OFFICE OF THE ASSISTANT SECRETARY OF DEFENSE
4000 DEFENSE PENTAGON
WASHINGTON, D.C. 20301-4000

READINESS AND FORCE MANAGEMENT

FEB 2 1 2013

MEMORANDUM FOR: SEE DISTRIBUTION

SUBJECT: Total Force Management and Budgetary Uncertainty

Reference: (a) Deputy Secretary of Defense Memorandum, "Handling Budget Uncertainty in Fiscal Year 2013", dated 10 January 2013
(b) Under Secretary of Defense of Personnel & Readiness Memorandum, "Prohibition on Converting Certain Functions to Contract Performance", dated 1 December 2011
(c) Deputy Secretary of Defense Memorandum, "Guidance for Limitation on Aggregate Annual Amount Available for Contracted Services", dated 3 June 2012
(d) Under Secretary of Defense of Personnel & Readiness Memorandum, "Guidance Related to the Utilization of Military Manpower to Perform Certain Functions", dated 2 March 2012
(e) DoD Instruction 1100.22, "Guidance for Determining Workforce Mix", dated 12 April 2010

This memorandum provides guidance for the management of the Total Force (active and reserve military, government civilians, and contracted support) during this time of continued budget uncertainty. The Department must maintain the viability of the All-Volunteer Force and sustain its operational readiness in the most cost-conscious manner. To do so, the Department must also maintain a properly sized, highly capable civilian workforce that is aligned to mission and workload; complements and delivers support to the military; supports the well-being of the warfighters and their families; and recognizes evolving critical demands while guarding against an erosion of organic skills and an overreliance on contracted services. Finally, the use of contracted services must continue to be reviewed to ensure the most appropriate, cost effective, and efficient support aligned to mission.

As DoD Components begin to take actions consistent with reference (a) – including the implementation of civilian hiring freezes, the release of term or temporary civilian employees, and other personnel related actions – they must be mindful of the Department's obligations to manage the Total Force consistent with Title 10 statutory requirements and references (b) through (e). These considerations are required in planning for the potential reduction or unavailability of fiscal year 2013 funds (with the exception of funds for military personnel) associated with sequester or the continuing resolution.

Consistent with section 2461 of title 10, United States Code, and reference (b), the conversion of functions or work performed by, or designated for performance by, civilian employees to contract performance without a public-private competition is expressly prohibited. Currently such competitions are prohibited under section 325 of the National Defense Authorization Act for Fiscal Year 2010 (Public Law 111-84). Workload currently performed by, or designated for performance by, civilian employees may not be transferred or assumed by contractors performing against prior year obligations. Most importantly, contractors may not perform inherently governmental work, and section 2464 of title 10, United States Code expressly prohibits contracting of certain functions (enclosure 1). DoD

Component heads, as well as field commanders and line managers, are urged to be particularly vigilant to prevent the inappropriate conversion of work to contract performance.

Additionally, limits on contracted support spending enacted in section 808 of the National Defense Authorization Act for Fiscal Year 2012, Public Law 112-81, and implemented via reference (c) still apply. The statutory obligations in section 2330a of title 10, United States Code, to minimize reliance on contract performance of work closely associated with inherently governmental functions (see illustrative examples at enclosure 2) remain in force. Moreover, the guidance in reference (c) to achieve reductions of such reliance, as well as in staff augmentation contract support, remains in effect. Planning for budgetary uncertainty does not relieve DoD Components from compliance with these mandates.

As we continue planning during this period of budgetary uncertainty, the Department must also ensure military personnel are not inappropriately utilized, particularly in a manner that may degrade readiness or result in unnecessary costs to the Department. Consistent with references (d) and (e), except in extraordinary, and typically temporary, circumstances, individual military personnel or units should not perform functions or work that is not military essential (see illustrative examples in enclosure 3). The use of "borrowed" or "repurposed" military can harm readiness and operational capabilities by diverting service members from training or performance of military essential functions, particularly when military members are required to work outside of their occupational specialties. In addition to the risk of hollowing the force, this practice could adversely impact the All-Volunteer Force and have negative effects on the recruitment, retention, and career progression of individual members. During this period of budgetary uncertainty, military units may perform work previously performed by civilian employees or contracted support as part of a rotation base for an operational capability (if this has been reflected in Operational Orders), provided this is done on a limited and temporary basis. In the event of sequestration, where military personnel accounts are exempted, there may be instances where military personnel can be used on a short-term, emergency basis to satisfy a demand that is of mission critical importance.

Please ensure maximum distribution of this memorandum throughout your organization, particularly to your manpower, personnel, and resourcing communities. Questions regarding application and implementation of this memorandum should be addressed to the following points of contact within the Office of Total Force Planning & Requirements: Mr. Thomas Hessel (thomas.hessel@osd.mil or 703-697-3402), and Ms. Amy Parker (amy.parker@osd.mil or 703-697-1735). Thank you for your support in the mitigating risks from budgetary uncertainty that could adversely affect the sustainability and readiness of the All Volunteer Force.

Frederick Vollrath
Principal Deputy Assistant Secretary of Defense for
Readiness and Force Management
Performing the Duties of the Assistant Secretary of
Defense for Readiness and Force Management

Enclosures: As stated

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DIRECTORS OF THE DOD FIELD ACTIVITIES

Non-Exhaustive Examples of Inherently Governmental Functions
(Extract from Office of Federal Procurement Policy Letter 11-1 (September 12, 2011)

1. The direct conduct of criminal investigation.
2. The control of prosecutions and performance of adjudicatory functions (other than those relating to arbitration or other methods of alternative dispute resolution).
3. The command of military forces.
4. Combat.
5. Security provided under any of the circumstances set out below. This provision should not be interpreted to preclude contractors taking action in self-defense or defense of others against the imminent threat of death or serious injury. (a) Security operations performed in direct support of combat as part of a larger integrated armed force. (b) Security operations performed in environments where, in the judgment of the responsible Federal official, there is significant potential for the security operations to evolve into combat. (c) Security that entails augmenting or reinforcing others (whether private security contractors, civilians, or military units) that have become engaged in combat.
6. The conduct of foreign relations and the determination of foreign policy.
7. The determination of agency policy, such as determining the content and application of regulations.
8. The determination of budget policy, guidance, and strategy.
9. The determination of Federal program priorities or budget requests.
10. The selection or non-selection of individuals for Federal Government employment, including the interviewing of individuals for employment.
11. The direction and control of Federal employees.
12. The direction and control of intelligence and counter-intelligence operations.
13. The approval of position descriptions and performance standards for Federal employees.
14. The determination of what government property is to be disposed of and on what terms (although an agency may give contractors authority to dispose of property at prices with specified ranges and subject to other reasonable conditions deemed appropriate by the agency).
15. In Federal procurement activities with respect to prime contracts:
    (a) determining what supplies or services are to be acquired by the government
    (b) participating as a voting member on any source selection boards;
    (c) approving of any contractual documents, including documents defining requirements, incentive plans and evaluation criteria;
    (d) determining that prices are fair and reasonable;
    (e) awarding contracts;
    (f) administering contracts (including ordering changers in contact performance or contact quantities, making final determinations about a contractor's performance, including approving award fee determinations or past performance evaluations and taking action based on those evaluations, and accepting or rejecting contractor products or services);
    (g) terminating contracts
    (h) determining whether contact costs are reasonable, allocable, and allowable;
    (i) And participating as a voting member on performance evaluation boards.

16. The selection of grant and cooperative agreement recipients including: (a) approval of agreement activities; (b) negotiating the scope of work to be conducted under grants/cooperative agreements; (c) approval of modifications to grant/cooperative agreement budgets and activities; and (d) performance monitoring.
17. The approval of agency responses to Freedom of Information Act requests (other than routine responses that, because of statute, regulation, or agency policy, do not require the exercise of judgment in determining whether documents are to be released or withheld), and the approval of agency response to the administrative appeals of denials of Freedom of Information Act requests.
18. The conduct of administrative hearings to determine the eligibility of any person for a security clearance, or involving actions that affect matters of personal reputation or eligibility to participate in government programs.
19. The approval of Federal licensing actions and inspections.
20. The collection, control, and disbursement of fees, royalties, duties, fines, taxes and other public funds, unless authorized by statute, such as title 31 Untied States Code section 952 (relating to private collection contractors) and title 31 United States Code section 3718 (Relating to private attorney collection services), but not including (a) collection of fees, fines, penalties, costs or other charges form visitors to or patrons of mess halls, post or base exchange concessions, national parks, and similar entities or activities, or from other persons, where the amount to be collected is predetermined or can be readily calculated and the funds collected can be readily controlled using standard cash management techniques; and (b) routine voucher and invoice examination.
21. The control of the Treasury accounts.
22. The administration of public trusts.
23. The drafting of official agency proposals for legislation, Congressional testimony responses to Congressional correspondence, or responses to audit reports from an inspector general, the Government Accountability Office, or other Federal audit entity.
24. Representation of the government before administrative and judicial tribunals, unless statute expressly authorizes the use of attorney whose services are procured through contract.

Statutory Restrictions on Contracting
(Title 10 United States Code Section 2465)

(a) Except as provided in subsection (b), funds appropriated to Department of Defense may not be obligated or expended for the purpose of entering into a contract for the performance of fire-fighting or security-guard functions at any military installation or facility.

(b) The prohibition in subsection (a) does not apply to the following contracts:
   (1) A contract to be carried out at a location outside the United States (including its commonwealths, territories, and possessions) at which members of the armed forces would have to be used for the performance of a function described in subsection (a) at the expense of unit readiness.
   (2) (2) A contract to be carried out on a Government-owned but privately operated installation.

(3) A contract (or the renewal of a contract) for the performance of a function under contract on September 24, 1983.

(4) A contract for the performance of firefighting functions if the contract is-

(A) for a period of one year or less; and

(B) covers only the performance of firefighting functions that, in the absence of the contract, would have to be performed by members of the armed forces who are not readily available to perform such functions by reason of a deployment.

