

USACE Defense Base Act Insurance Program



US Army Corps of Engineers
BUILDING STRONG[®]

Updated as of 31 July 2012

Overview

- What is DBA Insurance?
- When is DBA Insurance Required?
- Why was USACE Program Established?
- NCO DBA Policy
- Contracting Officer's Responsibilities
- Points of Contact



DBA Insurance

- What is DBA Insurance?
 - ▶ Congressionally mandated workers compensation insurance effective since 1941
 - 42 U.S.C. Sections 1651-1654, as amended
 - USG Policy and Waivers made by Dept. of Labor (DOL)

 - ▶ Contractors **MUST** buy DBA insurance for its employees working outside the 50 states.
 - Unless under a self-insurance program approved by DOL or subject to a waiver (see FAR 28.305)



Which Contracts Require DBA Insurance?

- All construction and service contract actions with performance overseas
- Both prime contractors and subcontractors must obtain DBA insurance (primes do not cover subs)
- Not required for supply acquisitions unless training or equipment installation is involved (i.e. performance OCONUS)



When is DBA Required?

- For ALL Contractors and Subcontractors unless waived by DOL
- DOL Country Waiver List
 - ▶ Country Waiver List on next slide
 - ▶ Unless on Country Waiver List, DBA insurance is required
- A waiver can be requested from DOL
 - IAW FAR 28.305
- No country waiver if:
 - ▷ Hired in the US
 - ▷ Resident of the US
 - ▷ Citizen of the US
 - ▷ If no Local Compensation Law Exists in Country



Country Waivers

- Belgium
- Germany
- Japan
- Oman
- United Arab Emirates
- Saudi Arabia
- Bahama Island
- Kazakhstan
- Italy
- Turkey
- Spain
- Uzbekistan
- South America
- Honduras
- El Salvador
- Qatar
- Botswana
- South Korea
- Territory of Guam
- Israel
- American Somoa
- France
- Russia
- Greenland



Why does the USACE Program exist?

- Background/History
 - ▶ After 9/11 insurance costs became unaffordable for many companies (as much as \$150 per \$100 Compensation)
 - ▶ Needed to find a way to help companies follow the DBA law
 - ▶ Allowed local small business firms to bid

- Contract Information
 - ▶ USACE Single Source Program began in October 2005
 - Current contract with CNA ends on 31 March 2013
 - Decision to be made to continue with a new single source contract or open market

 - ▶ The Fixed rates are currently:
 - Services \$3.50 per \$100 Compensation
 - Construction \$4.25 per \$100 Compensation
 - Security \$10.00 per \$100 Compensation
 - Aviation \$17.00 per \$100 Compensation



DBA Insurance

- The USACE-wide contract was awarded to Continental Insurance Company (CNA) with Rutherford as their agent/broker
- There is no minimum fixed amount requirement
- CNA must be utilized whenever the contractor either obtains new DBA insurance or renews its existing DBA insurance
 - ▶ Why? Because this is a single source requirements contract
 - ▶ Contract includes CENTCOM Contracting Command (C3) and the 408th Contracting Support Brigade (CSB)
 - ▶ Can't accept coverage from another insurance carrier or the Government will be in breach of its contract with CNA



Definition of Labor Categories

SERVICE: \$3.50/\$100 “White collar” workers such as IT Consultants, Engineers, Administrative type office workers and light housekeeping, Security Consultants could be included as long as they are just assessing risk and not providing armed protection.

CONSTRUCTION: \$4.25/\$100 “Blue collar” workers providing Construction services such as Carpentry, Electrical, Plumbing, Concrete, Asphalt, Day Laborers, Operation and Maintenance of Heavy Equipment

SECURITY: \$10.00/\$100 Personal Security Detail (PSD) and Static or Convoy Guarding Personnel or Property

AVIATION: \$17.00/\$100 Pilot and Crew of any aircraft excluding ground personnel who provide maintenance or services but stay on the ground



NCO Policy Instruction Letter (PIL)

- PIL 2011-05, 4 May 2011, announces new contract, new rates
- Separately priced CLIN (cost reimbursable)
- Requires DBA contractor to provide proof of confirmation of coverage within 3 working days after receipt of complete insurance application
 - ▶ Contracting Officer must have this confirmation to issue NTP
- NCO issued interim guidance on DBA refunds by e-mail on 27 July 2012 (to be posted on NCO Sharepoint)



Separately Priced CLIN

- Not a Fixed Price CLIN
- Per Guidance and Policy
- **CLIN LANGUAGE:**

DBA Insurance _____

The amount listed by the offeror on this CLIN is the estimated DBA insurance premium (estimated payroll of the offeror and its subcontractors times the applicable rate(s)). The DBA insurance premium amount varies with payroll and the nature of services and will, therefore, be taken into account during price evaluation of offers. The actual amount paid by the government under this CLIN will be based on the amount of the Rutherford invoice submitted by the offeror after contract award. In the event of recalculation of the premium by CNA based on actual payroll amounts, the contracting officer will adjust this CLIN by contract modification to reflect actual premium amounts paid.



