



DEPARTMENT OF THE ARMY  
U.S. ARMY CORPS OF ENGINEERS  
WASHINGTON, D.C. 20314-1000

CECT-P

04 MAY 2011

MEMORANDUM FOR ALL USACE COMMANDS (DIRECTORS/CHIEFS OF CONTRACTING)

SUBJECT: Policy Instruction Letter (PIL) 2011-05, USACE Defense Base Act (DBA) Insurance Program FY11 - Mandatory Requirements Contract with CNA Insurance

1. DBA Insurance is necessary to ensure contractor employees have workmen's compensation insurance in the event of an injury or fatality. This is particularly critical considering some of the high risks our contractors take to support the effort in Iraq and Afghanistan. Every effort must be taken to ensure contractor employees are covered by DBA insurance to avoid any situations where there is an injury or fatality and a contractor employee isn't covered.

2. USACE is in its 4th Single-Provider centrally-managed DBA Insurance contract, and as of 1 April, 2011, the new fixed rates for this mandatory requirements contract are as follows:

Service	\$3.50	per \$100 of employee remuneration
Construction	\$4.25	per \$100 of employee remuneration
Security	\$10.00	per \$100 of employee remuneration
Aviation	\$17.00	per \$100 of employee remuneration

3. DBA insurance is required for employees of contractors and their subcontractors at every tier unless the U.S. Department of Labor has granted a written country waiver (see FAR 28.305) AND the waiver is included in the contract on Technical Exhibit #2, List of Country Waivers (see Enclosure 3).

4. The Department of Labor has waived the application of the Defense Base Act for performance of work in the locations/countries listed on Technical Exhibit #2, List of Country Waivers (see Enclosure 3). These waivers apply to employees other than U.S. Citizens, residents of the United States or those hired in the United States under the following circumstances: such employees to whom the waiver will apply will receive compensation benefits pursuant to the provisions of the home or host country workers' compensation laws, providing occupational injury and death benefits without exception, inclusive of war related injury and death. The employer must obtain and pay for such home or host country workers' compensation coverage for the waiver of DBA cover to be valid as to those employees. A waiver granted under these provisions will not be effective if the employer fails to obtain such local coverage.

5. All USACE, CENTCOM Contracting Command (C3) and 408<sup>th</sup> Contracting Support Brigade (CSB) contractors and subcontractors procuring DBA insurance (i.e. renewing coverage or obtaining new coverage), for a USACE, C3 or 408<sup>th</sup> CSB contract, shall purchase such DBA insurance under this requirements contract unless one or more of the following exceptions apply:

- a. The contractor or subcontractor has a DBA self-insurance program approved by DOL; or
- b. The overseas place of performance is covered by a Department of Labor country waiver listed on the Technical Exhibit #2, List of Country Waivers; or

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c. The contractor is a personal services contractor whose employees are covered by the Federal Employees Compensation Act.

6. Pre-Award and Post-Award Responsibilities:

a. Special DBA Requirements:

1) Solicitation: Enclosure 1 contains the Special Solicitation Requirements which shall be utilized in all solicitations, even if there is a Country Waiver, with contractor and subcontractor employees working overseas, with the exception of Hawaii and Alaska. It is the Contracting Officer's responsibility to place the applicable Special Solicitation Requirements into the appropriate section of the solicitation and to ensure that Offerors/Bidders are aware of the statutorily mandated DBA.

2) Contract: Enclosure 2 contains the Special Contract Requirements which shall be utilized in all contracts, even if there is a Country Waiver, with contractor and subcontractor employees working overseas, with the exception of Hawaii and Alaska. It is the Contracting Officer's responsibility to place the Special Contract Requirements into the appropriate section of the contract, to ensure that Offerors/Bidders correctly price DBA insurance and that the successfully awarded contractors maintain a valid DBA Insurance policy with CNA Insurance.

3) Failure to Comply: The Special Contract Requirements includes 'failure to comply' language. This emphasizes the Government's ability to enforce compliance with the statutorily mandated DBA, and informs contractors that their contract can be terminated for default/cause if Primes or Subcontractors fail to comply.

4) Claims Reporting: The Special Contract Requirements have been revised to include the requirement for the contractor to make timely Defense Base Act insurance claims on behalf of each employee who is injured or killed in the course of their employment. It also requires the contractor to make monthly written reports to the Contracting Officer, Administrative Contracting Officer, and the District/Center Safety and Occupational Health Manager, providing the names of each such injured or deceased employee, the circumstances surrounding each injury or death, the dates of each injury or death, the date the insurance claim was made on behalf of each employee, and the current status of each claim.

b. When to Allow Performance or issue the Notice to Proceed (NTP): It is the Contracting Officer's responsibility to ensure that the successfully awarded Contractor obtains and maintains valid DBA Insurance with CNA Insurance, before allowing performance. There is a specific change to the Special Contract Requirements which requires CNA's Broker (Rutherford International) to provide proof of confirmation of coverage within 3 working days of receipt of a complete insurance application from the contractor. This written confirmation should be used by the Contracting Officer to issue the notice to proceed with performance. Contracting Officers shall ensure that there is a valid Insurance Policy or Endorsement to an existing policy for the Prime and each Subcontractor and verify that the USACE contract number or task order number is on the policy or endorsement. Contracting Officers shall also ensure that if a Department of Labor waiver is being utilized that the Prime and each Subcontractor also provide proof of confirmation of coverage from the home or host country workers' compensation coverage to ensure employees are covered.

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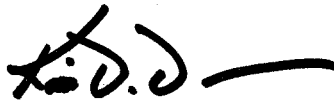
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c. Separately Price DBA Insurance Contract Line Item Number (CLIN): A separate CLIN will be established for DBA Insurance, so Offerors/Bidders are aware of the mandatory requirement and the rates and payments are easier to track and audit. Standard CLIN language is enclosed which explains that the amount listed by the offeror is based on their total estimated DBA Insurance premium and the amount varies with payroll. The actual amount paid by the U.S. Government will be based on the actual amount of the Rutherford stamped as "paid" invoice submitted by the contractor for the Prime and all Subcontractors. The Insurance carrier/Broker will conduct periodic audits of actual contractor payroll amounts. When a return is due for over-payment of premium on a specific audit, such returned premium shall be returned to the U.S. Department of Treasury.

7. Oversight and Accountability: NCO leadership is responsible and accountable to ensure oversight and compliance with the DBA insurance requirement. Oversight and accountability can be performed through HQ Program and Evaluation reviews, PARC.PMR's, and other internal reviews and assessments to ensure compliance with the statutorily mandated DBA Insurance Program.

8. If you have any questions or need additional information, please contact the USACE DBA subject matter expert, Ms. Lynn M. Harper, at (540) 665-3998 or the HECSA Contracting Officer, Ms. Susan M Stewart, at (703) 428-7406.

FOR THE COMMANDER:



KIM D. DENVER  
Director, National Contracting Organization  
U.S. Army Corps of Engineers

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