Non-Exhaustive Examples of Closely Associated With Inherently Governmental Functions (Extract from Office of Federal Procurement Policy Letter 11-1 (September 12, 2011)

1. Services in support of inherently governmental functions, including, but not limited to the following:
    a. Performing budget preparation activities, such as workload modeling, fact finding, efficiency studies, and should-cost analysis.
    b. Undertaking activities to support agency planning and reorganization.
    c. Providing support for developing policies, including drafting documents, and conducting analyses, feasibility studies, and strategy options.
    d. Providing services to support the development of regulations and legislative proposals pursuant to specific policy direction.
    e. Supporting acquisition, including in the areas of:
        i. Acquisition planning, such as by conducting market research; developing inputs for government cost estimates, and drafting statements of work and other pre-award documents.
        ii. Source selection, such as by preparing a technical evaluation and associated documentation; participating as a technical advisor to a source selection board or as a nonvoting member of a source selection evaluation board; and drafting the price negotiations memorandum.
        iii. Contract management, such as by assisting in the evaluation of a contractor's performance (e.g. by collecting information performing an analysis, or making a recommendation for a proposed performance rating), and providing support for assessing contract claims and preparing termination settlement documents.
    f. Preparation of responses to Freedom of Information Act requests.
2. Work in a situation that permits or might permit access to confidential business information or other sensitive information (other than situations covered by the National Industrial Security Program described in Federal Acquisition Regulation 4.402(b)).
3. Dissemination of information regarding agency policies or regulations, such as conducting community relations campaigns, or conducting agency training courses.
4. Participation in a situation where it might be assumed that participants are agency employees or representatives, such as attending conferences on behalf of an agency.
5. Services as arbitrators or provision of alternative dispute resolution (ADR) services.
6. Construction of buildings or structures intended to be secure form electronic eavesdropping or other penetration by foreign governments.
7. Provision of inspection services.
8. Provision of legal advice and interpretations of regulations and statutes to government officials.
9. Provision of non-law enforcement security activities that do not directly involve criminal investigations, such as prisoner detention or transport and non-military national security details.

Examples of Military Essential Functions
(summarized from DoD Instruction 1100.22)

1. Missions involving operational risks and combatant status under the Law of War.
2. Specialized collective and individual training requiring military unique knowledge and skills based on recent operational experience
3. Independent advice to senior civilian leadership in Department requiring military unique knowledge and skills based on recent operational experience
4. Command and control arrangements best performed within the Uniform Code of Military Justice.
5. Rotation base for an operational capability.
6. Career progression.
7. Esprit de corps (such as military recruiters, military bands)

Reference (a)

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

JAN 10 2013

MEMORANDUM FOR SECRETARIES OF THE MILITARY DEPARTMENTS
CHAIRMAN OF THE JOINT CHIEFS OF STAFF
UNDER SECRETARIES OF DEFENSE
DEPUTY CHIEF MANAGEMENT OFFICER
DIRECTOR, COST ASSESSMENT AND PROGRAM EVALUATION
DIRECTOR, OPERATIONAL TEST AND EVALUATION
GENERAL COUNSEL OF THE DEPARTMENT OF DEFENSE
INSPECTOR GENERAL OF THE DEPARTMENT OF DEFENSE
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DIRECTOR, NET ASSESSMENT
DIRECTORS OF THE DEFENSE AGENCIES
DIRECTORS OF THE DOD FIELD ACTIVITIES

SUBJECT: Handling Budgetary Uncertainty in Fiscal Year 2013

Two sources of uncertainty are creating budgetary challenges for the Department of Defense (DoD) in 2013. The first is the fact that the Department is operating under a Continuing Resolution (CR) through at least March 27, 2013. Because most operating funding was planned to increase from Fiscal Year (FY) 2012 to FY 2013, but is instead being held at FY 2012 levels under the CR, funds will run short at current rates of expenditure if the CR continues through the end of the fiscal year in its current form. The Secretary will continue to urge the Congress to enact appropriations bills for FY 2013. But if the CR were to be extended through the end of the fiscal year, it would hinder our ability to maintain a ready force.

The second source of uncertainty is the potential sequestration recently deferred from January 2, 2013 to March 1, 2013 by the American Taxpayer Relief Act of 2012. The possibility of sequestration occurring as late as the beginning of the sixth month of the fiscal year creates significant additional uncertainty for the management of the Department.

Either of these problems, in isolation, would present serious budget execution challenges to the Department, negatively impacting readiness and resulting in other undesirable outcomes. This situation would be made even more challenging by the need to protect funds for wartime operations.

Near-Term Actions

Given the overall budgetary uncertainty faced by the Department, and in particular the immediate operational issues presented by the CR, it is prudent to take certain steps now in order to help avoid serious future problems. I therefore authorize all Defense Components to begin implementing measures that will help mitigate our budget execution risks. For now, and to the extent possible, any actions taken must be reversible at a later date in the event that Congress acts to remove the risks I have described. The actions should be structured to minimize harmful effects on our people and on operations and unit readiness.

Categories of approved actions are identified in Table 1. The authority to implement these actions shall remain in effect until they are revoked in a subsequent memorandum from my office. If Components believe they must take actions that go beyond the categories listed in Table 1, they should present the options for my review and approval prior to their implementation.

Intensified Planning for Longer-Term Budgetary Uncertainty

Given the added challenge of a potential sequestration in March, we must also intensify efforts to plan future actions that might be required should that happen. This planning does not assume these unfortunate events will occur, only that we must be ready.

As they formulate draft plans, Components should follow the guidance that directs the Department to take all possible steps to mitigate harmful effects associated with this budgetary uncertainty and to maintain a strong defense. The details of the guidance are summarized below:

- For the operating portions of the DoD budget:
  - Exempt all military personnel funding from sequestration reductions, in accordance with the decision made by the President in July 2012.
  - Fully protect funding for wartime operations.
  - Fully protect Wounded Warrior programs.
  - To the extent feasible, protect programs most closely associated with the new defense strategy.
  - Reduce civilian workforce costs using the following actions (all subject to mission-critical exemptions, and appropriate consultation with union representatives consistent with Executive Order 13522):
    - Release temporary employees and do not renew term hires.
    - Impose hiring freezes.
    - Authorize voluntary separation incentives and voluntary early retirements to the extent feasible.
    - Consider the possibility of furloughs of up to 30 calendar days or 22 discontinuous workdays.
  - To the extent feasible, protect family programs.

- To the extent feasible, protect funding most directly associated with readiness; focus the necessary cuts on later deploying units.

- For the investment portions of the DoD budget (procurement, RDT&E, construction):
  - Protect investments funded in Overseas Contingency Operations if associated with urgent operational needs.
  - To the extent feasible, protect programs mostly closely associated with the new defense strategy.
  - Take prudent steps to minimize disruption and added costs (e.g., avoid penalties associated with potential contract cancellations where feasible; prudently manage construction projects funded with prior-year monies).

While we are hopeful of avoiding budgetary problems, draft Component plans should reflect the possibility that we may have to operate under a year-long CR and that sequestration takes place. Table 2 shows the types of information that should be included in the plans. Components should submit these draft plans to the Under Secretary of Defense (Comptroller) by February 1, 2013. The Under Secretary of Defense (Comptroller) will work with the Components to adjust this schedule if changes are required due to the deadlines for the preparation of the FY 2014 President's Budget submission.

I appreciate your patience as we work through these difficult budgetary times. The Department will continue to do its best to resolve these budgetary uncertainties in a manner that permits us to support our current defense strategy and maintain a strong defense.

If addressees have questions about this memorandum, they should direct them to the Under Secretary of Defense (Comptroller).

Ashton Carter

Attachments:
As stated

Table 1. Categories of Approved Near-Term Actions

- Freeze civilian hiring (with exceptions for mission-critical activities*).
- Provide authority to terminate employment of temporary hires and to notify term employees that their contracts will not be renewed (with exceptions for mission-critical activities and when appropriate in terms of personnel timing*).
- Reduce base operating funding.
- Curtail travel, training, and conferences (all with exceptions for mission-critical activities* including those required to maintain professional licensure or equivalent certifications).
- Curtail facilities maintenance or Facilities Sustainment, Restoration, and Modernization (FSRM) (with exceptions for mission-critical activities*).
  - If necessary, services/agencies are authorized to fund FSRM at levels below current guidance.
- Curtail administrative expenses such as supply purchases, business IT, ceremonies, etc. (with exceptions for mission-critical activities*).
- Review contracts and studies for possible cost-savings.
- Cancel 3rd and 4th quarter ship maintenance availabilities and aviation and ground depot-level maintenance activities. Take this action no earlier than February 15, 2013.
- Clear all R&D and production contracts and contract modifications that obligate more than $500 million with the USD(AT&L) prior to award.
- For Science and Technology accounts, provide the USD(AT&L) and the Assistant Secretary of Defense (Research & Engineering) with an assessment of the impact that budgetary uncertainty may have on meeting Departmental research priorities.

*Approvals will be granted by Component heads or by senior officials designated by the Component head.

Components with personnel serving Combatant Commanders (COCOMs) must consult with the COCOMs before implementing actions that affect them. Disputes will be brought to the attention of the Chairman of the Joint Chiefs of Staff for further resolution.

Components receiving reimbursements should coordinate with customer before taking actions that would affect the customer's mission.

Table 2. Information to Be Included in Draft Implementation Plans

The following information should be provided at the Component level. Information by commands and bases/installations is not required.

- For operating accounts, identify major actions to include, at a minimum:
  - Extent of civilian hiring freezes; expected number of temps/terms released; expected number, duration, and nature of furloughs.
  - Reductions in flying hours, steaming days, vehicle miles, and other operations/training/support activities that affect force readiness.
  - Areas of budgets experiencing disproportionate cuts.
- For investment accounts:
  - Plans for large programs (ACAT 1D and 1C, and MAIS programs).
    - Include major changes in unit buys, delays, etc.
  - Significant changes in all joint programs.
- Identify and prioritize any essential reprogramming actions with offsets.

