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SECRETARY OF THE AIR FORCE
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LESTER L. LYLES
General, USAF
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MEMORANDUM FOR ALMAJCOM-FOA-DRU/CC
DISTRIBUTION C

SUBJECT: Interim Policy Memorandum--Contractors in the Theater

The purpose of this memorandum is to provide consistent and uniform policy on the use of US contractor personnel to augment the support of Air Force operations in wartime and contingency operations. The attached paper provides Air Force guidance on the Contractors in the Theater concept, responsibilities, and implementing procedures.

Joint Publication 4-0, *Doctrine for Logistics Support of Joint Operations*, Chapter V, *Contractors in the Theater*, sets forth doctrine on the use of U.S. contractors in theater and provides a framework for addressing contractor support issues. Contractor support continues to increase in significance as a major contributor in military operations. Properly applied contractor support is a force multiplier and enhances the CIINC's operational capability.

It is USAF policy to integrate increased commercial participation in the Total Force while preserving our core Air Force competencies. The attached paper represents the latest Air Force level guidance for immediate use and implementation. Some issues, like contractor status under international law, cross Service lines and require further review. As these are resolved, additional information will be published.

This policy applies to all Air Force elements. Ensure widest dissemination of this policy memorandum.

Lawrence J. Delaney
Acting Secretary of the Air Force

Attachment:
USAF Guidance on Contractors in the
Theater

2001-8-A

USAF GUIDANCE
ON
CONTRACTORS IN THE THEATER

The purpose of this paper is to provide consistent and uniform guidance on the use of US contractor personnel to augment the support of Air Force operations in wartime and contingency operations. It further describes the Air Force Contractors in the Theater concept, responsibilities, policy and implementing procedures. This guidance applies to all Air Force elements. Ensure widest dissemination.

Our international obligations are clear: Civilian contractor personnel accompanying Air Force forces are not combatants and must not be allowed to act as combatants during Air Force operations. However, civilian contractor personnel have historically provided support to fielded military forces and international law allows for such activities. Therefore, it is USAF policy to integrate increased commercial support to the Total Force wherever appropriate while preserving our core uniformed USAF competencies.

The risks must be minimized when determining to use contractors in providing essential services. A uniformed capability to provide essential services should be maintained in the event the operational environment precludes the use of contractors. Full consideration of the impact of contractors must be addressed in developing operational plans (ref AFM 10-401, Vol 2, *Planning Formats and Guidance*). Commanders should limit the designation of "essential contract services" (IAW DoDI 3020.37, *Continuation of Essential DoD Contractor Services During Crisis*) to those truly indispensable to the accomplishment of the unit's operational mission. Contracts will identify which services are essential. If the contract has essential services, contractor support requirements must be integrated fully into the Total Force structure and planning to ensure mission accomplishment (ref AFM 10-401, Vol 2, *Planning Formats & Guidance*).

Any determination regarding commercial support must consider the essential services that must be maintained and the risks associated due to possible contractor non-performance. In the event contractors are not able to perform their assigned tasks, uniformed military augmentation must be available and integrated into planning. DoDI 3020.37 must be followed for contracts containing essential services and appropriate contingency plans developed.

Contractors are expected to comply with all applicable US and international law. Unless addressed otherwise by international agreement contractor personnel are subject to the law of the nation in which they are

located. This means that contractors must be prepared to comply with all local taxes, immigration requirements, customs formalities and duties, environmental rules, bond or insurance requirements, work permits, and transportation or safety codes. The fact that the military force for which they are performing services enjoys certain exemptions from local law does not mean contractor personnel are also exempt--generally, contractor personnel are not exempt from local law. During a declared war, contractor personnel accompanying the armed forces are subject to the criminal jurisdiction of the military and the Uniform Code of Military Justice. However, in all circumstances contractors are subject to host nation criminal law, unless specifically addressed otherwise by international agreement. Under newly enacted United States law, contractor employees and other civilians accompanying the armed forces can also be prosecuted by the United States for criminal acts.

When contractor personnel are deployed in support of Air Force operations, the Air Force may provide or make available, under terms and conditions as specified in the contract, force protection and support services commensurate with those provided to DoD civilian personnel to the extent authorized by US and host nation law. These services may include but are not limited to medical/dental care, messing, quarters, special clothing, equipment, training, mail, and emergency notification. Air Force units are to provide only those goods and services to contractor personnel that are specified in the terms of the contract when authorized under host nation law or applicable international agreement. If the Government provides support services to contractor personnel, it may increase the overall cost to the Government. Planning to provide this support to contractors must include a careful review of host nation law and applicable international agreements as well as contract pricing, budget, and military manpower. (ref AFM 10-401, Vol 2)

Commanders and the requiring activity will determine what are essential services and submit requirements, including proposed support services, to the contracting officer to modify existing contracts. All future contracts will need a determination if essential services exist and, if necessary, incorporate requirements in the statement of work (SOW). SOW language should also include applicable deployment requirements, both medical and physical, and allow for contractor information system interoperability with USAF and/or government information systems.

During contingencies that do not constitute international armed conflicts, the status of contractor personnel accompanying the armed forces is entirely determined by host nation law or applicable status of forces agreements, although contractors are seldom included in such agreements. During contingencies that constitute international armed conflicts, contractor personnel are non-combatant persons accompanying the armed forces but may nevertheless be subject to hostile action because of the support they provide in

close proximity to combat forces. Commanders should take care to ensure contractor personnel are not used in any manner that would jeopardize their status under international law as non-combatant persons accompanying the armed forces. Assuming they have not jeopardized their status as noncombatants, if captured during an international armed conflict, contractor personnel accompanying the armed forces are afforded the same protection granted to Prisoners of War (POWs) under the Third Geneva Convention of 1949.

Air Force commanders should not issue firearms to contractor personnel operating on their installations, nor should they allow contractor personnel to carry personally owned weapons. With the express permission of the geographic CINC and in consultation with host nation authorities, Air Force commanders may deviate from this prohibition of firearms only in the most unusual circumstances (e.g., for protection from bandits or dangerous animals if no military personnel are present to provide protection).

Air Force commanders should not issue military garments (e.g., BDUs, Gortex jackets) to contractor personnel. Exceptions may be made for compelling reasons such as a need for chemical protective equipment when the contract requires the Government to issue such items rather than requiring the contractor to provide them to its personnel. Should commanders issue any type of standard uniform item to contractor personnel, care must be taken to require that the contractor personnel be distinguishable from military personnel through the use of some distinctively colored patches, armbands, or headgear.

Although many contractor personnel supporting Air Force operations are former military members, the contract and commanders must make it clear that contractor personnel have no military status.

Pursuant to the Defense Base Act (42 U.S.C. 1651 et seq) US contractor personnel deployed in a theater of operations to perform "public work" may qualify for workers' compensation if injured, killed or missing while deployed. Compensation and limitations are further explained in the War Hazards Compensation Act (42 U.S.C. 1701 et seq). Ordinarily, contractors will be required to obtain insurance coverage for such risks and potential compensation on behalf of its employees (FAR 28.305, 52.228-3 or 52.223-4).

The guidance outlined in this paper should be widely disseminated and incorporated into applicable Air Force directives and instructions.