

Headquarters
United States Forces Korea
Unit #15237
APO AP 96205-5237

United States Forces Korea
Regulation 715-1

19 May 2010

Procurement

DEBARMENT AND SUSPENSION PROGRAM

***This regulation supersedes USFK Regulation 715-1, 10 December 1992.**

FOR THE COMMANDING GENERAL:

JOSEPH F. FIL
Lieutenant General, USA
Chief of Staff

OFFICIAL:



GARRIE BARNES
Chief, Publications and
Records Management

Summary. This regulation establishes policies and prescribes procedure for the United States Forces Korea Suspension and Debarment program in the Republic of Korea (ROK).

Summary of Change. This regulation has been substantially changed a full review of its contents is required.

Applicability

a. This regulation applies to all United States (U.S.) appropriated and nonappropriated fund contracting activities in the ROK. For the Army and Air Force Exchange Service, this regulation applies only to in country procurements.

b. All supplements or command policies that were established under USFK Reg 715-1, 10 Dec 92 and that do not adhere to the requirements of this regulation are now superseded.

Forms. USFK Forms are available at <http://www.usfk.mil/USFK/index.html>.

Supplementation. Issue of further supplements to this regulation by subordinate commands is prohibited unless prior approval is obtained from USFK Staff Judge Advocate (SJA), ATTN: FKJA, Unit #15237, APO AP 96205-5237.

Records Management. Records created as a result of processes prescribed by this regulation must be identified, maintained, and disposed of according to AR 25-400-2. Record titles and descriptions are available on the Army Records Information Management System (ARIMS) website at <https://www.arims.army.mil>.

Suggested Improvements. The proponent of this regulation is the Commander USFK, (FKPM-S). Users are invited to send comments and suggested improvements on DA Form 2028 (Recommended Changes to Publications and Blank Forms) to the Commander USFK, (FKPM-S), Unit #15237, APO AP 96205-5237.

Distribution. Electronic Media Only (EMO).

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Chapter 1

1. Purpose

This regulation supplements guidance concerning suspensions and debarments in DFARS, part 209.4, and FAR, part 9 and subpart 9.4., for United States Forces, Korea (USFK). It specifically establishes responsibilities and procedures for such actions in the Republic of Korea (ROK) and provides guidance concerning the publication and maintenance of the USFK consolidated list of debarred, ineligible, and suspended contractors.

2. References

Required and related publications are listed in Appendix A.

3. Explanation of Abbreviations and Terms

Abbreviations and special terms used in this regulation are listed in the Glossary.

4. Responsibilities

a. The Judge Advocate General delegates authority to the United States Forces Korea/Eighth United States Army (EUSA) Staff Judge Advocate (SJA) the responsibility to act on his behalf as the Debarment Authority (DA) for all purposes under Defense Federal Acquisition Regulation Supplement Subpart 209.4 (Suspension, Debarment, and Ineligibility) in the Republic of Korea (ROK).

b. The Debarment Authority, USFK/EUSA SJA will --

(1) Review suspension/debarment files and solely determine the basis for debarment or suspension.

(2) Issue a notice of proposed debarment or suspension to the contractor(s), or initiate an alternative administrative remedy as required (Corporate Ethics Program, Letter of Concern, etc).

(3) Hear and review the contractor(s) opposition to the proposed suspension, debarment, or other administrative remedy.

(4) Determine whether or not the contractor(s) has raised a genuine dispute over facts material to the proposed debarment or suspension.

(5) Refer the debarment or suspension file to a fact finder for findings when there is a general issue of material fact in accordance with FAR 9.4, para. 9.406-3d(2)(ii) and AR 27-10, para. 8-4f. The contracting office will be responsible for representing the government and presenting evidence during the fact-finding.

(6) Coordinate the recommended decision letter with the ACofS, Acquisition Management.

(7) Prepare the final decision letter.

(8) Advise the contractor(s) of USFK debarment and suspension procedures.

(9) Approve, disapprove, or modify and sign the decision letter.

(10) Issue the decision letter to the contractor.

(11) Fax or email copies of the contractor(s) proposed suspension, final suspension, proposed debarment, or final debarment letters to the Procurement Fraud Advisor, 411th Contracting Support Brigade-Korea (Office of Counsel), as soon as possible after signature (FAR 9.404(c) – Update EPLS generally within 5 working days after the action becomes effective.).