Reference (b)

UNDER SECRETARY OF DEFENSE
4000 DEFENSE PENTAGON
WASHINGTON, D.C. 20301-4000

PERSONNEL AND
READINESS

DEC 1 2011

MEMORANDUM FOR SECRETARIES OF THE MILITARY DEPARTMENTS
CHAIRMAN OF THE JOINT CHIEFS OF STAFF
UNDER SECRETARIES OF DEFENSE
DEPUTY CHIEF MANAGEMENT OFFICER
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SUBJECT: Prohibition on Converting Certain Functions to Contract Performance

This memorandum provides clarification regarding statutory language as related to the conversion of certain functions to contract performance. While the Department is holding civilian funding at fiscal year (FY) 2010 levels through FY 2013, with some exceptions, the Congress and the Secretary also remain concerned that the Department not be overly reliant on contracted services.

As the Department adapts to declining budgets and operating in a constrained fiscal environment, we must ensure that we make analytically-based spending choices based on sound strategy and policies. In particular, as we implement the results of organizational assessments; continue to assess missions and functions in terms of priority; and revisit both our civilian and military force structures, we must be particularly vigilant to prevent the inappropriate conversion of work to contract performance.

Under section 2461 of title 10, United States Code (U.S.C.) the Department is prohibited from converting work currently performed (or designated for performance) by civilian personnel to private sector (contract) performance without first conducting a public-private competition. The National Defense Authorization Act for fiscal year 2010 (Public Law 111-84) included a significant modification to this statute, extending the requirement for a public-private competition prior to the conversion of work by any number of civilian employees. Prior to this change, functions performed by fewer than 10 civilian employees could be converted to contract performance absent a public-private competition, known as a "direct conversion".

The Department is currently precluded, under a moratorium, from conducting public-private competitions. This prohibits the conversion of any work currently performed (or designated for performance) by civilian personnel to contract performance. This prohibition applies to functions and work assigned to civilians, regardless of whether or not the position is encumbered. When new requirements arise, such as those that may occur as military end-strength levels are reduced, special consideration must first be provided, consistent with section 2463 of title 10, U.S.C., and applicable Department policies, to using Department of Defense civilian employees. This includes billets and work that may have been unencumbered for an extended period of time.

Please ensure maximum distribution of this memorandum across your organization, particularly to your manpower, personnel, and acquisition communities. Questions regarding implementation/ enforcement of this memo should be addressed to my points of contact: Mr. Thomas Hessel (thomas.hessel@osd.mil or 703-697-3402) and Ms. Amy Parker (amy.parker@osd.mil or 703-697-1735).

Jo Ann Rooney
Acting

Reference (c)

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

MEMORANDUM FOR: SEE DISTRIBUTION

JUN 0 3 2012

SUBJECT: Guidance for Limitation on Aggregate Annual Amount Available for Contracted Services

This memorandum provides guidance (Attachment 1) regarding compliance with section 808 of the National Defense Authorization Act for Fiscal Year 2012, P.L. 112-81. Section 808 limits the amount of funds the Department may obligate for contract services in FY 2012 and FY 2013. Consistent with this statutory language, the Department's obligations for all contracted services shall not exceed, in FY 2012 and FY 2013, the total amount requested for the Department for all contracted services in the President's FY 2010 budget submission, excluding contracted services relating to overseas contingency operations, military construction, and research and development. Each Component must take action to ensure compliance with the limitation on the aggregate amount for contracted services reflected in your FY 2012-enacted budget and FY 2013 President's Budget request.

Given the nature of how appropriated funds are allocated to fulfill requirements for contracted services and the fact we are well into the year of execution for FY 2012, compliance with section 808 will require close coordination among all stakeholders. Execution will be measured using obligations from base funds, reported semi-annually in the Department's accounting systems as described in Attachment 2, to ensure that there is no migration or growth of contracted services that were excluded from the FY 2010 baseline and as tracked against Component services portfolios and contractor inventories.

Questions regarding this guidance should be directed to the following points of contact: Office of the Under Secretary of Defense (OUSD) (Comptroller): Mr. Keith Anderson (keith.anderson@osd.mil); OUSD (Personnel and Readiness): Ms. Amy Parker (amy.parker@osd.mil) and Mr. Thomas Hessel (thomas.hessel@osd.mil); and OUSD (Acquisition, Technology and Logistics): Mr. John Tenaglia (john.tenaglia@osd.mil) and Mr. Jeffrey Grover (jeffrey.grover@osd.mil).

Ashton B. Carter

Attachments:
As stated

OSD006113-12

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DIRECTORS OF THE DOD FIELD ACTIVITIES
PRESIDENT, DEFENSE ACQUISITION UNIVERSITY
PRESIDENT, NATIONAL DEFENSE UNIVERSITY

Guidance to Implement Section 808 of the National Defense Authorization Act for Fiscal Year 2012, P.L. 112-81

1. The primary means by which the Department is to meet or be below the aggregate annual limitation for contracted services is for the individual Military Departments and Defense Components to limit obligations for contracted services to the FY 2012 enacted budget amount and FY 2013 President's Budget request. The following adjustments apply:

   a. Excluding amounts allocated for overseas contingency operations, military construction, and research, development, test and evaluation;

   b. Including all object classification code 25 categories, except 25.3 (Other goods and services from Federal sources) and 25.6 (Medical Care) as defined in DoD Financial Management Regulation 7000.14-R Volume 1: General Financial Management Information, Systems and Requirements, Appendix A;

   c. Excluding statutory exceptions for offsetting cost increases associated with the number of civilian billets approved above the number of billets in the FY 2010 civilian personnel baseline as part of the Department's efficiencies initiatives; and

   d. Excluding amounts adjusted for net transfer from funding for overseas contingency operations.

   Except where approved increases to the current limitations on civilian personnel occur, each Military Department and Defense Agency will not exceed the FY 2012 President's Budget enacted amount for contract services and FY 2013 President's Budget request for the Department to meet the aggregate limitation, as reflected in this attachment.

2. For all contracts or task orders with an estimated value of more than $10,000,000 awarded for contracted services in FY 2012 or FY 2013, contracting officers shall establish negotiation objectives for direct labor and overhead rates that are less than or equal to direct labor and overhead rates paid to that contractor for the same or similar contracted services in FY 2010. Contracting officers shall coordinate with the Defense Contract Management Agency and the Defense Contract Audit Agency to determine the applicable rates. In the event such contracts or task orders are to be awarded that provide for continuing services at an annual cost that exceeds the annual cost paid by the Military Department or Defense Agency/Field Activity for the same or similar services paid in FY 2010, the Secretary of the Military Department or the Head of the Defense Agency/Field Activity must provide written approval prior to contract award or order issuance.

3. The Secretaries of the Military Departments and the Heads of the Defense Agencies/Field Activities (to include the Offices of the Secretary of Defense, the Joint Staff, the Combatant Commands, and all other organizations of the Department of Defense) shall identify and eliminate any instance where such organization is utilizing contracted services to perform inherently governmental functions. In instances where inherently governmental functions are found to be performed under contract, the department or

agency shall take immediate actions to either in-source the work to government civilian performance or immediately divest the function and associated workload, reducing the scope of the contract. The term "inherently governmental functions" is defined in the Office of Federal Procurement Policy (OFPP) Policy Letter 11-01, Performance of Inherently Governmental and Critical Functions, available online at (http://www.whitehouse.gov/omb/procurement_index_work_performance/).

4. The Secretaries of the Military Departments and the Heads of the Defense Components (to include the Offices of the Secretary of Defense, the Joint Staff, the Combatant Commands, and all other organizations of the Department of Defense) shall reduce by 10 percent per fiscal year in FY 2012 and FY 2013 obligations for staff augmentation contracts and contracts for the performance of functions closely associated with inherently governmental functions (as defined in section 2383(b)(3) of title 10, U.S.C., and described in OFPP Policy Letter 11-01).

    a. Section 808 defines staff augmentation contracts as contracts for personnel who are subject to the direction of a government official other than the contracting officer for the contract, including but not limited to contractor personnel who perform personal service contracts. The reductions for staff augmentation contracts have already been factored into the budget documentation for FY 2012 and FY 2013. However, the aforementioned senior officials are responsible for ensuring those reductions are sustained.

    b. For the purpose of fulfilling the requirement to reduce by 10 percent the amount of contracted services spent acquiring functions that are closely associated with inherently governmental functions, Components should use the classification in the FY 2010 Inventory of Contract Services as the baseline amount. If this data is unknown in the FY 2010 inventory, Components should use the classification in the FY 2011 Inventory of Contract Services.

5. The Secretaries of the Military Departments and the Heads of the Defense Agencies shall assign responsibility for overseeing and implementing this guidance to the officials designated pursuant to section 2330 of title 10, U.S.C., and section 812(b) of the National Defense Authorization Act for Fiscal Year 2006, P.L. 109-163, and ensure that the contractor inventory and program and budget proponents provide appropriate support.

6. As required by section 235 of title 10, U.S.C., this information must be consistent with a component's contractor inventory compiled pursuant to section 2330a.

