. environmental laws. Ch. 6, AR 715-9.

2. CAF will redeploy through a CRC/IDS. Here they will return clothing and equipment and be screened for any injuries or illnesses. All determinations will be documented in Army files. DFARS 252.225-70XX(h); Ch. 6, AR 715-9.

3. While processing through the CRC/IDS, the government will furnish lodging and will charge a nominal fee for meals. Transportation and travel from the CRC/IDS is the contractor's responsibility. Government re-imbursement for travel is determined by contract. Ch. 6, AR 715-9.

XII. LOGCAP.

A. The LOGCAP objective is to preplan for the use of civilian contractors to perform selected services in wartime to augment Army forces. AR 700-137, para. 1-1.

B. MACOMs must review OPLANs and program requirements, determine which services can be accomplished by contract, rank the contract requirements, and develop an advanced acquisition plan that incorporates contractor performance. AR 700-137, para. 2-2.

C. OPLANs must permit rapid integration of contractor personnel. Under the LOGCAP contract, contractor personnel will be provided logistics support such as: investigative and security clearance classification; shots and passports; training; transportation requirements; equipment and equipment maintenance; communication; billeting and rations; evacuation equipment; contract administration; medical support; civil affairs coordination. AR 700-137, para. 2-2. See additional information earlier in outline and the terms of the contract.

D. LOGCAP is premised on contractor support provided on a voluntary basis. Because there is always a risk that civilian contractor support during war will not be available, advanced acquisition planning can reduce this risk by

providing redundancy and multiple of sources of support. AR 700-137, para. 2-4.

E. Wartime requirements will be exercised as contract options. This prevents the need to set aside funds at contract award to cover potential wartime requirements. AR 700-137, para. 2-5.

F. Contractors can maximize material readiness and personnel availability through careful drafting of contract requirements (see statement of work – definitions § of outline), choice of contract type, and contract administration. AR 700-137, para. 3-2.

G. LOGCAP III, the third LOGCAP contract, covers the period from 2002 to the present. This best value contract was competitively awarded to Kellogg, Brown and Root Company in December 2001 and is managed by the Army Material Command. LOGCAP III presently provides support to operations in Iraq, Kuwait, Afghanistan, and the Republics of Georgia and Uzbekistan.

1. Contract Data.

a) Maximum Requirement. Two major regional conflicts and one small scale contingency per year. There is no cost ceiling in the contract.

b) Total Term is ten years (one base year with nine option years).

2. Contract Type.

a) Indefinite Delivery, Indefinite Quantity (IDIQ).

b) Contract requirements are issued as task orders. Task orders can be priced using one of the following methods: firm fixed price; cost plus; cost; time and materials.

c) Task orders for planning and minor exercises/events are firm fixed priced.

d) Task orders for unstable requirements during major exercise/events are cost plus award fee or cost plus fixed fee.

(1) The government has the right to convert these requirements to a firm fixed price basis.

e) Urgent requirements can be issued as an Undefinitized Contract.

3. Contract Administration. The Government has a contract administration team in place to oversee performance and manage costs.

a) Procuring Contracting Officer - the government official that is warranted to reach agreements with the contractor.

b) Defense Contract Management Agency (DCMA) - provides on site contract administrators to oversee contract performance on a daily basis; reviews all subcontracts over $2,500; evaluates and manages quality assurance matters; monitors the use and control of property acquired under the contract; performs technical reviews of contractor cost proposals (relevant to the contract cost base).

c) Defense Contract Audit Agency (DCAA) - audits the contractors cost proposals; reviews and approves the contractor's cost estimating and accounting systems; reviews and approves the contractor's pay vouchers before they are sent to DFAS; audits all costs incurred to support the Government's final determination of which costs are allocable, allowable, and reasonably incurred.

d) Controlling Contract Costs - Brown & Root's performance in controlling costs is evaluated by the PCO and becomes part of its past performance record (which is used as an evaluation factor when awarding future government contracts). In addition, the contractor’s performance on cost control is one evaluation factor that determines the award fee (aka, contractor’s profit).

e) Award Fee (Contractors Profit) - 3% is the maximum fee structure in this contract (1% base and 2% for factors such as cost control, timeliness of work and quality of work).