(12) Appoint a Procurement Fraud Irregularities Coordinator and a Procurement Fraud Advisor IAW AR 27-40.

c. Procurement Fraud Irregularities Coordinator (PFIC), USFK/EUSA SJA will –

(1) Have overall responsibility for the design and implementation of the USFK procurement fraud program.

(2) Coordinate procurement fraud irregularities with theater procurement fraud advisors (IMCOM, 411th CSB/K, Far East District Engineers (FED)) and the Army Procurement Fraud Branch (PFB).

(3) Process all suspension, debarment, and other administrative remedies for review by the debarment authority.

d. Assistant Chief of Staff (ACofS), Acquisition Management, will --

(1) Review suspension and debarment reports for compliance with DFARS, part 209.4, and FAR, part 9, subpart 9.4. Recommend approval or disapproval of the report, and return the report to the submitting Procurement Fraud Advisor, 411th CSB/K (Office of Counsel).

(2) Coordinate recommendations concerning invited/technical representative contractor restrictions with the appropriate U.S. diplomatic mission and government agencies.

e. Procurement Fraud Advisor (411th CSB/K) will –

(1) Coordinate 411th CSB/K procurement fraud irregularities with the PFIC.

(2) Review all agency suspension and debarment reports for legal sufficiency.

(3) Register the report as an official USFK initiation of debarment and suspension action.

(4) Draft 411th CSB/K contract suspension and debarment reports related to cases of fraud identified by investigative agencies (CID, OSI, FBI, etc.).

(5) Forward one copy of completed reports, complete with all exhibits and evidence, thru the Director of Contracting, Deputy Assistant Chief of Staff (DACofS), Acquisition Management, to the Assistant Chief of Staff (ACofS), Acquisition Management for review and approval.

(6) Notify contracting activities and concerned agencies in the ROK of potential action pending.

(7) Forward all Freedom of information Act (FOIA) requests for evidence to the USFK Debarment Authority (USFK/EUSA SJA). Copies of all documents released and the name of each requestor will also be forwarded to the Debarment Authority.

(8) Notify contracting activities and concerned agencies in the ROK of the decision.

(9) All changes to the proposed debarment or suspension will be submitted by the contracting agency to the PFA, 411th CSB/K for coordination with the Debarment Authority.

(10) Maintain the USFK list of debarred, suspended, and ineligible contractors, adding contractors to or deleting them from the list when appropriate and posting on the EUSA Portal (<https://8army.korea.army.mil/specialstaff/CCK/Office%20of%20Counsel/default.aspx>), no less than quarterly.

(11) Fax or email pertinent data on contractor(s) suspended, proposed for debarment, or debarred to the Procurement Fraud Branch (PFB) as soon as possible after the action is completed.

f. Procurement Fraud Advisors (IMCOM/FED) will –

(1) Coordinate procurement fraud irregularities with the PFIC.

(2) Review respective agency suspension and debarment reports, provide a formal legal sufficiency legal opinion, and forward one copy to the PFA, 411th CSB/K.

g. Contracting officers (other than investigative agency cases) will --

(1) Identify the basis for debarment or suspension as set forth in the FAR, part 9, subpart 9.4, and summarize evidence in support of each cited basis.

(2) Prepare the report required by DFARS, part 209.406-3(a) (also see PGI 209.406-3 Procedures).

(3) Review, assess, and initiate all correspondence and coordination between the contracting activity and the contractor concerning the proposed action, to include any steps the contractor may have taken or recommended to avoid practices cited in the proposed debarment or suspension action including the firing of employees, offers to make restitution to the U.S. Government, or similar proposals.

(4) Advise, if known, whether or not the contractor, owners, officers, or managers are prominent citizens or entities in the ROK or if they have any family, social, or other connections with such individuals or entities.

(5) Compile and forward all evidence and related documents supporting the proposed debarment or suspension. In cases in which some of the evidence is classified, privileged, or otherwise not releasable to the contractor, compile and forward a second file of all evidence without the protected evidence. The basis for the deleted evidence will be discussed in the report and will be coordinated with the appropriate investigative agencies before being forwarded to the chief of the contracting office. Investigative agencies may later be required to discuss protected evidence with the military judge or the U.S. counsel representing the U.S. Government.