($$ in Thousands)

	Contract Services (includes all appropriations except MILCON and RDT&E) Object Class 25.xxx (excluding .3 and .6)	
	FY 2012 PB Enacted (PRCP Base only)	FY 2013 PB Request (CIS (00-FEB-2012 Final))
Army		
Aircraft Procurement, Army	252,176	213,510
Army General Gift Fund (Trust)		5,448
Environmental Restoration, Army	346,031	
Family Housing Construction, Army		
Family Housing Operation and Maintenance, Army	128,417	127,423
Joint Improvised Explosive Device Defeat Fund	185,328	172,328
Military Personnel, Army	11,143	10,171
Missile Procurement, Army	53,182	48,212
National Science Center, Army	25	25
Operation and Maintenance, Army	7,162,514	10,107,133
Operation and Maintenance, Army National Guard	1,246,324	1,280,219
Operation and Maintenance, Army Reserve	626,184	502,257
Other Procurement, Army	129,062	112,253
Procurement of Ammunition, Army	173,597	151,504
Procurement of Weapons and Tracked Combat Vehicles, Army	23,500	20,394
Restoration of the Rocky Mountain Arsenal		8,000
TOTAL	**10,337,483**	**12,758,877**
Air Force		
Aircraft Procurement, Air Force	77,598	75,866
Family Housing Operation and Maintenance, Air Force	131,836	216,713
Military Personnel, Air Force	109,931	114,901
Missile Procurement, Air Force	174,439	168,922
Operation and Maintenance, Air Force	13,376,274	13,485,354
Operation and Maintenance, Air Force Reserve	399,743	376,144
Operation and Maintenance, Air Force, Recovery Act		
Operation and Maintenance, Air National Guard	1,405,440	1,309,815
Other Procurement, Air Force	179,978	164,412
Procurement of Ammunition, Air Force	2,694	2,536
TOTAL	**15,857,933**	**15,914,663**
Navy		
Aircraft Procurement, Navy	368,734	323,708
Family Housing Operation and Maintenance, Navy and Marine Corps	124,701	118,519
Military Personnel, Marine Corps	11,343	10,021
Military Personnel, Navy	6,008	5,700
National Defense Sealift Fund	19,280	9,896
Operation and Maintenance, Marine Corps	1,382,299	1,377,606
Operation and Maintenance, Marine Corps Reserve	75,740	84,194
Operation and Maintenance, Marine Corps Reserve, Recovery Act		
Operation and Maintenance, Marine Corps, Recovery Act		
Operation and Maintenance, Navy	9,231,443	10,879,377
Operation and Maintenance, Navy Reserve	393,188	337,913
Operation and Maintenance, Navy Reserve, Recovery Act		
Operation and Maintenance, Navy, Recovery Act		
Other Procurement, Navy	306,890	271,510
Procurement of Ammunition, Navy and Marine Corps	4,437	2,871
Procurement, Marine Corps	42,275	33,755
Shipbuilding and Conversion, Navy	333,268	331,183
Weapons Procurement, Navy	49,878	42,823
TOTAL	**12,349,484**	**13,829,076**

Attachment 2

($$ in Thousands)

	Contract Services (Includes all appropriations except MILCON and RDT&E) Object Class 25.xxx (excluding .3 and .6)	
	FY 2012 PB Enacted (PRCP Base only)	FY 2013 PB Request (CIS (00-FEB-2012 Final))
Defense		
Chemical Agents and Munitions Destruction, Army	1,152,848	989,579
Cooperative Threat Reduction Account	455,175	421,379
Defense Coalition Support, Defense		
Defense Production Act Purchases	213,558	94,316
Department of Defense Acquisition Workforce Development Fund	161,074	466,287
Department of Defense Family Housing Improvement Fund	2,184	1,786
Disposal of Department of Defense Real Property	91,202	7,855
DoD Overseas Military Facility Investment Recovery	7,295	229
Drug Interdiction and Counter-drug Activities, Defense	347,796	299,842
Family Housing Operation and Maintenance, Defense-Wide	3,103	2,006
Lease of Department of Defense Real Property	91,815	12,029
Office of the Inspector General, Recovery Act		
Office of the Inspector General	47,072	19,032
Operation and Maintenance, Defense-Wide		
DAU	19,544	19,259
DCAA	15,225	17,237
DCMA	41,113	44,236
DFAS	11,975	17,513
DHRA	424,308	459,284
DIA	1,156,881	1,039,683
DISA	841,094	849,558
DLA	124,457	71,014
DLSA	2,608	1,768
DMACT	81,554	70,562
DODEA	280,111	297,403
DPMO	622	693
DSCA	56,936	60,482
DSS	68,894	64,871
DTRA	200,578	210,139
DTSA	6,408	6,727
MDA	202,342	255,729
NDU	6,780	7,316
NGA	1,384,321	1,499,319
NSA	2,941,862	2,558,101
OEA	36,172	141,193
OSD	986,144	849,862
SOCOM	1,095,167	1,659,037
TJS	249,664	199,037
WHS	156,036	136,136
Overseas Humanitarian, Disaster and Civic Aid	108,078	57,647
Procurement, Defense-Wide	107,433	80,299
United States Court of Appeals for the Armed Forces	390	490
Defense Health Program	3,017,197	3,073,269
TOTAL	**16,197,016**	**16,062,204**
Department TOTAL	54,741,916	58,564,820

Section 808 Exceptions

FY 2010 PB Request Baseline	50,876,680	50,876,680
Adjustment for Civilian Pay Increase from FY 2010 PB	3,030,446	3,809,499
OCO to Base Transfer	2,561,644	4,352,887
FY 2010 PB Request Adjusted IAW Sec 808	56,468,770	59,039,066
Below Section 808 Annual Aggregate Limitation	-1,726,854	-474,246

Excludes Civil Functions, MILCON and RDT&E appropriations
Excludes Overseas Contingency Operations (Afghanistan Security Funds and Iraq Security Forces Fund)
Includes Major Category 25 - Contract Services
Excludes Minor Category: 310 - GDS/Service from other Agencies; 320 - Pay Foreign Nationals; and 330 - Buy from Revolving Funds
Excludes Minor Category: 610 - Medical Care

Attachment 2

Reference (d)

UNDER SECRETARY OF DEFENSE
4000 DEFENSE PENTAGON
WASHINGTON, D.C. 20301-4000

PERSONNEL AND READINESS

MAR 2 2012

MEMORANDUM FOR SECRETARIES OF THE MILITARY DEPARTMENTS
CHAIRMAN OF THE JOINT CHIEFS OF STAFF
UNDER SECRETARIES OF DEFENSE
DEPUTY CHIEF MANAGEMENT OFFICER
COMMANDERS OF THE COMBATANT COMMANDS
ASSISTANT SECRETARIES OF DEFENSE
GENERAL COUNSEL OF THE DEPARTMENT OF DEFENSE
DIRECTOR, OPERATIONAL TEST AND EVALUATION
DIRECTOR, COST ASSESSMENT AND PROGRAM EVALUATION
INSPECTOR GENERAL OF THE DEPARTMENT OF DEFENSE
ASSISTANTS TO THE SECRETARY OF DEFENSE
DIRECTOR, ADMINISTRATION AND MANAGEMENT
DIRECTOR, NET ASSESSMENT
DIRECTORS OF THE DEFENSE AGENCIES
DIRECTORS OF THE DoD FIELD ACTIVITIES

SUBJECT: Guidance Related to the Utilization of Military Manpower to Perform Certain Functions

This memorandum addresses the use of "repurposed", or "borrowed", military manpower (both active and reserve) to perform new, expanding, or existing missions, and most specifically work that is most appropriately aligned to non-military resources, including work recently performed by government civilians or through contracted services.

The Department's "sourcing" of necessary functions and work between military, civilian, and contracted services must be consistent with applicable laws and policies; as well as workload requirements, funding availability, readiness and management needs. Declining operating tempos may result in a perception that military personnel will be available to fill staffing shortfalls for non-military essential functions or workload. This is particularly true as the Department faces declining budgets and continues to implement efficiency initiatives. While there may be instances where military personnel can be used to appropriately satisfy a near-term demand, the Department must be vigilant in ensuring military personnel are not inappropriately utilized, particularly in a manner that may degrade readiness. To ensure efficient and effective Total Force Management, Components shall balance these needs and consider the following in shaping their workforce and assigned military personnel.

Consistent with DoD Instruction 1100.22, *"Policy and Procedures for Determining Workforce Mix"* (April 2010), tasks that are not military essential in nature must be designated for government civilian personnel, or contract performance where appropriate. Exceptions will be based upon a demonstrated and documented military need e.g., to provide a reasonable overseas rotation or career progression base. Components shall refer to DoD Instruction 1100.22 for the criteria to determine appropriateness of military personnel utilization.

Additionally, decisions to utilize military manpower to perform non-military essential functions must consider corollary costs. Therefore, when considering the option of using military manpower to perform non-military essential tasks, the fully burdened cost must be determined in accordance with Directive Type Memorandum-09-007, "*Estimating and Comparing the Full Costs of Civilian and Military Manpower and Contract Support,*" or successor guidance.

Please ensure maximum distribution of this memorandum throughout your organization, particularly to your manpower, personnel, and resourcing communities. Questions regarding application and implementation of this memorandum should be addressed to my points of contact within the Office of Total Force Planning & Requirements: Mr. Thomas Hessel (thomas.hessel@osd.mil or 703-697-3402) and Ms. Amy Parker (amy.parker@osd.mil or 703-697-1735).

Thank you for your support in shaping an efficient, effective, and viable Total Force that aligns choices to strategy supported by rigorous analysis.

JoAnn Rooney
Acting

Reference (e)

Department of Defense
INSTRUCTION

NUMBER 1100.22
April 12, 2010

USD(P&R)

SUBJECT: Policy and Procedures for Determining Workforce Mix

References: See Enclosure 1

1. PURPOSE. In accordance with the authority in DoD Directive 5124.02 (Reference (a)), this Instruction:

a. Establishes policy, assigns responsibilities, and prescribes procedures for determining the appropriate mix of manpower (military and DoD civilian) and private sector support.

b. Implements policy established in DoD Directive 1100.4 (Reference (b).

c. Incorporates and cancels DoD Instruction 3020.37 (Reference (c)).

d. Provides manpower mix criteria and guidance for risk assessments to be used to identify and justify activities that are inherently governmental (IG); commercial (exempt from private sector performance); and commercial (subject to private sector performance).

e. Reconciles and consolidates the definitions and examples of IG from section 306 of title 5, United States Code (U.S.C.) (Reference (d)); sections 501 (note), 1115, and 1116 of title 31, U.S.C. (Reference (e)); Attachment A of Office of Management and Budget (OMB) Circular A-76 (Reference (f)); and Subparts 2 and 7.503(c) of the Federal Acquisition Regulation (Reference (g)) into a set of criteria for Defense-wide use.

f. Implements aspects of sections 113, 118(b), 129a, and 2463 of title 10, U.S.C. (Reference (h)).

g. Reissues and cancels DoD Instruction 1100.22 (Reference (i)).