4. LOGCAP Funding Process. Army LOGCAP funding starts at the DA level and is passed down to the Major Command level (i.e., FORSCOM). FORSCOM then allocates the LOGCAP funds to their subordinate level (i.e., CFLCC). CFLCC then issues funding authority to various task forces (i.e., OEF, OIF). The task forces then furnish funds to the Army Field Support Command (AFSC) resource manager.

The AFSC RM validates the accounting data and initiates acceptance. Once accepted, the funds are released to the AFSC contracting office and a task order is generated to fill an approved requirement. The generation of this task order gives the contracting officer authority to incur costs against the LOGCAP contract.

5. POCs for LOGCAP III: PCO - Mary Beth Watkins; Project Manager - Donald Trautner; LSU Commander - COL Frank Tavennor; LOGCAP Fusion Cell - LTC Doug Cooper; LOGCAP Attorney - David DeFrieze

XIII. CONCLUSION.

XIV. APPENDIX - INTERIM AFARS CLAUSE – 5152.225-74-9000.

CONTRACTORS ACCOMPANYING THE FORCE (NOV. 2003)

(a) General. (1) Performance of this contract may require deployment of Contractor Personnel in support of military operations. The Contractor acknowledges that such operations are inherently dangerous and accepts the risks associated with contract performance in this environment.

(2) For purposes of this clause, the term ``Contractor Personnel'' refers to the Contractor's officers and employees. Unless otherwise specified (e.g., subparagraph (b) of this clause), this term does not include personnel who permanently reside in the country where contract performance will take place.

(3) The Contractor shall ensure that Contractor Personnel working in an area of operations (AO, as defined in the Joint Publication 1-02, ``DOD Dictionary of Military and Associated Terms'') are familiar and comply with applicable: (i) Military Service and Department of Defense regulations, directives, instructions, general orders, policies, and procedures, in particular Army Regulation 715-9 and Field Manual 3-100.21; (ii) U.S., host country, local, and international laws and regulations; and (iii) treaties and international agreements (e.g., Status of Forces Agreements, Host Nation Support Agreements, and Defense Technical Agreements) relating to safety, health, force protection, and operations under this contract.

(4) The Contractor shall ensure that this clause is included in all subcontracts.

(b) Compliance with Combatant Command Orders. The Contractor shall ensure that Contractor Personnel, regardless of residency status, working in the AO comply with all orders, directives, and instructions of the combatant command relating to non-interference in military operations, force protection, health, and safety. The Combatant Commander or his subordinate commanders, in conjunction with the Contracting Officer or the Contracting Officer's Representative, may direct the Contractor, at the Contractor's own expense, to replace and, where applicable, repatriate any Contractor personnel who fail to comply with this provision. Such action may be taken at the Government's discretion without prejudice to its rights under any other provision of this contract, including the Termination for Default clause.

(c) Contractor Personnel Administration. (1) In order to maintain accountability of all deployed personnel in the AO, the Contractor shall follow instructions issued by the Army Materiel Command's Logistics Support Element (AMC LSE) or other Contracting Officer's designated representative to provide, and keep current, requested data on Contractor Personnel for entry into military personnel database systems.

(2) The Contractor shall coordinate with the AMC LSE or other Contracting Officer's designated representative for logistics support, as follows: (i) Upon initial entry into the AO; (ii) upon initiation of contract performance; (iii) upon relocation of contract operations within the AO; and (iv) upon exiting the AO.

(3) Before deployment, the Contractor shall ensure that:

(i) All Contractor Personnel complete two DD Forms 93, Record of Emergency Data Card. One copy of the completed form shall be returned to the Government official specified by the Contracting Officer's designated representative; the other shall be hand-carried by the individual employee to the AO.

(ii) All required security and background checks are completed.

(iii) All medical screening and requirements are met.

(4) The Contractor shall ensure that Contractor Personnel have completed all pre-deployment requirements specified by the Contracting Officer's designated representative (including processing through the designated Continental United States (CONUS) Replacement Center unless another deployment processing method is specifically authorized), and the Contractor shall notify the Contracting Officer's designated representative that these actions have been accomplished.

(5) The Contractor shall have a plan for timely replacement of employees who are no longer available for deployment for any reason, including mobilization as members of the Reserve, injury, or death.