Contracting Officer's Responsibilities

PRE AWARD:

- Special Solicitation and Contract Requirements
 - ▶ Refer to PIL (Encl 1 - 4)
 - ▶ Solicitation Provision
 - ▶ Contract Clause

- Make sure the Offerors are aware and cost it
 - ▶ Discussions/Negotiations or Pre-Bid Conferences
 - ▶ Applications for DBA Insurance aren't needed until Award

- Ensure that the Contractor and its Subs obtain DBA insurance from ***CNA only***



DBA Insurance Process

POST AWARD:

- Contractor completes application / sends to Rutherford
- Rutherford acknowledges receipt within 3 business days
- E-mail notice is sent to contractor with the effective date
- Contracting Officer issues NTP upon e-mail confirmation from the contractor
- **Make sure Contract/Task Order Number is on Policy/Endorsement!**
- Ensure that the Contractor and its Subcontractors maintain DBA coverage *with CNA and adjust coverage as necessary for contract modifications*
- Get a copy of the paid Invoice from the Contractor within 30 days – before progress payments are made
 - ▶ Do not pay DBA Insurance Premium without proof (Paid Invoice)
- If a contractor fails to maintain coverage
 - ▶ Issue a Stop Work Order
 - ▶ Withhold progress payments
 - ▶ Issue Cure Notice
 - ▶ Terminate the contract for default
 - ▶ Poor past performance – CPARS, ACASS, CCASS



REIMBURSEMENT OF THE DBA INSURANCE PREMIUM

- Rutherford will issue actual policy and invoice within 10 days after acknowledgement of the application
- Invoice is issued to the contractor along with the policy
- Contractor pays the premium by wire transfer
- Rutherford issues “PAID” invoice
- Contractor submits request for reimbursement along with copy of the policy

This entire process should be completed within 30 days after award or by the time the contractor submits the first payment request



Contracting Officer/COR – Beware!

- KO/COR should receive payment request within 30 days
- Review “PAID” invoices carefully for any alterations (i.e. previous cases of fraud)
- No request for payment is a red flag
- Failure to pay premium will result in cancellation of the policy (after 2 cancellation warnings from CNA)



Can The Contractor Use Agents Or Brokers Other Than Rutherford?

- Yes – The agent/broker must access the contract with CNA via Rutherford
- Rutherford allows the agent 2% of its own commission share
- USG will reimburse NO MORE than the total premium amount, including broker fee
- USG will not reimburse the contractor for any additional agent fee
- If the agent fails to make payment to Rutherford the policy will be cancelled (NOTE: This has happened!)



DBA Insurance and Multiple Contracts

- One policy is issued per contractor for a one year period
- New contracts/TO's are added to the existing policy by endorsement
- One policy may cover several different contracts/TO's. Each new contract or TO requires additional premium – **Check your invoice and endorsement for your Contract/TO#**
- Contract performance may cover more than one policy period
- Initial premium is paid only for policy period remaining
- Rates at award will be based on date initial policy was issued
- Policy renewals will be at current contract rates and these rates may change if options/modifications are made to the CNA contract



Cancellation of DBA Insurance

- Cancellation is the result of non-payment of the insurance premium
- Cancellation of insurance for one contract will result in cancellation for ALL covered contract actions for that contractor
- Unless all arrears payments are made, the contractor is ineligible for future awards
- USACE DBA insurance liaison receives cancellation warnings and notices; forwards to appropriate contracting office for action
- Rutherford issues past-due notices plus two cancellation warnings prior to actual cancellation of the policy
- If contractor pays, insurance is reinstated. **IT SHOULD NEVER GO THIS FAR!**



DBA Insurance and Contract Termination

- Premium is based on estimated payroll; termination results in unused premium which will be refunded
- The contractor must submit a copy of any termination notice to Rutherford
- Rutherford will request final actual payroll total and issue credit for refund to USACE
- The Contracting Officer must consider the DBA amount during settlement



Adjustments Required for DBA CLIN

- When a modification significantly changes the labor amount
- When the contractor's annual self audit and final audit worksheet are received
- Any premiums owed will be paid to Rutherford by the contractor
- Any premium refunds will be paid by Rutherford to the USACE Finance Center (UFC)
- Refunds may be used for new obligations if the source appropriation is open for new obligations
- Refunds for expired appropriations may be used for obligation adjustments
- Refunds for cancelled appropriations will be returned to the U.S. Treasury by the UFC



Contract File Documentation

- All contract insurance documents (e.g. policy or endorsement)
- Correspondence regarding DBA insurance
- Contractor billings for insurance premium reimbursement
- Paid insurance receipts
- Evidence of coverage for all periods of performance
- Final Audit Worksheet and contractor's annual self audit from Rutherford



Summary – Key Points

- DBA insurance is based on total payroll (labor) only; NOT contract price
- Contracting Officer issues NTP upon receipt of e-mail confirming /acknowledgement of the contractor's application
- Insurance premium does NOT have to be paid for DBA insurance to be effective
- ALWAYS follow up if paid invoice is not received within 30 days
- It is the KO/COR's responsibility to ensure that coverage is maintained at all times and adjusted for modifications
- Any DBA insurance refunds must be returned to USACE if the contractor has been previously reimbursed by Rutherford for overpayment
- Modify the contract as required upon receipt of the Final Audit Worksheet from Rutherford
- **Ensure that Contract/Task Order # is on Policy/Endorsement!**



Points of Contact

- USACE DBA Program Manager
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