



DEPUTY SECRETARY OF DEFENSE
1010 DEFENSE PENTAGON
WASHINGTON, DC 20301-1010

FEB 26 2010

MEMORANDUM FOR: SEE DISTRIBUTION

SUBJECT: Continuation of Essential Contractor Services

Today's changing threat environment has increased the need for continuity of operations capabilities and plans that enable agencies to continue their essential functions across a broad spectrum of emergencies. One example of such a threat is the 2009 H1N1 influenza that has spread internationally with unprecedented speed and was officially declared a pandemic June 11, 2009. Of particular concern is the possibility there will be a dramatic increase in cases and that the infection may become more virulent in the future.

The Federal Emergency Management Agency's Federal Preparedness Circular #65 directs the United States to have in place a comprehensive and effective program to ensure continuity of essential Federal functions under all circumstances. DoD Instruction 3020.37 requires the Department to provide reasonable assurance of the continuation of essential services provided by DoD contractors during crisis situations. Components working with contractors performing essential services must develop and implement plans and procedures that will provide reasonable assurance of the continuation of essential services during any crisis situation using contractor employees or other resources as necessary.

Requiring activities shall review contracted services and determine which services would be critical to the support of mission essential functions that, if interrupted, may seriously impair the Government. Class deviation 2009-O0010, attached, has been approved in accordance with FAR 1.404 to ensure continuity of such services in the event of any crisis. Contracting officers shall include this deviation so that contractors will ensure that these essential contractor services continue without interruption.

Attachment:
As stated



OSD 10546-09



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WASHINGTON, DC 20301-3000

ACQUISITION,
TECHNOLOGY
AND LOGISTICS

AUG 27 2009

In reply refer to
DAR Tracking Number: 2009-O0010

MEMORANDUM FOR COMMANDER, UNITED STATES SPECIAL OPERATIONS
COMMAND (ATTN: ACQUISITION EXECUTIVE)
COMMANDER, UNITED STATES TRANSPORTATION
COMMAND (ATTN: ACQUISITION EXECUTIVE)
DEPUTY ASSISTANT SECRETARY OF THE ARMY
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DEPUTY ASSISTANT SECRETARY OF THE NAVY
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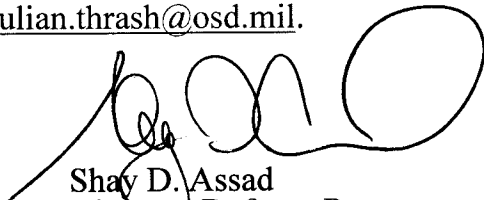
SUBJECT: Class Deviation to the Department of Defense Federal Acquisition
Regulation Supplement (DFARS) for Continuation of Essential
Contractor Services

Effective immediately, contracting officers are authorized to use the attached clause in solicitations and contracts that are identified by the requiring agency as having essential contractor services which support mission essential functions.

Today's changing threat environment has increased the need for continuity of operations capabilities and plans that enable agencies to continue their essential functions across a broad spectrum of emergencies. An example of such a threat to continuity of operations includes, but is not limited to, the 2009 H1N1 influenza pandemic.

Department of Defense Instruction (DoDI) 3020.37, *Continuation of Essential DoD Contractor Services During Crises*, dated November 6, 1990, requires the Department to provide for a reasonable assurance of the continuation of essential services provided by contractors, including services provided to Foreign Military Sales customers, during crisis situations. This class deviation is necessary to ensure consistency in the implementation of this requirement.

This deviation is effective until incorporated into the DFARS or otherwise rescinded. Any questions should be addressed to Mr. Julian Thrash, Senior Procurement Analyst, at 703-602-0310, or via e-mail at julian.thrash@osd.mil.



Shay D. Assad
Director, Defense Procurement
and Acquisition Policy

Attachments:
As stated

Class Deviation 2009-00010

CONTINUATION OF ESSENTIAL CONTRACTOR SERVICES

Subpart 237.XX- CONTINUATION OF ESSENTIAL CONTRACTOR SERVICES

237.XX00 Scope.

This subpart prescribes procedures for the acquisition of essential contractor services which support mission essential functions.

237.XX01 Definitions.

As used in this subpart-

(1) "Essential contractor service" means a service provided by a firm or individual under contract to DoD to support mission essential functions, such as support of vital systems, including ships owned, leased, or operated in support of military missions or roles at sea; associated support activities, including installation, garrison, and base support services; and similar services provided to foreign military sales customers under the Security Assistance Program. Services are essential if the effectiveness of defense systems or operations may be seriously impaired by the interruption of these services.

