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MEMORANDUM THRU ASSISTANT SECRETARY OF THE ARMY
(ACQUISITION, LOGISTICS AND TECHNOLOGY)

FOR DEPUTY CHIEF OF STAFF, G-4

SUBJECT: Request for Exemption of Military Logistics Functions in the Operating Force

Reference: Deputy Chief of Staff for Logistics (DCS), G-4 Memorandum, subject: National Security Exemption from Contracting of Army Military Logistics Positions.

Function. This request includes military in the operating force performing the logistics functions of transportation, quartermaster (supply), and ordnance.

Decision. Much of the logistics function within the operating forces appears to directly fall within sustained land dominance, one of the six recognized core competencies of the Army, as provided for in Army Field Manual 1 and The Army Plan. This function would pertain to: Shape the Security Environment (Deter Forward); Prompt Response; Forcible Entry Operations; Mobilize the Army; Sustained Land Dominance; or Support Civil Authority. Therefore, there is a basis for military performance of this function in the operating forces under the following circumstances — their mission will involve a high likelihood of hostile fire or collateral damage (division-level logistics units and below), or if it is determined that a core military capability is needed in the event the threat changes and military capabilities are required (corps-level logistics units to division-level logistics units). An additional core capability is required for theater level logistics, but some of these logistics functions are currently under study for possible contracting opportunities and are thus potentially subject to private sector performance. "Potentially subject" to private sector performance means that these positions should be considered in a revised MTOF process that includes workforce mix determinations. The Total Army Analysis (TAA) process is the appropriate method to determine the forces needed to meet the requirements discussed above. To the extent that certain strategic-level logistics functions have already been transferred to joint defense activities, these strategic-level logistics functions do not constitute core Army competencies. Military positions in the operating forces that perform acquisition-related and contracting functions are inherently governmental and can in some instances be converted to civilian employee performance. The policies in this decision will be implemented through the force development process.

Statutes pertaining to contracting out are not applicable to positions being filled by military; these can be converted directly to contractor performance. However, Host Nation laws, interservice agreements, international treaties, Status of Forces Agreements (SOFAs), and Geneva Convention implications must also be considered when considering contractor replacement of Expeditionary Forces that will participate in joint service, interagency, multinational, and coalition operations. The limitations and scope of this decision are discussed in detail below.

At enclosure are instructions on how to implement this decision in the Inventory of Commercial and Inherently Governmental Activities (including the Federal Activities Inventory Reform Act Inventory), to be developed by the DCS, G-4 in coordination with our responsible staff officers.

Requestor's Position on Issues. The request claims that a majority of logistics functions performed by units in the operating forces are either inherently governmental or constitute requisite core competencies of the Army.

Standard of review. The senior HQDA functional official for a function must describe and substantiate specifically how preparation and implementation of a Third Wave implementation plan for each course of action poses substantial and specific risks to a core war-fighting mission of the Army (i.e., a core competency) or violates a statutory requirement affecting a function. The following are risk factors to evaluate this request: force management risk; operational risk; future challenges; and institutional risk. How these risk criteria are applied may vary based on each course of action evaluated (i.e., A-76; alternatives to A-76; military conversions; transfer to another agency; divestiture). Therefore, exemption requests and decisions must assess the potentially adverse impact of each course of action.

Core Competency Relevant to Risk Issue. Much of the logistics function within the operating forces appears to directly fall within sustained land dominance, one of the six recognized core competencies of the Army, as provided for in Army Field Manual 1 and The Army Plan. This function would pertain to: Shape the Security Environment (Deter Forward); Prompt Response; Forcible Entry Operations; Mobilize the Army; Sustained Land Dominance; or Support Civil Authority. However, some of the functions, at a strategic level have already been transferred to other defense agencies (e.g., fuel delivery, transportation), or are contracted to some degree. Therefore, the application of the risk criteria pertaining to the impact of an implementation plan or sourcing decision as it affects the Army's war-fighting competencies is complicated, in this case, by this fragmentation of the competency. For simplicity, this fragmentation is due to the nature of the different levels of logistics: tactical, operational and strategic. Theater Support Contractors, External Support Contractors and System Contractors have all been used in recent history to bridge gaps