(6) List each investigating agency that provided information for the action and a point of contact, with phone number, at each agency.

(7) The debarment and suspension file may be prepared and submitted in accordance with Rule 4, Procedures of the Armed Services Board of Contract Appeals, to achieve uniform preparation of the file.

(8) Submit one copy of the report, including enclosures, to their agency Procurement Fraud Advisor for formal legal opinion.

h. Acquisition personnel (contracting specialists, GPC cardholders, billing officials, etc.) will-

(1) Prior to obligating government funds (purchase orders, contract awards, GPC purchases, contract extensions, etc), review the EPLS and USFK Parties List(s) after the opening of contract bids or receipt of proposals to ensure no listed suspended/debarred contractors are utilized in the acquisition process.

(2) Comply with FAR 9.405 (d)(2) and (3).

(3) Prior to award or modification of any contract, acquisition personnel obligating government funds shall again review the EPLS and USFK Parties lists to ensure that no award is made to a listed contractor.

(4) Agencies unable to access the web-based USFK Parties list will notify 411th CSB/K, Office of Counsel, (724-7515/3373), to obtain a copy via telefax/email.

5. Policy Guidance

There are 3 tenets to the USFK/EUSA suspension and debarment program.

- a. Accurate compilation of data supporting suspension and debarment.
- b. A thorough review of advisory lists to identify suspended and debarred contractors.
- c. Individual proactive measures by all personnel to remain cognizant of potential procurement fraud activities and to immediately report suspected fraud to appropriate procurement fraud advisors.

6. Exceptions to Policy

a. Personnel requesting an exception to policy concerning any chapter, section or paragraph in this regulation must forward a written request through appropriate command channels and HQ USFK, ATTN: FKJA, Unit #15237, APO AP 96205-5237, for final decision. Requests for exception to policy must provide, at a minimum, justification for the exception and include appropriate compensatory measures.

b. Exceptions to policy approved under previous editions of this regulation will expire 90 days from the effective date of this regulation. Requests for renewal of previously approved exceptions must be submitted within 60 days of the effective date of this regulation, IAW the routing process in paragraph 6a above and the provisions of this regulation.

7. USFK Installation Barment

a. In specific cases, an Area/USFK-wide installation bar may be imposed on individual contractors debarred from contracting.

b. Installation bars will normally run concurrently with the acquisition debarment period.

c. The procedures established in USFK 190-7 Installation Access will be utilized in the processing of Area/USFK-wide installation barments and reinstatement of installation access privileges

Appendix A References

Section I. Required Publications

FAR, Part 9, Contractor Responsibilities and Subpart 9.4, Debarment, Suspension, and Ineligibility. (cited in 1)

DFARS, Part 209.406-3(a) (Debarment, Suspension, and Ineligibility (Investigation and Referral). (cited in 4g(2))

AR 27-40 (Litigation). (cited in 4b(12))

USFK Reg 190-7 (Installation Access Control). (cited in 7)

Section II. Related Publications

AR 27-1 (Legal Services, Judge Advocate Legal Services).

AR 27-10 (Military Justice).

AR 190-30 (Military Police Investigations).

AR 195-2 (Criminal Investigation Activities).

AR 215-4 (Nonappropriated Fund Contracting).

AR 215-8 (Army and Air Force Exchange Service Operations).

Armed Services Board of Contract Appeals Procedures.

Bid Protest Guide.

Court of Federal Claims Rules.

DoD 5400.7-R (DoD Freedom of Information Act Program)

DoD 5400.11-R (Department of Defense Privacy Program)

DoD 5500.7-R (Joint Ethics Regulation).

Status of Forces Agreement (Art XV).

USFK Reg 700-19 (USFK Invited Contractors and Technical Representatives Program).

USFK Reg 715-2 (Contracting for Supplies, Services, and Construction).

Appendix B
Designation of Officials for Suspensions and Debarments



DEPARTMENT OF THE ARMY
WASHINGTON

07 AUG 2003



MEMORANDUM FOR THE JUDGE ADVOCATE GENERAL

SUBJECT: Designation of Officials for Debarment, Suspension and Ineligibility Matters

Pursuant to my authority as Acting Secretary of the Army, The Judge Advocate General is hereby designated as my designee under DFARS Subpart 209.4 (Debarment, Suspension, and Ineligibility). He, or his general officer or Senior Executive Service designee, has the authority to act on my behalf for all purposes of this subpart, to include acting as a debarring and suspending official.