(2) "Mission essential functions" means those organizational activities that must be performed under all circumstances to achieve DoD component missions or responsibilities. Failure to perform or sustain these functions would significantly affect DoD's ability to provide vital services or exercise authority, direction, and control.

237.XX02 Policy.

Although the excusable delays and termination for default clauses generally relieve contractors from delay and default liability when a failure to perform arises from causes beyond their control, contractors providing services designated as essential contractor services by a DoD

component are expected to use their best efforts to continue providing such services, in accordance with the terms and conditions of their contracts even during periods of crisis.

237.XX03 Contract clause.

Use the clause at 252.237-70XX, Continuation of Essential Contractor Services in solicitations and contracts for services that are in support of mission essential functions.

PART 252-SOLICITATION PROVISIONS AND CONTRACT CLAUSES

252.237-70XX, Continuation of Essential Contractor Services.

As prescribed in 237.XX03, use the following clause:

CONTINUATION OF ESSENTIAL CONTRACTOR SERVICES (Aug 2009)

(a) The Contracting Officer has identified all or a portion of the contractor services performed under this contract as essential contractor services in support of mission essential functions. The contractor-provided services that have been determined to be essential contractor services in support of mission essential functions are listed in attachment __, Mission Essential Contractor Services, dated _____.

(b) The Contractor shall have a plan after award of this contract or incorporation of this clause in a contract by modification, for continuing the performance of essential contractor services identified in (a) above during a crisis.

(1) The Contractor shall identify in the plan provisions made for the acquisition of necessary personnel and resources, if necessary, for continuity of operations for up to 30 days or until normal operations can be resumed;

(2) The plan must, at a minimum, address-

(i) Challenges associated with maintaining contractor essential services during an extended event, such as a pandemic that occurs in repeated waves;

(ii) The time lapse associated with the initiation of the acquisition of necessary personnel and resources and their actual availability on site;

(iii) The components, processes, and requirements for the identification, training, and preparedness of personnel who are capable of relocating to alternate facilities or performing work from home; and

(iv) Any established alert and notification procedures for mobilizing identified "essential contractor service" personnel; and

(v) The approach for communicating expectations to contractor employees regarding their roles and responsibilities during a crisis.

(c) The Contractor recognizes that the services under this contract are vital to the Government and must be continued without interruption. In the event the Contractor anticipates not being able to perform due to any of the causes enumerated in the excusable delay clause of this contract, the Contractor shall notify the contracting officer or other designated representative as expeditiously as possible and use its best efforts and cooperate with the Government in the Government's efforts to maintain the continuity of operations.

(d) The Government reserves the right in such crisis situations to use federal employees of other agencies or contract support from other contractors or to enter into new contracts for essential contractor services. Any new contracting efforts would be conducted in accordance with OFPP letter, "Emergency Acquisitions" May 2007 and FAR and DFARS Subparts 18 and 218 respectively or any other subsequent emergency guidance issued.

(e) This clause shall be included in subcontracts for the essential services.

(End of Clause)



Department of Defense INSTRUCTION

NUMBER 3020.37
November 6, 1990

Incorporating Change 1, January 26, 1996
ASD(FM&P)

SUBJECT: Continuation of Essential DoD Contractor Services During Crises

- References: (a) DoD Directive 1100.18, "Wartime Manpower Mobilization Planning," January 31, 1986
(b) Executive Order 12656, "Assignment of Emergency Preparedness Responsibilities," November 18, 1988
(c) DoD Instruction 1000.1, "Identity Cards Required by the Geneva Conventions," January 30, 1974
(d) DoD Directive 1404.10, "Retention of Emergency-Essential (E-E) DoD U.S. Civilian Employees Overseas," April 6, 1990
(e) through (j), see enclosure 1

1. PURPOSE

This Instruction implements DoD policy, assigns responsibilities, and prescribes procedures, in accordance with references (a) and (b), to provide reasonable assurance of the continuation of essential services provided by DoD contractors, including services provided to Foreign Military Sales (FMS) customers, during crisis situations.