(d) Clothing and Equipment Issue. (1) To help distinguish them from combatants, Contractor Personnel shall not wear military clothing unless specifically authorized by a written Department of Army waiver. Contractor Personnel may wear specific items of clothing and equipment required for safety and security such as ballistic or NBC (Nuclear, Biological, Chemical) protective clothing. The CONUS Replacement Center or the combatant command may provide to the Contractor Personnel military unique Organizational Clothing and Individual Equipment (OCIE) to ensure security and safety.

(2) All issued OCIE shall be considered Government Furnished Property, and will be treated in accordance with Government Furnished Property clauses included elsewhere in this contract.

(e) Weapons and Training. (1) Contractor Personnel may not possess privately owned firearms in the AO. The combatant command may issue weapons and ammunition to Contractor Personnel, with the employee's company's consent as well as the individual employees' consent, and may require weapons and other pre-deployment training.

(2) The Contractor shall ensure that Contractor Personnel follow all instructions by the combatant command, as well as applicable Military Service and DoD regulations, regarding possession, use, safety, and accountability of weapons and ammunition.

(3) All issued weapons, ammunition, and accessories (e.g., holsters) shall be considered Government Furnished Property. Upon redeployment or notification by the combatant command, the Contractor shall ensure that all Government issued weapons and unused ammunition are returned to the point of issue using a method that complies with Military Service regulations for issue and turn-in of firearms.

(f) Vehicle and Equipment Operation. (1) The Contractor shall ensure that Contractor Personnel possess the required licenses to operate all vehicles or equipment necessary to perform the contract in the AO.

(2) Contractor-owned or leased motor vehicles or equipment shall meet all requirements established by the combatant command and shall be maintained in a safe operating condition.

(g) Passports, Visas and Customs. The Contractor is responsible for obtaining all passports, visas, and other documents necessary for Contractor Personnel to enter and exit any AO.

(h) Purchasing Limited Resources. When the Combatant Command establishes a Commander-in-Chief Logistics Procurement Support Board (CLPSB), Joint Acquisition Review Board, or similar purchase review committee, the contractor will be required to coordinate local purchases of goods and services designated as limited, in accordance with instructions provided by the Administrative Contracting Officer or the Contracting Officer's designated representative.

XV. APPENDIX – DFARS CLAUSE "DEFENSE CONTRACTORS OUTSIDE THE UNITED STATES" WITH PROPOSED CHANGES.

252.225-70XX -- Contractors Accompanying a Force Deployed for Contingency, Humanitarian, Peacekeeping, or Combat Operations.

(a) *Definitions.* As used in this clause-

Combatant Commander is the commander of a unified or specified combatant command established pursuant to 10 U.S.C. 161, or any subordinate commander given authority by that Combatant Commander to issue direction to contractors in a specified geographical area or for a specific functional area.

Contingency operation means a military operation that-

(1) Is designated by the Secretary of Defense as an operation in which members of the armed forces are or may become involved in military actions, operations, or hostilities against an enemy of the United States or against an opposing military force; or

(2) Results in the call or order to, or retention on, active duty of members of the uniformed services under § 688, 12301(a), 12302, 12304, 12305, or 12406 of 10 U.S.C., chapter 15 of 10 U.S.C., or any other provision of law during a war or during a national emergency declared by the President or Congress (10 U.S.C. 101(a)(13)).

Humanitarian or peacekeeping operation means a military operation in support of the provision of humanitarian or foreign disaster assistance or in support of a peacekeeping operation under chapter VI or VII of the Charter of the United Nations. The term does not include routine training, force rotation, or stationing (10 U.S.C. 2302(8) and 41 U.S.C. 259(d)).

(b) *General.* (1) Performance of this contract may require deployment of contractor personnel in support of deployed military forces involved in humanitarian, peacekeeping, contingency, or combat operations.

(2) Contract performance in support of such forces is inherently dangerous. The Contractor accepts the risks associated with required contract performance in such operations.

(c) *Support.* (1) Unless specified elsewhere in the contract or as provided in paragraph (c)(2) of this clause, the Contractor is responsible for all support required for contractor personnel engaged in this contract.

(2) The Government at its sole discretion may authorize or may require the use of certain Government-provided logistical or in-country support.