This designation includes the authority for The Judge Advocate General to further designate officials to act as debarring and suspending officials in overseas areas of responsibility as specified in DFARS Subsection 209.403, except that such officials overseas need not be general officers.

The Judge Advocate General will ensure that the names of all parties suspended, proposed for debarment, or debarred pursuant to this designation or any redesignation are included on the General Services Administration's List of Parties Excluded for Federal Procurement or Nonprocurement Programs.

This designation is effective immediately.

A handwritten signature in black ink, appearing to read "R. L. Brownlee".

R. L. Brownlee
Acting Secretary of the Army



DEPARTMENT OF THE ARMY
UNITED STATES ARMY LEGAL SERVICES AGENCY
901 NORTH STUART STREET
ARLINGTON VA 22202-1837

REPLY TO
ATTENTION OF

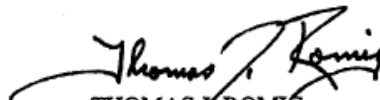
JALS-CA-PF (27-40f)

MEMORANDUM FOR

COMMANDER, U.S. ARMY LEGAL SERVICES AGENCY
STAFF JUDGE ADVOCATE, UNITED STATES ARMY EUROPE AND SEVENTH ARMY
STAFF JUDGE ADVOCATE, U.S. EIGHTH ARMY

SUBJECT: Designation of Army Officials for Suspension, Debarment, and Ineligibility Matters

1. The Secretary of the Army designated The Judge Advocate General, or his General Officer or Senior Executive Service designee, to act on his behalf for all purposes under Defense Federal Acquisition Regulation Supplement Subpart 209.4 (Suspension, Debarment, and Ineligibility).
2. Under the authority delegated to The Judge Advocate General, the Special Assistant to The Judge Advocate General for Communications, Transportation, and Utilities, Mr. Robert N. Kittel (Senior Executive Service), is hereby designated as the Army's Official for Suspension, Debarment, and Ineligibility matters. The Assistant Judge Advocate General is designated to perform such duties when Mr. Kittel is unable to act due to conflict, disqualification, or unavailability.
3. The Deputy Judge Advocate, U.S. Army Europe and Seventh Army, and the Staff Judge Advocate, U.S. Eighth Army are designated as the Army's Suspension and Debarment officials for Europe and Korea, respectively.
4. These designations shall remain effective until superseded or revoked.


THOMAS J. ROMIG
Major General, USA
The Judge Advocate General

12 Sep '03

CF:
DAJA-ZB
DAJA-ZC
DAJA-ZX
DAJA-AO
JALS-ZX
JALS-CA

Printed on  Recycled Paper

**Appendix C
USFK Parties List**

<https://8army.korea.army.mil/specialstaff/CCK/Office%20of%20Counsel/Shared%20Documents/Document-USFKParties%20List.pdf>

Example



REPLY TO
ATTENTION OF:

DEPARTMENT OF THE ARMY
411th CONTRACTING SUPPORT BRIGADE
UNITED STATES ARMY CONTRACTING COMMAND KOREA
UNIT #18289
APO AP 96206-5289



SPCA-KC

1 November 2007

MEMORANDUM FOR SEE DISTRIBUTION

SUBJECT: USFK List of Parties Excluded from Federal Procurement and Non-Procurement Programs

1. A revised USFK List of Parties Excluded from Federal Procurement and Non-Procurement Programs, dated 1 November 2007, is enclosed. IAW Federal Acquisition Regulation 9.405, contractors on this list are excluded from receiving contracts, to include purchases made with a Government Purchase Card (GPC). The enclosed information paper provides the restrictions in contracting with companies that are suspended, debarred, or proposed for suspension or debarment actions.
2. This list replaces the USFK List of Parties Excluded from Federal Procurement and Non-Procurement Programs dated 1 August 2007. These names shall be posted on the Excluded Parties Listing System website at <http://www.epls.gov/epls/search.do>¹ and USFK Parties List at <https://cckweb.korea.army.mil/GPC/Repository/Debar/USFKDebar.pdf>. Procurement Fraud Updates will be provided via email text and this parties list modified as changes occur. The next USFK List of Parties Excluded from Federal Procurement and Non-Procurement Programs shall be published NLT February 2008.
3. Absent any current contract performance requirements, a USFK-Wide Installation barment shall be imposed on all individuals debarred for more than two years. This bar shall remain in effect for the duration of the procurement/non-procurement debarment period.
4. Point of contact is Office of Counsel, 724-7515.