prior to the arrival of military support, when Host Nation support has not been available, or to augment existing support capabilities. The effective use of Theater Support Contractors and External Support Contractors is best seen in the examples provided by Desert Shield/Desert Storm and Bosnia. Contracted base support logistics functions in Desert Shield/Desert Storm were: petroleum and water delivery; field services; food service; installation/post/camp operations; labor; maintenance; manufacturing; marine; material handling; ordnance; supply; transportation/distribution; and warehousing. The use of the Logistics Civil Augmentation Program (LOGCAP) is another example of the use of External Support Contractors. Under a Combat Service Support (CSS) augmentation contract, the LOGCAP contractor is in Bosnia providing services at base camps that military logistics forces would provide otherwise. Specifically, they have provided base camp construction; operation and maintenance; laundry; field latrines; water production, purification, storage, and distribution; sewage/solid waste removal; bulk fuel receipt, storage, and issue; transportation for passengers and cargo; well drilling; vehicle/tank wash racks; equipment maintenance; hazardous material collection, storage, and disposal; pest and vector control; supply operations (all classes); inter-coastal barge support; refuse collection and disposal; maintenance of main supply routes; food service and supply; loading and storing containers from ships; construction material storage and distribution; railhead operations; seaport operations; equipment retrograde; cargo transfer operations; air terminal movement control team; aircraft refueling; and freight forwarding/trailer transfer operation. Contractors have been used in these limited circumstances, in large part, after the threat of hostilities diminished. They were called upon to provide base camp and service functions, but not sustainment support for the initial Expeditionary Forces – this was the mission performed by military logistics units.

Statutory Requirements Relevant to Risk Issue. This overall function may not be divested since Title 10, United States Code (U.S.C.), Section 3013 makes the Secretary of the Army responsible for the logistics functions of supplying, servicing, and maintaining.

Inherently Governmental Determination Relevant to Outsourcing Issue. An inherently Governmental function includes those activities that require either the exercise of substantial discretion in applying Government authority or the making of value judgments while making decisions for the Government. An inherently Governmental function is so intimately related to the public interest as to require performance by Federal Government employees. Determining, protecting, and advancing United States economic, political, territorial, property or other interests by military action, and the command of combat troops, are inherently Governmental. This concept does not include providing advice to Federal Government officials.

Your request seems to suggest that most logistics functions are inherently Governmental. However, pursuant to Office of Federal Procurement Policy (OFPP) Policy Letter 92-1, only the acquisition-related and contracting functions would be considered inherently Governmental, because these functions involve binding the government "to take...some action by contract..." See OFPP Policy Letter 92-1, Appendix 5, paragraph 5 (a). The remaining logistics functions, which include transportation, maintenance, and supply operations, do not involve the substantial exercise of discretion in exercising government authority or the making of value judgments in making decisions for the government. However, where it may be necessary to compel performance in areas of engagement, or in areas where there is a greater probability of hostile fire, as distinguished from non-hostile areas of sustainment. In these situations, it may be necessary to employ military personnel, rather than contractors, as the performance of military personnel can be compelled under the provisions of the Uniform Code of Military Justice (UCMJ). The result would be that soldiers performing non-inherently Governmental logistical support functions may be called upon to perform inherently Governmental functions in order to adequately determine, protect, and advance United States economic, political, territorial, property, or other interests by military action.

Statutes Relevant to Sourcing Decision. Conversion of functions currently being performed by military directly to contractor performance does not trigger the requirements for public-private competition found in 10 U.S. Code, Sections 2461 and 8014 of the annual appropriations acts.

Personal Services. In the case of contractors accompanying the operating forces, there also may be a legitimate basis for exempting the function from contractor performance. Exemption may be necessary to avoid inappropriate personal services arrangements, or if command and control of the contractor by the commander in the field is required for effective performance because of the cohesive nature of military units, doctrine, tactics, and the risks associated with combat. Army Field Manual 3-100.21, Contractors on the Battlefield, dated January 2003, recognizes these issues and states that a decision to use contractors in an area of operations requires an assessment of the risks posed to the contractor and his employees and the potential impacts on the operation itself, due to factors ranging from possible sabotage, lack of responsiveness or refusal to enter potentially dangerous areas. However, the Army has effectively used contractors to augment CSS military force structure in base camps and to obtain services in support of the operating forces in operations in Somalia, Haiti, Kuwait, East Timor, and the Balkans, as well as preparation for and support of major combat operations (Desert Shield and Desert Storm). It is often possible to structure the support in a manner that will mitigate the personal services problem. Therefore, absent a need to change current doctrine, I will refrain from a blanket exemption on personal services grounds for functions in the operating forces.