2. APPLICABILITY

This Instruction applies to the Office of the Secretary of Defense (OSD); the Military Departments, including the Coast Guard when operating as a Service in the Navy; the Chairman, Joint Chiefs of Staff and the Joint Staff; the Combatant Commands; the Inspector General of the Department of Defense (IG, DoD); and the Defense Agencies (hereafter referred to collectively as the "DoD Components").

3. DEFINITIONS

Terms used in this Instruction are defined in enclosure 2.

4. POLICY

It is DoD policy that:

4.1. The DoD Components shall rely on the most effective mix of the Total Force, cost and other factors considered, including Active, Reserve, civilian, host-nation, and contract resources necessary to fulfill assigned peacetime and wartime missions.

4.2. Contractors providing services designated as essential by a DoD Component are expected to use all means at their disposal to continue to provide such services, in accordance with the terms and conditions of the contract during periods of crisis, until appropriately released or evacuated by military authority.

4.3. DoD Components working with contractors performing essential services shall develop and implement plans and procedures which are intended to provide reasonable assurance of the continuation of essential services during crisis situations using contractor employees or other resources as necessary.

4.4. For situations where the cognizant DoD Component Commander has a reasonable doubt about the continuation of essential services during crisis situations by the incumbent contractor, the Commander shall prepare a contingency plan for obtaining the essential service from alternate sources (military, DoD civilian, host-nation, other contractor(s)).

5. RESPONSIBILITIES

5.1. The Assistant Secretary of Defense (Force Management and Personnel) (ASD(FM&P)) shall periodically monitor implementation of this Instruction.

5.2. The Heads of DoD Components shall:

5.2.1. Ensure that the policy and procedures in this Instruction are implemented by relevant subordinate organizations.

5.2.2. Ensure that all contractor services are reviewed annually, to include new and existing contracts, to determine which services will be essential during crisis situations.

5.2.3. Conduct an annual assessment of the unanticipated and/or premature loss of essential contractor services on the effectiveness of support to mobilizing and deployed forces. Include the results of these assessments into relevant portions of the affected contingency and/or operations plans, consistent with JCS planning guidance.

5.2.4. *Establish procedures to ensure that these standard support requirements and any additional ones established by the Combatant Commander are met. They shall specifically authorize appropriate uniforms, if any, and the theater-specific equipment determined by the Combatant Commander to be necessary, in accordance with joint Staff procedures, to be issued for use by civilian contractors.*

5.2.5. *Provide assistance to FMS customers in prioritizing security assistance requirements, planning for the retention of essential contractor personnel in a crisis, and recommending required actions relative to continuation or termination of security assistance programs.*

5.2.6. *Advise the ASD(FM&P) of any significant problems in implementing this Instruction.*

5.3. **The Chairman, Joint Chiefs of Staff (CJCS), shall:**

5.3.1. Establish procedures for the preparation and review of contingency plans by the Combatant Commanders that conform to policy guidance from the President and the Secretary of Defense. Planning guidance shall include the review and assessment of alternatives to continue contractor services identified as critical to the execution of the plan.

5.3.2. Review for adequacy and feasibility, operations and/or contingency plans developed by the Combatant Commanders as part of the established deliberate planning process of the Joint Strategic Planning System.

5.3.3. Monitor the execution of contingency plans following activation by the applicable trigger mechanism (identified in paragraph E2.1.5. of enclosure 2).

5.3.4. *Establish procedures for Combatant Commanders to declare theater and/or scenario-specific civilian contractor support requirements as including equipment that is in addition to the standard support requirement described in enclosure 3.*

6. PROCEDURES

The following essential services planning procedures apply to DoD Component activities using contractor services in peacetime:

6.1. Identify services designated as mission essential in the contract statement of work (SOW).

6.2. Maintain, in a current status, the following information:

6.2.1. The generic description of the essential contractor service.

6.2.2. The name, address, and telephone number of the contractor performing the essential service.

6.2.3. The name, address, and telephone number of the in-country contact for the DoD activity using the essential service, if overseas.

6.2.4. The number of contractor employees and equivalent man-years required to perform the essential service.

6.2.5. The number of dependents of designated-essential contractor employees to be included in noncombatant evacuation planning, if overseas.

6.3. Issue Geneva Convention identity cards in accordance with DoD Instruction 1000.1 (reference (c)), to essential contractor personnel overseas.

6.4. For situations where a reasonable assurance of continuation of essential services by a contractor cannot be attained, the cognizant DoD Component Activity Commander shall do one of the following:

6.4.1. Obtain military, DoD civilian, or host-nation personnel to perform the services concerned and, in consultation with appropriate legal and contracting personnel, determine the proper course of actions to transition from the contractor provided services.