- 2 Encls
1. Debarment Lists, 1 Nov 07
2. Information Paper, 29 Dec 04

DANIEL T. COTTRELL
COL, AR
Principal Assistant Responsible for
Contracting

¹ "Reciprocal" list

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FOR OFFICIAL USE ONLY
 USFK SUSPENSION/DEBARMENT LIST
 BY COMPANY - 1 November 2007

COMPANY NAME	REGISTRATION NUMBER	CY OF OFFENSE	OFFENSE	AGENCY	CONTRACTOR ADDRESS	SUSPENSION DEBARMENT PERIOD	START DATE	TERM DATE	REMARKS
GUBAK CONSTRUCTION CO	5555555-5555555	2002	FALSE BIDS	USACCK	102-1003 SAMGAK APT, YONGSAN GU, SEOUL, ROK	5 YRS	24-Jun-04	24-Jun-09	

FOR OFFICIAL USE ONLY
 USFK SUSPENSION/DEBARMENT LIST
 BY INDIVIDUAL - 1 November 2007

INDIVIDUAL NAME	K.I.D. #	POSITION	CY OF OFFENSE	OFFENSE	AGENCY	ADDRESS	SUSPENSION/DEBARMENT PERIOD	USFK-WIDE INSTALLATION BAR	START DATE	TERM DATE	COMPANY NAME REMARKS
KIM, PON KUN	555555-5555555	PRESIDENT	2000-2003	BRIBERY	USACCK	102-1003 SAMGAK APT, YONGSAN GU, SEOUL, ROK	5 YRS	YES	24-Jun-04	24-Jun-09	GUBAK CONSTRUCTION CO

INFORMATION PAPER

CONTRACTS WITH DEBARRED AND SUSPENDED CONTRACTORS

1. **PURPOSE:** To highlight restrictions for contractors that are debarred, suspended or proposed for either action.¹

2. **DISCUSSION:**

a. **New Contracts.** Agencies cannot enter into new contracts² with companies that are debarred, suspended or proposed for either action. The Federal Acquisition Regulation (FAR) allows an exception to this general rule when "the agency head or designee determines that there is a compelling reason for such action." FAR 9.405(a). The Army has delegated the authority to make this determination to the local Suspension and Debarment Official (SDO), the Staff Judge Advocate for the Eighth U.S. Army. Army FAR Supplement (AFARS) 5109.405(a). A contracting officer initiates the process of seeking an exception, then must route it through the Head of the Contracting Activity ((HCA) Director, Army Contracting Agency) and the Contract Appeals Division for coordination, and who then forward the request to the local SDO for action. Requests affecting USACCK contracts and the GPC program are all coordinated with the Director of Contracting and the Commander before being forwarded to the HCA.

b. **Existing Contracts.** Generally, agencies can continue contracts that were in existence when a firm was debarred, suspended or proposed for either action, unless an agency head or designee directs otherwise. FAR 9.405-1(a) The decision to terminate an existing contract is made by a contracting officer in consultation with his legal advisor and technical staff. Acquisition regulations place several restrictions on the authority to use existing contracts with debarred or suspended contractors. Agencies may not renew or otherwise extend the duration of current contracts (e.g., exercise options), may not place orders exceeding the guaranteed minimum under indefinite quantity contracts or place orders on GSA Federal Supply Schedule contracts. The acquisition regulations do allow exceptions to these rules if the agency determines that there is a compelling reason for that action. Defense FAR Supplement (DFARS) 209.405-1(b) & (c). The local SDO determines if compelling reasons exists to grant an exception using the same procedures outlined above.

c. **Compelling Reasons.** Listed below are examples of compelling reasons for contracting with firms that have been debarred, suspended or proposed for either action. Requests for exceptions must be supported by compelling factual information, not general or conclusory statements.