(d) *Compliance with laws and regulations.* The Contractor shall comply with and ensure that its employees are familiar with and comply with all-

(1) United States, host country, and local laws;

(2) Treaties and international agreements (e.g., Status of Forces Agreements, Host Nation Support Agreements, and Defense Technical Agreements);

(3) United States regulations, directives, instructions, policies, and procedures that are applicable to the Contractor in the area of operations;

(4) Orders, directives, and instructions issued by the Combatant Commander relating to force protection, security, health, safety, or relations and interaction with local nationals; and

(5) The Uniform Code of Military Justice where applicable.

(e) *Contractor personnel.* (1) The Contracting Officer may direct the Contractor to remove and replace any contractor personnel who jeopardize or interfere with mission accomplishment or who fail to comply with or violate applicable requirements under this clause.

(2) The Contractor shall have a current plan on file showing how the Contractor would replace employees who are unavailable for deployment or who need to be replaced during deployment. The plan shall identify all personnel who are subject to military mobilization and shall detail how the position would be filled if the individual were mobilized. In addition, the plan shall identify all personnel who occupy a position that is designated as mission essential by the Contracting Officer. This plan shall be available for review by the Contracting Officer's representative.

(f) *Personnel data.* (1) The Contractor shall maintain with the designated Government official a current list of all employees in the area of operations in support of the military force. The Contracting Officer will designate the Government official to receive this data and the appropriate automated system(s) to use for this effort.

(2) The Contractor shall ensure that all employees on this list have at all times a current DD Form 93, Record of Emergency Data Card, on file with both the Contractor and the designated Government official.

(g) *Pre-deployment requirements.* The Contractor shall ensure that the following requirements are met prior to deploying an employee in support of deployed forces. Specific requirements for each category may be set forth in the statement of work or contract annex to the operation order. The Contractor shall ensure that-

(1) All applicable specified security and background checks are completed;

(2) All deploying personnel are medically and physically fit to endure the rigors of deployment in support of military operations and have received all required vaccinations;

(3) Deploying personnel possess the required licenses to operate all vehicles or equipment necessary to perform the contract in the theater of operations;

(4) Deploying personnel have all necessary passports, visas, and other documents required for contractor personnel to enter and exit an area of operations; and

(5) Country and theater clearance is obtained for personnel.

(h) *Military clothing and protective equipment.* (1) Contractor personnel accompanying the force are prohibited from wearing military clothing unless specifically authorized by the Combatant Commander. However, contractor personnel

may wear specific items required for safety and security such as ballistic or nuclear, biological, or chemical protective clothing.

(2) The CONUS Replacement Center, or the theater commander, at his discretion, may provide to the contractor personnel military-unique organizational clothing and individual equipment (OCIE) and training to ensure contractor personnel security and safety.

(3) In accordance with Government-Furnished Property clauses specified elsewhere in this contract, the Contractor shall ensure that all issued OCIE is returned to the point of issue.

(i) *Weapons.* (1) Contractor personnel may not possess privately owned firearms when in support of deployed forces unless specifically authorized by the Combatant Commander. The Contractor shall ensure employee compliance with this requirement.

(2) If the Combatant Commander authorizes the carrying of firearms, the military may issue weapons and ammunition to the Contractor for issuance to specified contractor employees. The Contractor shall ensure that its personnel who receive weapons are adequately trained, are not barred from possession of a firearm by 18 U.S.C. 922(d)(9) or (g)(9), and adhere to all guidance and orders issued by the Combatant Commander regarding possession, use, safety, and accountability of weapons and ammunition. Upon redeployment or revocation by the Combatant Commander of a contractor's authorization to issue firearms, the Contractor shall ensure that all Government-issued weapons and unexpended ammunition are returned as directed by the Contracting Officer.

(j) *Next of kin notification.* The Contractor shall be responsible for in-person notification of the employee designated next of kin of a deployed employee in the following circumstances:

(1) Death of the employee.

(2) An injury to the employee requiring evacuation.

(3) The employee is missing.

(4) The employee is captured.

(k) *Evacuation of bodies.* In the event of the death of a contractor employee, the Contractor is responsible for the evacuation of body from the point of identification to the location specified by the employee or next of kin, as applicable.