Conflicts of Interest. Your request does not appear to raise any inherent conflict of interest issues pertaining to the Third Wave implementation plan courses of action. I am prepared to deal with this issue as an exemption issue at any point during the course of implementation of Third Wave courses of action.

Military conversions. The mere fact that logistics units are deployed with larger military formations does not necessarily mandate that these jobs may only be performed by uniformed personnel. To the extent that these personnel carry out their logistics duties in non-hostile sustainment areas, rather than in an actual area of engagement or hostile fire zone, civilians can carry out these functions. Indeed, non-military personnel are currently doing many jobs in areas close to the battlefield.

The DoD Inventory of Commercial and Inherently Governmental Activities Guide to Inventory Submission (Inventory Guide), at Enclosure 6, page 6-3, provides guidance regarding manpower mix criteria. “[Manpower] that perform duties and responsibilities that are integral to military command and control of combat and crisis situations” shall be designated as Military Operations (Code A). See Enclosure 6, page 6-3, paragraph 1. Components that perform combat and service support functions shall be designated Code A only if there is such a high likelihood of hostile fire or collateral damage that: 1) military authority, discipline, and training are needed to maintain control and, if necessary, reconstitute the unit, and 2) use of civilians or contract support constitutes an inappropriate or unacceptable risk. Additionally, in situations without a high likelihood of hostilities or collateral damage, [Manpower] needed for a core capability in the event the threat changes and military capabilities are required shall be considered military essential and designated as Military Support Elements in Operating Forces (Code B).

Enclosure 8 of the Guide contains guidance for risk assessment. Applying the guidelines on p.8, paragraph 1-1, use of non-military personnel in combat support roles must be assessed “based on the consequences to both the support mission and the missions dependent on that support. The more catastrophic the consequences of contract default, the greater the risk. For instance, combat mission failure and loss of life are severe consequences, while lost of quality-of-life support services (e.g., loss of dry cleaning or mail services) are not. When deployed in a theater of operations, where refusal to obey a commander’s orders could create a risk of loss of life or mission failure, UCMJ authority will be needed in order to compel performance. (While UCMJ jurisdiction applies to civilians accompanying the operating forces, which could include contractors, that jurisdiction only applies during a “declared war,” and most military operations augmented by civilians are operations other than war.) As Joint Pub 4-0, Doctrine Support for Logistics Support for Joint Operations, dated April 2000, points out, United States laws are only the initial consideration when considering use of contractors in a deployed setting. Additional restraints on the employment of

contractors and their noncombatant status might be found in Host Nation laws, Status of Forces Agreements, and other international agreements. Additionally, in some countries, contractors have no status at all because the applicable international agreements do not recognize them. Combatant commanders and their staffs, in coordination with the HQDA staff elements, must consider the relevant United States laws, international laws, and international agreements in the conduct of the TAA process.



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Enclosure

CODING RULES for Logistics in the Operating Force

SRCs in this functional Area Include:

- SRC09 Ordnance
- SRC10 Quartermaster
- SRC42 Supply
- SRC43 Maintenance
- SRC54 Logistics Organizations and Operations
- SRC55 Transportation
- SRC63 Combat Service Support

1. Division echelon and lower

- a. SRC09 ORD unit WB09AA 55th ORDNANCE COMPANY
- b. SRC09 ORD unit WB2PAA 21st ORDNANCE COMPANY
- c. SRC63 CSS Theatre Support Command units

M – DoD Management Decision
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1. WNPBAA 200th TSC MMC
2. WNBQAA 9th CS HHC TSC
3. WNBRAA 19th CS HHC TSC
4. WNBAAA 21st CS HHC TSC
5. WNBAAA 377th CS HHC TSC
6. WNBAAA 55th CS CO TSC MMC
7. WNBAAA 321st CS CO TSC MMC

d. All remaining units Division and below

A – Military Operations

2. Corps/Theatre echelon

B – Military Support Elements in Operating Force

3. Echelons above Corps/Theatre

- a. EAC units outside SRC63 CSS
- b. EAC units in SRC63 CSS
 - 1. WB0FAA 80th Support Group
 - WCAYAA - 29th Support Group &
 - WDCVAA 23rd Support Group
- 2. All other SRC63 units

M – DoD Management Decision

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P – Pending Restructuring