2. APPLICABILITY. This Instruction applies to OSD, the Military Departments, the Office of the Chairman of the Joint Chiefs of Staff and the Joint Staff, the Combatant Commands, the Office of the Inspector General of the Department of Defense, the Defense Agencies, the DoD Field Activities, and all other organizational entities within the Department of Defense (hereafter referred to collectively as the "DoD Components").

3. DEFINITIONS. See Glossary.

4. POLICY. It is DoD policy that:

a. Consistent with Reference (a) and section 118(b) of Reference (h), the workforce of the Department of Defense shall be established to successfully execute Defense missions at a low to moderate level of risk. Accordingly, risk mitigation shall take precedence over cost savings when necessary to maintain appropriate control of Government operations and missions. Consistent with Reference (a) and section 113 of Reference (h), the Defense workforce shall have sufficient flexibility to reconstitute or expand the capabilities of the Military Services on short notice to meet a resurgent or increased threat to U.S. national security. Accordingly, risk mitigation shall take precedence over cost savings when necessary to maintain core capabilities and readiness.

b. The Department shall provide ready forces. Accordingly, the peacetime workforce shall be structured with sufficient manpower to satisfy projected mobilization and crisis demands that cannot be met in sufficient time by mobilizing, hiring, recruiting, or reassigning DoD personnel or contracting for additional support.

c. Functions that are IG cannot be legally contracted. The Manpower Mix Criteria codes in this Instruction reconcile and consolidate definitions and examples for what is IG from References (d) through (g) and shall serve as the DoD standard for determining what is IG. Functions that are IG shall be designated for DoD civilian or military performance consistent with the criteria.

d. Functions that are not IG are commercial in nature. Commercial activities (CAs) that are exempted from private sector performance by law, Executive Order (E.o.), treaty, or international agreement (IA) shall be designated for DoD civilian or military performance. Consistent with Reference (a) and section 129a of Reference (h), CAs shall be exempted from private sector performance and designated for DoD civilian or military performance, as necessary, to provide for the readiness and workforce management needs of the Department - i.e., functions shall be exempted from private sector performance to mitigate operational risk and to provide sufficient personnel for wartime assignments, overseas or sea-to-shore rotation, career development, continuity of operations, and esprit de corps.

e. Consistent with sections 129a and 2463 of Reference (h) and with Deputy Secretary of Defense memorandum (Reference (j)), even if a function is not IG or exempted from private sector performance, it shall be designated for DoD civilian performance (subject to paragraph 4.g. of this section) unless an approved analysis for either of the following exceptions has been addressed consistent with the DoD Component's regulatory guidelines:

(1) A cost comparison required by Reference (j), or a public-private competition required by Reference (f), shows that DoD civilian personnel are not the low-cost provider.

(2) There is a legal, regulatory, or procedural impediment to using DoD civilian personnel. This shall include determinations by Human Resource (HR) officials that DoD civilians cannot be hired, hired in time, or retained to perform the work.

f. Consistent with Reference (a), manpower shall be designated as civilian except when one or more of the following conditions apply:

(1) Military-unique knowledge and skills are required for performance of the duties.

(2) Military incumbency is required by law, E.o., treaty, or IA.

(3) Military performance is required for command and control, risk mitigation, or esprit de corps.

(4) Military manpower is needed to provide for overseas and sea-to-shore rotation, career development, or wartime assignments.

(5) Unusual working conditions or costs are not conducive to civilian employment.

g. Consistent with DoD Instruction 1400.25, Volume 250 (Reference (k)), Civilian Strategic Human Capital Plans shall provide for the development of a DoD civilian workforce with competencies needed to meet missions requirements.

5. RESPONSIBILITIES. See Enclosure 2.

6. PROCEDURES. See Enclosure 3.

7. RELEASABILITY. UNLIMITED. This Instruction is approved for public release and is available on the Internet from the DoD Issuances Website at http://www.dtic.mil/whs/directives.

8. EFFECTIVE DATE. This Instruction is effective immediately.

Dr. Clifford L. Stanley
Under Secretary of Defense for
Personnel and Readiness

Enclosures
1. References

2. Responsibilities
3. Procedures
4. Manpower Mix Criteria
5. Guidance for Risk Assessments
Glossary

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REFERENCES

(a) DoD Directive 1100.4, "Guidance for Manpower Management," February 12, 2005
(b) DoD Directive 5124.02, "Under Secretary of Defense for Personnel and Readiness (USD(P&R))," June 23, 2008
(c) DoD Instruction 3020.37, "Continuation of Essential DoD Contractor Services During Crisis," November 6, 1990 (hereby cancelled)
(d) Section 306 and Chapter 11 of title 5, United States Code
(e) Sections 501 (note), 1115, 1116, 3711, and 3718 of title 31, United States Code
(f) Office of Management and Budget (OMB) Circular A-76 (Revised), "Performance of Commercial Activities," May 29, 2003
(g) Federal Acquisition Regulation (FAR) sub-parts 2 and 7.5, current edition
(h) Title 10, United States Code
(i) DoD Instruction 1100.22, "Guidance for Determining Workforce Mix," September 7, 2006 (hereby cancelled)
(j) Deputy Secretary of Defense Memorandum, "Implementation of Section 324 of the National Defense Authorization Act for Fiscal Year 2008 (FY 2008 NDAA)—Guidelines and Procedures of In-sourcing New and Contracted Out Functions," April 4, 2008
(k) DoD Instruction 1400.25, Volume 250, "DoD Civilian Personnel Management Systems: Volume 250, Civilian Strategic Human Capital Planning (SHCP)," November 18, 2008
(l) Defense FAR Supplement (DFARS), current edition
(m) DoD Instruction 5000.02, "Operation of the Defense Acquisition System," December 8, 2008
(n) DoD Instruction 3020.41, "Contractor Personnel Authorized to Accompany the U.S. Armed Forces," October 3, 2005
(o) DoD Instruction 3020.50, "Private Security Contractors Operating in Contingency Operations," July 22, 2009
(p) Sections 1038 and 1080 of Public Law 111-84, "The National Defense Authorization Act For Fiscal Year 2010," October 28, 2009
(q) Under Secretary of Defense for Personnel and Readiness Memorandum, "Interim Policy and Procedures for Strategic Manpower Planning and Development of Manpower Estimates," December 10, 2003[1]
(r) DoD Instruction 7730.64, "Automated Extracts of Manpower and Unit Organizational Element File," December 11, 2004
(s) Deputy Under Secretary of Defense for Program Integration, "DoD Functions," current edition[2]
(t) DoD Directive 1404.10, "DoD Civilian Expeditionary Workforce," January 23, 2009
(u) DoD Directive 1200.7, "Screening the Ready Reserve," November 18, 1999
(v) Constitution of the United States
(w) Articles 2, 3, 4, and 32 of the Geneva Convention Relative to the Treatment of Prisoners of War, of August 1949 (Third Geneva Convention)[3]

[1] Available at http://www.defenselink.mil/prhome/pi.html
[2] Available at http://prhome.defense.gov/pi.html

(x) Articles 24, 28, and 30 of Convention (I) for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field, August 12, 1949, (GWS)[4]
(y) DoD Directive 2310.01E, "The Department of Defense Detainee Program," September 5, 2006
(z) DoD 5210.41-M, "Nuclear Weapon Security Manual (U)," November 22, 2004
(aa) DoD Directive 3115.09, "DoD Intelligence Interrogations, Detainee Debriefings, and Tactical Questioning," October 9, 2008
(ab) DoD Directive 5530.3, "International Agreements," June 11, 1987
(ac) DoD Directive 2311.01E, "DoD Law of War Program," May 9, 2006
(ad) DoD Instruction 1000.17, "Detail of DoD Personnel to Duty Outside the Department of Defense," April 16, 2008
(ae) DoD Directive 1100.20, "Support and Services for Eligible Organizations and Activities Outside the Department of Defense," April 12, 2004
(af) DoD Instruction 4000.19, "Interservice and Intragovernmental Support," August 9, 1995
(ag) DoD Instruction 6025.5, "Personal Services Contracts (PSCS) for Health Care Providers (HCPS)," January 6, 1995
(ah) DoD Directive 1315.07, "Military Personnel Assignments," January 12, 2005
(ai) Section 1905 of title 18, United States Code
(aj) Section 609 of title 40, United States Code
(ak) Section 670(a) of title 16, United States Code
(al) DoD Directive 8500.1E, "Information Assurance" October 24, 2002
(am) Executive Order 12473, "Courts-Martial Manual, United States, 1984" April 13, 1984, as amended
(an) Secretary of Defense Memorandum, "UCMJ Jurisdiction Over DoD Civilian Employees, DoD Contractor Personnel, and Other Persons Serving With or Accompanying the Armed Forces Overseas During Declared War and a Contingency Operation," March 10, 2008
(ao) DoD Directive 1000.20, "Active Duty Service Determinations for Civilian or Contractual Groups," September 11, 1989
(ap) Joint Publication 1-02, "Department of Defense Dictionary of Military and Associated Terms," current edition

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[3] Available at: www.unhchr.ch/html/menu3/b/91.htm
[4] Available at: www.unhchr.ch/html/menu3/b/q_genev2.htm

ENCLOSURE 2

RESPONSIBILITIES

1. UNDER SECRETARY OF DEFENSE FOR PERSONNEL AND READINESS (USD(P&R)). The USD(P&R) shall:

a. Maintain oversight of programs that implement this Instruction and work with the Heads of DoD Components to ensure that the DoD Components establish policies and procedures consistent with this Instruction.

b. Coordinate with the Under Secretary of Defense for Acquisition, Technology, and Logistics (USD(AT&L)) to issue annual guidance for the Inherently Governmental Commercial Activities (IGCA) Inventory consistent with this Instruction.