6.4.2. Prepare a contingency plan for obtaining the essential services from other sources if the contractor does not perform in a crisis.

6.4.3. Accept the risk attendant with a disruption of the service during a crisis situation.

6.5. *Determine prior to contract award, or prior to modification to extend the performance period, whether an interruption of service would result in an unacceptable risk. If an unacceptable risk would result, develop a contingency plan to ensure continued service.*

6.6. *Include provisions in operations or contingency plans to assume or supplement contractor-supplied essential services during crisis situations at the earliest opportunity, when members of the U.S. Armed Forces, DoD civilians (DoD Directive 1404.10) (reference (d)), or host-nation resources can be identified to perform the essential DoD-contracted services. The contractor providing the service should be made aware of such replacement and transitioning plans.*

6.7. *Ensure the contract SOW requires the development of contractor contingency plans for those tasks that have been identified as essential to provide reasonable assurance of continuation during crisis conditions.*

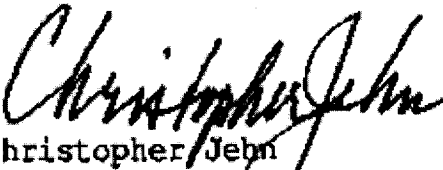
6.8. *Establish administrative controls to ensure that all information on essential contractor employees overseas is handled as sensitive data and released only to authorized personnel.*

6.9. *Ensure that contractors providing essential services identify their employees having military mobilization recall commitments and have adequate plans for replacing those employees in the event of mobilization, in accordance with the guidelines in DoD Directives 1200.7 and 1352.1 (references (e) and (f)).*

6.10. *Ensure that information on contractor-employee benefits due to war exigencies, under 33 U.S.C. 901 and 42 U.S.C. 1651 and 1701 (references (g) and (h)), is fully developed and provided in writing to all affected contractor employees.*

7. EFFECTIVE DATE AND IMPLEMENTATION

This Instruction is effective immediately. Forward two copies of implementing documents to the Assistant Secretary of Defense (Force Management and Personnel) within 120 days.


Christopher Jehn
Assistant Secretary of Defense
(Force Management and Personnel)

Enclosures - 3

E1. References, continued

E2. Definitions

E3. *Guidelines for Theater Admission Procedures*

E1. ENCLOSURE 1

REFERENCES, continued

- (e) DoD Directive 1200.7, "Screening the Ready Reserve," April 6, 1984
- (f) DoD Directive 1352.1, "Management and Mobilization of Regular and Reserve Retired Military Members," March 2, 1990
- (g) Section 901 et seq. of title 33, United States Code (Public Law 69-803, "Longshoremen's and Harbor Workers' Compensation Act," March 4, 1927)
- (h) Sections 1651 and 1701 et seq. of title 42, United States Code (Public Law 77-208, "Defense Base Act," August 16, 1941, and Public Law 77-784, "War Hazards Compensation Act," December 2, 1942)
- (i) JCS Pub. 1-02, "Department of Defense Dictionary of Military and Associated Terms," December 1989
- (j) Public Law 94-329, "International Security Assistance and Arms Export Control Act of 1976," June 30, 1976

E2. ENCLOSURE 2

DEFINITIONS

E2.1.1. Crisis Situation. Any emergency so declared by the National Command Authority (NCA) or the overseas Combatant Commander, whether or not U.S. Armed Forces are involved, minimally encompassing civil unrest or insurrection, civil war, civil disorder, terrorism, hostilities buildup, wartime conditions, disasters, or international conflict presenting a serious threat to DoD interests.

E2.1.2. Defense Readiness Condition (DEFCON). A number or code word indicating the readiness posture of a unit for actual operations or exercises, as defined in JCS Pub 1-02 (reference (i)). Also, called "state of readiness."

E2.1.3. Essential Contractor Service. A service provided by a firm or an individual under contract to the Department of Defense to support vital systems including ship's owned, leased, or operated in support of military missions or roles at sea and associated support activities including installation, garrison, and base support serviced considered of utmost importance to the U.S. mobilization and wartime mission. That includes services provided to FMS customers under the Security Assistance Program. Those services are essential because of the following:

E2.1.3.1. DoD Components may not have military or DoD civilian employees to perform these services immediately.