- Only that contractor can provide the supplies or services;
- Urgency requires contracting with a debarred or suspended contractor;
- National defense requires continued business dealings with the contractor; or
- The contractor and agency have an agreement covering the same events that resulted in the debarment or suspension and the agreement includes the agency's decision not to debar or suspend the contractor. DFARS 209.405(a).

d. **Individual Responsibilities.** All DOD officials involved in the contracting process or GPC program must protect the Government's interests from irresponsible contractors. To satisfy this obligation, agency officials must not seek bids from, extend existing contracts with or award new contracts to companies that are debarred, suspended or proposed for either action. This is achieved by reviewing the USFK and EPLS list(s) of parties excluded from contracting with the US govt.³

e. **Contracting Officer's Responsibilities.** Contracting officers must also review the Office of Counsel Advisory List to determine if a particular contractor is responsible. The Advisory List identifies companies and/or individuals that are being investigated for possible misconduct. This list may not be released outside of this Command.

¹ Debarments exclude contractors from receiving Government contracts and subcontracts for a set time period. Suspensions have the same effect, but are temporary measures to protect the Government's interests until an investigation or legal proceeding is completed. FAR 9.405(a) & 9.407-1(b)(1). Contractors proposed for debarment or suspension have been notified that they are being considered for either of these measures and are given an opportunity to present evidence that such measures are unnecessary. As a general rule, contractors are debarred or suspended because they have committed misconduct relating to the performance of a Government contract.

² The restrictions in this information paper also apply to Morale Welfare & Recreation contracts and Government Purchase Card transactions. AR 215-4, para 4-5.a; USACCK GPC SOP, para III.B.4.c.

³ [USFK = <https://8army.korea.army.mil/specialstaff/CCK/Office%20of%20Counsel/default.aspx>] [EPLS = <http://www.epls.gov/epls/search.do>]

Appendix D Excluded Parties List System (EPLS)

<https://www.epls.gov/epls/search.do>

EPLS
Excluded Parties List System

Search - Current Exclusions

- > Advanced Search
- > Multiple Names
- > Exact Name and SSN/TIN
- > MyEPLS
- > Recent Updates

View Cause and Treatment Code Descriptions

- > Reciprocal Codes
- > Procurement Codes
- > Nonprocurement Codes

Agency & Acronym Information

- > Agency Contacts
- > Agency Descriptions
- > State/Country Code Descriptions

OFFICIAL GOVERNMENT USE ONLY

- > Debar Maintenance
- > Administration
- > Upload Login

EPLS Advanced Search

Exact Name
Format: Last, First Middle or Last, First MI.

Partial Name
Refer to Search Help for tips on Partial Name searching.

Action Dates
To

Termination Dates
To

Create Dates
To

Modify Dates
To

DUHS

Classification
ALL
Entity
Firm

Exclusion Type
ALL
NonProcurement
Procurement

CT Code (Reciprocal)
03-BSE-01
03-DP-01
03-ENT-01

CT Code (Procurement)
A
A1
AA

CT Code (Non-Procurement)
C
C1
E

Agency
AF
AID

Resources

- > Search Help
- > Public User's Manual
- > FAQ
- > Acronyms
- > Privacy Act Provisions
- > News

Reports

- > Advanced Reports
- > Recent Updates
- > Dashboard

Archive Search - Past Exclusions

- > Advanced Archive Search
- > Multiple Names
- > Recent Updates

Contact Information

- > Email: support@epls.gov
eplscomments@epls.gov
- > Phone: 1-866-GSA-EPLS
1-866-472-3757

Start | Done | Internet | 2:37 PM

Glossary

ACofS	Assistant Chief of Staff
CID	Criminal Investigation Division
DA	Debarment Authority
DACofS	Deputy Assistant Chief of Staff
DoC	Director of Contracting
EUSA	Eighth United States Army
EPLS	Excluded Parties List System
FED	Far East District (Engineers)
FBI	Federal Bureau of Investigation
FOIA	Freedom of Information Act
GPC	Government Purchase Card
OSI	Office of Special Investigations
PFA	Procurement Fraud Advisor
PFB	Procurement Fraud Branch
PFIC	Procurement Fraud Irregularities Coordinator
ROK	Republic of Korea
SJA	Staff Judge Advocate
U.S.	United States (of America)
USFK	United States Forces, Korea