2. USD(AT&L). The USD(AT&L) shall:

a. Ensure that policies and procedures governing the acquisition process are consistent with this Instruction. This shall include requiring the contracting officer, concurrent with the transmittal of the statement of work (or any modification thereof), to obtain a written statement from the requiring official that the work is appropriate to contract consistent with this Instruction and References (f), (g), (h), (j), and Defense FAR Supplement (DFARS) (Reference (l)).

b. Ensure that policies and procedures governing the Defense acquisition process in DoD Instruction 5000.02 (Reference (m)) are consistent with this Instruction.

c. Ensure that policies and procedures governing contractor personnel in DoD Instruction 3020.41 (Reference (n)) and DoD Instruction 3020.50 (Reference (o)) are consistent with this Instruction.

d. Ensure that policies and procedures governing the Commercial Activities Program are consistent with this Instruction.

e. In coordination with the USD(P&R), issue annual guidance for the IGCA Inventory consistent with the procedures in this Instruction and use the data from the IGCA Inventory to develop the inventories required by Reference (f).

3. UNDER SECRETARY OF DEFENSE FOR INTELLIGENCE (USD(I)). The USD(I) shall:

a. Ensure that policies and procedures governing DoD intelligence and counterintelligence operations (to include intelligence interrogations and debriefings) are consistent with this Instruction.

b. Issue procedures for obtaining waiver authority to the prohibition on the interrogation of detainees by contractor personnel provided under section 1038 of Public Law 111-84 (Reference (p)) that are consistent with this Instruction. All waiver requests shall be submitted through the responsible Geographic Combatant Commander and the Joint Staff to the USD(I) for approval by the Secretary of Defense. Not later than 5 days after the Secretary issues a waiver, notification of the waiver shall be submitted to Congress.

4. HEADS OF THE DoD COMPONENTS. The Heads of the DoD Components shall require their designated manpower authority to:

a. Issue implementing guidance requiring use of this Instruction when:

(1) Determining the workforce mix for current, new, or expanded missions, to include determining the workforce mix for capabilities or support elements requested during a mobilization or crisis.

(2) Developing manpower estimates for Defense acquisition programs covered by USD(P&R) Memorandum (Reference (q)).

(3) Revalidating manpower during reorganizations, mission area analyses, efficiency reviews, and streamlining, reengineering, or restructuring efforts (to include most efficient organizations, high-performing organizations, and business process reengineering studies covered by OMB guidance).

(4) Developing inter- and intra-governmental service support agreements.

(5) Acquiring service support.

(6) Considering the advantages of converting from one source of support (military, DoD civilian, and contractor) to another when developing the annual personnel authorization request to Congress, as required by section 129a of Reference (h).

(7) Assessing the force structure and end strength for assigned missions.

(8) Assisting with the development of Strategic Human Capital Plans consistent with the principles of this Instruction.

b. Ensure the Manpower Mix Criteria codes in Enclosure 4 are used to document manpower in the centralized DoD database as required by DoD Instruction 7730.64 (Reference (r)).

c. Issue procedures that require manpower officials to make determinations as to whether functions to be contracted are IG or exempt from private sector performance, based on the procedures in this Instruction. This will allow the agency head or designated requiring official to provide the contracting officer, concurrent with transmittal of the statement of work (or any modification thereof), a written determination that none of the functions to be performed under

contract are IG or exempt from private sector performance as required by subpart 7.503(e) of Reference (g) and subpart 207.503 of Reference (l).

d. Provide sufficient oversight to ensure compliance with this Instruction through periodic reviews of the DoD Component's workforce and reviews of annual IGCA Inventory submissions.

5. CHAIRMAN OF THE JOINT CHIEFS OF STAFF. The Chairman of the Joint Chiefs of Staff, in addition to the responsibilities in section 4 of this enclosure, shall:

a. When reviewing the adequacy of manpower and manpower policies of the Military Services as required by sections 153(a)(3)(C) and 153(a)(4)(E) of Reference (h), assess whether the workforce mix is appropriate consistent with this Instruction.

b. When reviewing the adequacy of critical contract services that support the Combatant Commanders' contingency plans during the deliberative planning process of the Joint Strategic Planning System, assess the risks of using contract support consistent with this Instruction and require Combatant Commanders to develop contingency plans if they have a reasonable doubt that a contractor will continue to provide essential services during a mobilization or crisis.

c. Ensure that joint doctrine governing the acquisition and use of private security contractors (PSCs) is consistent with this Instruction.

d. When conducting periodic reviews of combat agencies, as required by section 193 of Reference (h), assess the adequacy of the agency's manpower and contract support consistent with this Instruction.

6. COMMANDERS OF THE COMBATANT COMMANDS (CCDRs). The CCDRs, in addition to the responsibilities in section 4 of this enclosure, shall:

a. When determining if the authority, direction, and control they have of assigned commands or forces are sufficient to command effectively as required by section 164 of Reference (h), assess whether the authority, direction, and control they have of DoD civilian and private sector contract support elements are sufficient.

b. Ensure that procedures governing the use of PSCs during a military operation preclude PSCs from performing any IG or exempt function and restrict PSCs from areas of operation where, in the commander's judgment, PSCs would not have sufficient discretionary latitude, authority, equipment, weapons, or fire power to perform successfully their contract.

c. Ensure that the workforce mix (military, DoD civilian, or contractor support) for requests for forces, additional capabilities, or support elements during a military operation (e.g., contingency, humanitarian, peacekeeping) or crisis is based on the policy and procedures in this Instruction.

ENCLOSURE 3

PROCEDURES

1. WORKFORCE MIX DECISION PROCESS

a. Initial Steps. When establishing the workforce mix, manpower planners shall review all mission requirements and design units and/or organizations to accomplish baseline operations and transition quickly and easily to support military operations (e.g., contingency, humanitarian, peacekeeping) and crises. Manpower analysts shall identify the type of work from the list of DoD functions (Reference (s)). They shall use the manpower mix criteria at Enclosure 4 of this Instruction to distinguish between functions that are IG and commercial and to identify which IG and commercial functions will be performed by military personnel and which will be performed by DoD civilian personnel. Manpower analysts also shall use the guidance for risk assessments at Enclosure 5 of this Instruction to help identify risks. The Table lists the manpower mix criteria.

Table. Manpower Mix Criteria

A	Direction and Control of Combat and Crisis Situations		
B	Exemption of Combat Support and Combat Service Support due to Operational Risk		
D	Exemption of Manpower Dual-Tasked For Wartime Assignments		
E	DoD Civilian Authority Direction & Control	F	Military-Unique Knowledge & Skills
G	Exemption for Esprit de Corps		
H	Exemption for Continuity of Infrastructure Operations	I	Military Augmentation of the Infrastructure During War
J	Exemption for Civilian & Military Rotation	K	Exemption for Civilian & Military Career Development
L	Exemption by Law, Executive Order, Treaty or International Agreement		
M	Exempted by DoD Management Decision		
P	Pending Restructuring of Commercial Activities		
R	Subject to Review for Public-Private Competition		
W	Non-Packageable Commercial Activity		
X	Alternative to Public-Private Competition		

b. IG Activities. In general, a function is IG if it is so intimately related to the public interest as to require performance by Federal Government personnel. IG functions shall include, among other things, activities that require either the exercise of substantial discretion when applying Federal Government authority, or value judgments when making decisions for the Federal Government, including judgments relating to monetary transactions and entitlements. Criteria A, E, F, and I identify activities that are IG consistent with section 306 of Reference (d); sections 501 (note), 1115, and 1116 of Reference (e); Attachment A of Reference (f); and subparts 2 and 7.503(c) of Reference (g). Criterion I identifies IG activities performed during a mobilization or other national emergency. Manpower authorities shall consult mobilization and crisis planners to identify these IG activities. Manpower analysts shall designate IG functions for performance by military or DoD civilian personnel as provided by criteria A, E, F, and I.

c. CAs That are Exempted from Private Sector Performance. Criterion L identifies CAs that are exempted from private sector performance due to a law, E.o., treaty, or IA. All other CAs are subject to private sector performance except when the work is exempted to provide for DoD readiness or workforce management needs.

(1) DoD Readiness Needs. Manpower analysts shall exempt service support functions performed in-theater from private sector performance for risk mitigation purposes as addressed by criterion B. Because operational risk is often dependent on the threat level in a geographical region, CCDRs shall reevaluate these exemptions as threat levels change and recommend workforce changes, as appropriate. Manpower analysts shall confer with mobilization and crisis planners within the DoD Component to exempt manpower dual-tasked for wartime assignments as addressed by criterion D. Manpower analysts also shall confer with mobilization and crisis planners to exempt commercial work from private sector performance that is needed for continuity of operations during a national emergency or war as addressed by criterion H.

(2) Workforce Management Needs of the Department. Criterion G identifies CAs that are exempted from private sector performance for esprit de corps reasons. Manpower analysts shall confer with personnel officials within the DoD Component to exempt commercial work from private sector performance to provide for overseas or sea-to-shore rotation (criterion J) and career development (criterion K). In addition, manpower analysts shall exempt CAs to provide for continuity of baseline operations as addressed by criterion H. CAs are also exempted based on DoD management decisions (criterion M). However, these exemptions are usually temporary, pending final resolution by the DoD Component and OSD.

d. CAs Subject to Private Sector Performance or Divestiture. All other CAs are subject to private sector performance or divestiture. These activities may be subject for review for a public-private competition (criterion R). They may be identified for divestiture or military to civilian conversion, or contracted without going through a public-private competition (criterion X). Also, CAs are sometimes temporarily retained in-house pending restructuring of the activity (criterion P), or because the CA cannot be packaged for public-private competition (criterion W).