E2.1.3.2. The effectiveness of defense systems or operations may be seriously impaired, and interruption is unacceptable when those services are not available immediately.

E2.1.4. Foreign Military Sales (FMS). That portion of U.S. security assistance authorized by Public Law 94-329 as amended (reference (j)).

E2.1.5. Trigger Mechanism. Subject to CJCS oversight, and with recommendations by Defense Agencies, the cognizant Combatant Commander assesses the crisis situation in the specific area of operational responsibility in which contractor employees are located, and the Combatant Commander or senior U.S. authority makes a decision to activate applicable plans, or when DEFCON 3 is declared for that area.

E2.1.6. Vital Defense Systems and Associated Support Activities

E2.1.6.1. Command, control, communications, and intelligence (C3I) systems, including tactical and strategic information, intelligence collection, and computer subsystems.

E2.1.6.2. Selected operational weapons systems, including those being brought into the DoD inventory, international customer inventory, or fielded systems undergoing major modifications.

E2.1.6.3. Operational logistics support of the systems described in paragraphs E2.1.6.1. and E2.1.6.2., above, medical services, noncombatant evacuation activities, and other wartime services if determined vital to mission continuance by the Component Commander.

E3. ENCLOSURE 3

GUIDELINES FOR THEATER ADMISSION PROCEDURES

E3.1.1. In issuing and implementing theater admission requirements to a possible theater of operations for civilian contractors, the Chairman of the Joint Chiefs of Staff, the Combatant and Supporting Commanders, and the other DoD Components should include the following:

E3.1.1.1. Training for civilians on their responsibilities; e.g., standards of conduct, as well as coping skills if they become Prisoners of Wars;

E3.1.1.2. Issuing to civilian contractors, and training personnel in the use of, the same defensive personal protective gear as is issued to military personnel in theater, to include lens inserts, if required;

E3.1.1.3. Immunizing civilians with the same immunizations as given to military in theater. (Refer to United States Air Force Foreign Area Clearance Guide for specific immunizations required for a particular country.);

E3.1.1.4. Providing to civilian contractors appropriate cultural awareness training for the theater if it is being provided to military personnel;

E3.1.1.5. Ensuring civilian contractors obtain or are issued DD Form 489 (Geneva Convention Identification Cards), passports, visas, and country clearances in accordance with the United States Air Force Foreign Area Clearance Guide. When theater conditions necessitate further clearances, the Combatant Commander will notify the Heads of the DoD Components expeditiously;

E3.1.1.6. Ensuring that civilian contractors are issued any required security clearances expeditiously. Security clearances are to be issued on a "need-to-know" basis;

E3.1.1.7. Ensuring that civilian contractors fill out DD Form 93, "Record of Emergency Data." Components shall set up procedures to store and access civilian DD 935 that are the same as or parallel to those for the military;

E3.1.1.8. Ensuring that Components set up procedures for civilian contractor casualty notification and assistance that parallel those for military personnel as far as is legally permissible;

E3.1.1.9. Ensuring civilian contractors in a theater of operations are entitled to the same medical care as military personnel. They will be human immunodeficiency virus tested before deployment if the country of deployment requires it. They also shall ensure that all DoD-sponsored non-military personnel permanent change of station or temporary duty outside the United States of America and its Territories shall have panarexs or deoxyribo nucleic acid samples taken for identification purposes. Dental x-rays may be substituted when the ability to take panarex or deoxyribo nucleic acid samples is not available. Civilian contractors may also be issued "dog tags" for identification purposes. Components shall establish procedures to store and access such identification data that are the same as or parallel to those for the military;

E3.1.1.10. Ensuring that deploying civilian contractor personnel 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. During a contingency or emergency, civilian contractors returning to the United States and its Territories from a theater of operations may receive cost-free military physical examinations;

E3.1.1.11. Ensuring that deploying civilian contractor personnel shall carry with them a minimum of a 90-day supply of any medication they require;

E3.1.1.12. Ensuring that deploying civilian contractor personnel are encouraged to make family care plans for any dependents;

E3.1.1.13. Ensuring that civilian contractor personnel killed in a theater of operations are processed by Graves Registration with procedures parallel to those utilized for the military; and

E3.1.1.14. Ensuring that civilian contractor personnel deploying to or in a theater of operations are furnished the opportunity and assisted with making wills as well as with any necessary powers of attorney; as permissible under Military Department regulations.