(l) *Evacuation.* If the Combatant Commander orders a mandatory evacuation of some or all personnel, the Government will provide assistance to the extent available to

United States and third country employees. In the event of a non-mandatory evacuation order, the Contractor shall maintain personnel on location sufficient to meet contractual obligations under this contract.

(m) *Insurance.* The Contractor is responsible for all issues dealing with exclusions contained in an employee's personal insurance policies that may be provided through its compensation package as negotiated with that employee.

(n) *Processing and departure points.* The Contractor and its employees will use a Government, contractor, or military unit processing and point of departure and transportation mode as directed by the Contracting Officer or the Contracting Officer's representative.

(o) *Purchase of scarce commodities.* If the Combatant Commander has established an organization for an area of operations whose function is to determine that certain items are scarce commodities, the Contractor shall obtain the approval of that organization prior to procuring the item(s).

(p) *Changes.* (1) When the Contractor, in order to meet a contractual obligation, must accompany or travel to an area where a force is deployed for contingency, humanitarian, peacekeeping, or combat operations, the Contractor shall comply with instructions of the Combatant Commander relating to all transportation, logistical, and support requirements.

(2) If there is a conflict between the instructions issued by the Combatant Commander under paragraph (p)(1) of this clause and the existing terms of the contract, the instructions issued by the Combatant Commander take precedence over any existing terms.

(3) The Contractor may submit a request for equitable adjustment for any additional effort required or any loss of contractor-owned equipment occasioned by such direction.

(q) *Changes in emergencies.* (1) Normally, the Contracting Officer or the Contracting Officer's representative provides direction to the Contractor, and the Contractor provides direction to its employees. However, when the Contractor is accompanying the force outside the United States, if the Contracting Officer or the Contracting Officer's representative is not available and emergency action is required because of enemy or terrorist activity or natural disaster that causes an immediate possibility of death or serious injury to contractor personnel or military personnel, the ranking military commander in the immediate area of operations may direct the Contractor or contractor employee to undertake any action as long as those actions do not require the contractor employee to engage in armed conflict with an enemy force.

(2) The Contractor may submit a request for equitable adjustment for any additional effort required or any loss of contractor-owned equipment occasioned by such

direction.

(r) *Subcontracts.* The Contractor shall incorporate the substance of this clause, including this paragraph (r), in all subcontracts that require subcontractor employees to accompany or to be available to accompany a force engaged in contingency, humanitarian, peacekeeping or combat operations outside the United States.

XVI. ADDITIONAL REFERENCES.

A. Geneva Conventions of 1949 and Additional Protocol of 1977.

B. 18 U.S.C. § 922(d), Unlawful Acts (providing firearms to certain persons).

C. 22 U.S.C. § 3261 *et seq.*, Responsibility of the Secretary of State (for U.S. citizens abroad).

D. AR 700-4 (Logistics Assistance).

E. AR 570-9 (Host Nation Support).

F. AR 12-1 (International Logistics).

G. FM 3-100.21 – Contractors Accompanying the Force.

H. FM-100-10-2 – Contracting Support on the Battlefield.

I. DA PAM 27-1-1 (Geneva Convention Protocols).

J. DA PAM 690-80 (Use of Local Civvies in Hostilities).

K. DA PAM 715-16 (Contractor Deployment Guide).

L. DA Policy Memo, 12 Dec 97, Contractors on the Battlefield.

M. ASA(ALT) Memo, 26 Jan 02, (Contractor Systems Support During Contingency Operations).

N. DODI 4161.2 (Government Property in Possession of Contractors).

O. DODI 1300.23 (Isolated Training for DOD Civilian and Contractors).

P. DODI 1000.1 (Geneva Convention ID Cards).

Q. DODI 3020.37 (Continuation of Essential DOD Contractor Services Crisis).

R. DODD 5000.1 (The Defense Acquisition System).

S. DODD 3025.1 (Non-combatant Evacuation Operations).

T. Joint Pub 1-2, Definitions.

U. Joint Pub 4-0, Doctrine for Logistics Support of Joint Operations, Contractors in Theater.

V. AMC Pamphlet, 715-18. AMC Contracts and Contracting Supporting Military Operations. 16 June 1999.

W. Air Force General Counsel Guidance Memorandum titled Deploying With Contractors – Contractor Consideration, November 2003.