2. IG FUNCTIONS AND ACTIVITIES CLOSELY ASSOCIATED WITH IG FUNCTIONS

a. How management responsibilities are delegated within an organization often has a direct impact on the workforce mix. For example, approval authority is an IG task. How approval authority is assigned (centralized or decentralized) has a direct bearing on the number of personnel performing IG work. Also, if a function entails both IG and commercial tasks, how the work is organized dictates the workforce mix. For instance, if IG and commercial tasks are non-severable (both have to be performed by all the manpower in the activity to accomplish the mission), then all of the manpower in the activity are designated IG to ensure that all IG tasks are performed by Government personnel. However, if IG and commercial tasks can be separated into sub-functions without adverse consequence to mission success, the manpower performing each sub-function shall be designated IG or commercial according to the sub-function performed. (See subparagraph 1.d.(2) of Enclosure 4 of this Instruction for an example.)

b. Particular attention should be paid to activities that are closely associated with IG functions. Functions listed at section 7.503(d) of Reference (g) are closely associated with IG functions (see section 2383 of Reference (h)). However, the list of functions at section 7.503(d) of Reference (g) is illustrative and not all-inclusive. Functions that are closely associated with IG functions (to include those listed in section 7.503(d) of Reference (g)) are addressed in the manpower mix criteria at Enclosure 4 of this Instruction.

(1) Although activities that are closely associated with IG functions are generally not considered to be IG, they may become IG because of the way they are performed or the circumstances under which they are performed. Decisions as to whether or not a function is IG should place emphasis on the degree to which the conditions or facts restrict or put at risk the discretionary authority, decision-making responsibility, or accountability of Defense officials. When an activity is so closely associated with an IG function that it cannot be separated or distinguished from the IG function, it should be identified as IG to preclude transferring governmental authority, responsibility, or accountability to the private sector. This includes situations where: a contractor could have to assume IG responsibilities to accomplish the job; a contractor's role with regard to an IG function would no longer be discernible from a DoD official's role; or a contractor's advice or direction could be mistaken for that of a DoD official's on a matter that involves IG responsibilities. These functions shall be designated IG as prescribed in paragraphs 1.d., 4.b., and 5.g. of Enclosure 4. The guidance for risk assessments at Enclosure 5 provides examples and additional clarification.

(2) Activities closely associated with IG functions are also exempted from private sector performance for risk mitigation purposes as addressed at paragraphs 2.b. and 7.b. of Enclosure 4.

3. PERSONAL SERVICES. Personal services shall be performed by military or DoD civilian personnel and not contracted unless specifically authorized (subpart 37.104 of Reference (g)). See subparagraph 1.b.(2) of Enclosure 5 of this Instruction for an explanation of personal services.

4. PERSONNEL SHORTFALLS

a. If a DoD Component has a military or DoD civilian personnel shortfall, the shortfall is not sufficient justification for contracting an IG function. Likewise, a personnel shortfall is not sufficient justification for contracting activities that are closely associated with IG functions if contracting the activity would result in an inappropriate risk as provided in subparagraph 2.b.(1) of this enclosure. Personnel shortfalls shall be addressed by hiring, recruiting, reassigning military or DoD civilian personnel; authorizing overtime or compensatory time; mobilizing all or part of the Reserve Component (when appropriate); or other similar actions.

b. Manpower authorities shall not designate manpower for military performance based on the assumption that DoD civilians cannot be recruited or will not deploy to perform activities during a mobilization or other national emergency. Manpower authorities shall consult the director of the DoD Component's Human Resource Office to verify whether DoD civilian employees are available or can be recruited and trained as emergency essential (E-E) employees to provide support during a mobilization or other national emergency. A sufficient number of E-E positions shall be established as are required to support a national emergency or war.

5. COST AS A DECIDING FACTOR IN WORKFORCE MIX DECISIONS. As provided in paragraph 4.f. above the signature of this Instruction, even if a function is not IG or exempt from private sector performance, DoD Components shall use DoD civilian personnel to perform the function unless DoD civilians are not the low-cost provider or there is a legal, regulatory, or procedural impediment to using DoD civilian personnel. When assessing workforce costs, manpower analysts shall not assume that one source of support (military, DoD civilian, or contractor) is less costly than another. DoD Components shall conduct a cost comparison as provided by Reference (j) to determine the low-cost provider for all new or expanding mission requirements and for functions that have been contracted but could be performed by DoD civilian employees. DoD Components shall perform public-private competitions as provided by Reference (f) to determine the low-cost provider for CAs.

6. NON-AVAILABILITY OF DoD CIVILIAN EMPLOYEES. If there is a legal or regulatory impediment to using DoD civilian employees, or the director of the local Human Resource Office certifies that DoD civilians cannot be hired, hired in sufficient time, or retained to perform a function, the function may be contracted provided it is not IG or exempt from private sector performance. If the function is IG, the activity shall be designated for military performance as provided by section 8 of this enclosure. If the function is exempted from private sector performance for other than IG reasons, the exemption shall be handled through normal management actions.

7. ORDER OF PRECEDENCE FOR CODING MANPOWER IN DoD MANPOWER DATABASES. The codes assigned to each manpower mix criterion at Enclosure 4 of this Instruction shall be used to document manpower in DoD manpower databases. Manpower mix criteria are listed in descending order of precedence at the Table in this enclosure. When two or

more criteria apply, the criterion highest on the list shall take precedence. The order of precedence at the Table is structured to give manpower officials visibility of why activities are performed by DoD civilian or military personnel. By understanding the underlying reason for the workforce mix, Defense officials can assess the risks that manpower shortfalls have on IG responsibilities, readiness, workforce management, and mission accomplishment.

8. CODING MILITARY-TO-CIVILIAN AND CIVILIAN-TO-MILITARY CONVERSIONS. If manpower analysts decide that military personnel are performing functions that should be performed by DoD civilian personnel, or that DoD civilian personnel are performing functions that should be performed by military personnel, they shall use the appropriate code to show that the activity should be converted from military to civilian or from civilian to military performance. For example, manpower analysts shall designate military manpower with code "E," "Civilian Authority Direction & Control," if criterion "E" best describes the type of work. Also, civilian manpower that performs work that requires "Military-Unique Knowledge & Skills" shall be coded "F."

9. CODING MILITARY MANPOWER LOCATED IN DoD ACTIVITIES OUTSIDE THE MILITARY DEPARTMENTS. When manpower authorities from OSD, the Joint Staff, Combatant Commands, DoD Field Activities, Defense Agencies, or other organizations outside the Military Departments determine or revalidate their workforce mix, they shall consult officials from the Military Services to ensure that manpower needed for military rotation, career development, and wartime assignments are properly coded. This shall include manpower for interagency assignments.

ENCLOSURE 4

MANPOWER MIX CRITERIA

1. CRITERION A - DIRECTION AND CONTROL OF COMBAT/CRISIS SITUATIONS. Manpower analysts shall code manpower in operating forces "A" if the manpower performs any of the IG functions addressed in this section. Civilian manpower in overseas locations that are coded "A" are also designated E-E as provided by DoD Directive 1404.10 (Reference (t)). E-E positions are also designated key following the procedures in DoD Directive 1200.7 (Reference (u)) to indicate they are not to be filled by Ready Reservists that can be called to active duty.

a. Command of Military Forces. Command of military forces is an IG function according to Reference (g). Command within the Military Services is implemented through a unique construct of command authority, known as the "military chain of command." Within the operating forces, this authority begins with field commanders and extends to the lowest level of command responsible for discretionary decision making, personnel safety, and mission accomplishment. Accordingly, manpower in operational command or that may have to assume operational command of military forces is designated military and coded "A."

b. Operational Control of Combat, Combat Support, and Combat Service Support Units. Operational control is derived, in part, from IG responsibilities assigned to commanders and their military subordinates as explained in subparagraphs 1.b.(1) and 1.b.(2) of this enclosure.

(1) Military Discipline. Military officers and enlisted personnel are subject to a strict form of discipline – i.e., they must obey all lawful orders at all times and are trained and prepared to immediately perform all duties as directed by military commanders. In addition, military personnel may not quit or abandon their duties. See subparagraphs 2.d.(1) through 2.d.(4) of Enclosure 5 concerning responsibilities inherent to military discipline that are uniquely military. This strict discipline provides military commanders with the control and flexibility needed to quickly reassign duties, reconstitute operations, provide relief and assistance to military forces during hostilities, and fight and win wars. It also provides for the orderly transfer of command and control of military operations if the commander is killed or incapacitated. This strict discipline is an IG responsibility unique to the military establishment. The unique nature of the military establishment and its role in defense of the Nation has been recognized by the Supreme Court—i.e., the differences between the military and civilian communities result from the fact that it is the primary business of armies and navies to fight or be ready to fight wars should the occasion arise.

(2) Uniform Code of Military Justice (UCMJ) Authority. Operational control is enforced, among other means, by Chapter 47 of Reference (h), also known and hereafter referred to as "the UCMJ." Consistent with section 809 of Reference (h), commissioned officers have the authority to order the arrest or confinement of an enlisted Service member who violates the UCMJ. Commanding officers may authorize warrant officers, petty officers, or noncommissioned officers to order enlisted members of their command or individuals subject to their authority who violate the UCMJ into arrest or confinement. Commissioned and warrant

officers, and those civilians subject to the UCMJ, may be ordered into arrest or confinement only by a commanding officer to whose authority they are subject. Civilians are subject to the UCMJ when serving with or accompanying U.S. armed forces in the field during a declared war or a qualifying contingency operation (as defined in Enclosure 5). The authority to order the arrest or confinement of civilians subject to the UCMJ, commissioned officers, and warrant officers may not be delegated by the commanding officer. UCMJ authority, together with the operational control it provides, entails substantial discretion and is IG-consistent with References (e), (f), and (g).

c. Combat Operations. When armed fighting or use of force is deemed necessary for national defense, the Department of Defense may authorize deliberate destructive and/or disruptive action against the armed forces or other military objectives of another sovereign government or against other armed actors on behalf of the United States. This entails the authority to plan, prepare, and execute operations to actively seek out, close with, and destroy a hostile force or other military objective by means of, among other things, the employment of firepower and other destructive and disruptive capabilities.

(1) Combat authorized by the U.S. Government is IG, coded "A," and designated for military performance because:

(a) The U.S. Government has exclusive responsibility for discretionary decisions concerning the appropriate, measured use of combat power, including the offensive use of destructive or deadly force on behalf of the United States.

(b) Since combat operations authorized by the U.S. Government entail the exercise of sovereign Government authority and involve substantial discretion – i.e., can significantly affect the life, liberty, or property of private persons or international relations - they are IG-consistent with References (e), (f), and (g).

(c) The appropriate, measured use of combat power during hostilities is of critical national interest. Under certain circumstances, the United States can be liable for its misuse or compelled to make restitution due to its unintended collateral effects. The Department of Defense safeguards U.S. sovereign authority and reduces the risk of using destructive and/or disruptive force inappropriately by:

1. Delegating responsibility for combat operations only to military commanders through the military chain of command.

2. Holding military commanders and their forces accountable for the appropriate and controlled use of combat power and adherence to rules of engagement and the law of war. (See section 164 of Reference (h) concerning the responsibility of CCDRs for their authority, direction, and control of commands and forces assigned to their command. This responsibility entails substantial discretion and is IG-consistent with References (e), (f), and (g).)

3. Ensuring that the discretionary judgment, leadership, knowledge, and discipline necessary to perform effectively and responsibly under fire is developed and reinforced through extensive training of military commanders in tandem with their forces.

4. Holding commanders responsible for assessments of the training, discipline, and readiness of their forces to conduct assigned missions. (See section 117 of Reference (h) concerning the commanders' responsibility for force readiness. This responsibility entails substantial discretion and is IG-consistent with References (e), (f), and (g).)

(2) Consistent with subparagraph 1.c.(1) of this enclosure, manpower shall be designated military and coded "A" if the planned use of destructive combat capabilities is part of the mission assigned to this manpower (including destructive capabilities involved in offensive cyber operations, electronic attack, missile defense, and air defense). This includes manpower located both inside and outside a theater of operations if the personnel operate a weapon system against an enemy or hostile force (e.g., bomber crews, inter-continental ballistic missile crews, and unmanned aerial vehicle operators). This does not include technical advice on the operation of weapon systems or other support of a non-discretionary nature performed in direct support of combat operations.

d. Security Provided to Protect Resources and Operations in Hostile or Volatile Areas

(1) Security provided for the protection of resources (people, information, equipment, supplies, facilities, etc.) or operations in uncontrolled, unpredictable, unstable, high risk, or hostile environments inside or outside the United States entails a wide range of capabilities, some of which are IG and others of which are commercial. (See paragraph 2.b. of this enclosure for a discussion of security functions that are not IG but are exempted from private sector performance.) Subparagraphs 1.d.(1)(a) through (f) of this enclosure are examples of IG security functions.

(a) If security forces that operate in hostile environments as part of a larger, totally integrated and cohesive armed force perform operations in direct support of combat (e.g., battlefield circulation control and area security), the operations are IG. These operations entail the discretionary use of deadly force — i.e., although these operations are governed by rules of engagement, mission statements, and orders expressing the commander's intent, the military troops are still required to exercise initiative and substantial discretion when deciding how to accomplish the mission, particularly when unanticipated opportunities arise or when the original concept of operations no longer applies. These security operations require command decisions, military training, and operational control for reasons stated in subparagraph 1.c.(1) of this enclosure and must be provided through a military means. As PSCs may not perform these security operations, private security contracts are not a force structure substitute for these requirements.

(b) Security is IG if it is performed in environments where there is such a high likelihood of hostile fire, bombings, or biological or chemical attacks by groups using sophisticated weapons and devices that, in the judgment of the military commander, the situation could evolve into combat. Security performed in such high-risk environments requires command

decisions, military training, and operational control for reasons stated in subparagraph 1.c.(1) of this enclosure and shall be designated for military performance. In such situations, private security contracts are not a force structure substitute for these requirements.

(c) Security actions that entail assisting, reinforcing, or rescuing PSCs or military units who become engaged in hostilities are IG because they involve taking deliberate, offensive action against a hostile force on behalf of the United States. This type of security requires command decisions, military training, and operational control for reasons stated in subparagraph 1.c.(1) of this enclosure and shall be designated for military performance. As PSCs may not be given the discretionary latitude to engage in offensive actions, private security contracts are not a force structure substitute for these requirements. Nothing in this subparagraph of the Instruction shall preclude a PSC from defending another contractor or government entity of their own volition if consistent with U.S., international, and host nation (HN) law; Status of Forces Agreement (SOFA) and other IA; HN support agreement; and Federal regulation.

(d) Security is IG if, in the commander's judgment, an offensive response to hostile acts or demonstrated hostile intentions would be required to operate in, or move resources through, a hostile area of operation. Decisions to offensively respond to hostile acts or demonstrated hostile intentions (e.g., assault or preemptively attack) entail substantial discretion and are IG. (See subparagraph 2.d.(6)(a) of Enclosure 5 of this Instruction for additional information and an example.) This type of security requires command decisions, military training, and operational control for reasons stated in subparagraph 1.c.(1) of this enclosure and shall be designated for military performance. As PSCs may not be given the discretionary latitude to authorize or engage in offensive actions against an enemy or hostile force, private security contracts are not a force structure substitute for these requirements.

(e) Security is IG if, in the commander's judgment, decisions on the appropriate course of action would require substantial discretion, the outcome of which could significantly affect U.S. objectives with regard to the life, liberty, or property of private persons, a military mission, or international relations. Such actions typically require high-risk, on-the-spot judgments on the appropriate level of force, acceptable level of collateral damage, and whether the target is friend or foe in situations pivotal to U.S. interests. These actions are so intimately related to U.S. interests as to require government performance and, as provided by Reference (e), is IG. Private security contracts are not a force structure substitute for these requirements.

(f) If consistent with applicable U.S., international, and HN law; SOFAs and other IAs; HN support agreements; and Federal regulations, a DoD PSC may be authorized to provide security services so long as the services are not IG as provided by this Instruction. As provided by References (n) and (o), contractors may provide security services for other than uniquely military functions as identified in subparagraphs 1.d.(1)(a) through 1.d.(1)(e) of this enclosure, so long as the geographic CCDR can:

1. Clearly articulate rules on the use of force that preclude ceding governmental control and authority of IG functions to private sector contractors as addressed in subparagraphs 1.d.(1)(a) through 1.d.(1)(e) of this enclosure.

2. Set clear limits on the use of force based on U.S. law and policy, and applicable HN law, relevant SOFAs, IAs, and international law, including the law of war.

3. Include in the contract for security services a description of where the PSC will operate, a description of the anticipated threat, a description of any known or potentially hazardous situations, and a plan for how appropriate assistance will be provided to PSC personnel who become engaged in hostile situations.

(2) Security shall be designated for military performance and the manpower coded "A" if, in the judgment of the commander, it meets one or more of the criteria addressed in subparagraphs 1.d.(1)(a) through 1.d.(1)(e) of this enclosure. This includes combat support (CS) and combat service support (CSS) if all the manpower in the unit must perform one or more of these IG security functions to accomplish the mission. For example, manpower in Marine Corps CS and CSS units are coded "A" because they are required to use offensive tactics to defend the unit and accomplish the mission. In this example, two functions are performed by all of the manpower in the unit and the IG function (security) takes precedence over the commercial function for coding purposes so that IG work is always performed by government personnel. However, if IG security operations can be performed separately without adverse impact to mission success, only manpower performing IG security operations are coded "A." For example, if a Military Service has a new weapon system available for use during hostilities, but sufficient numbers of military maintainers are not yet trained, the commander might be able to use contract maintenance in a secure compound without degrading the operational capability of the system. In such cases, only the IG security forces at the compound are coded "A." However, in such cases, contractor personnel may be issued weapons for self-defense as provided by Reference (n).

(3) It should be in the sole discretion of the commander of the relevant combatant command to determine whether or not the performance by a PSC under a contract awarded for a particular activity, a series of activities, or activities in a particular location, within a designated area of combat operations, is appropriate. Such a determination shall not be delegated to any person who is not in the military chain of command.

e. Medical and Chaplain Services Performed in Hostile Areas. Services provided by military medical personnel and chaplains embedded in military units that engage in hostile action are IG. This manpower shall be designated military and coded "A" because:

(1) During hostilities, military medical personnel function as an inherent part of the unit and (as with other members of the unit) use substantial discretion when defending their patients.

(2) The First Amendment prohibits any law respecting the establishment of religion or prohibiting the free exercise thereof. Although the Department of Defense can and does contract for religious ministry from individual faiths, the Department of Defense cannot contract for the type of religious pluralism required in operational environments.

(3) The Department of Defense cannot impose upon civilian religious ministry professionals the type of religious pluralism exercised by military chaplains without risk of

challenge under the establishment clause of the First Amendment of the Constitution (Reference (v)). Accordingly, sections 3073, 5347, 5142, and 8067 of Reference (h) authorize the appointment of military chaplains. Chaplains provide for military members' religious "free exercise" rights and satisfy both the "establishment" and "free exercise" clauses of Reference (v). Legal efforts to invalidate this contention have been unsuccessful. In addition, military chaplains have support from over 230 endorsing bodies that represent over 300 faith groups to work cooperatively with other faith groups to provide for the pluralistic religious needs of military members.

(4) Even though many aspects of their duties are governed by policy and practice, military chaplains must use substantial discretion and make value judgments when interpreting DoD policy and ministering to the pluralistic religious needs of the military. To avoid proselytizing, chaplains often have to balance their personal religious beliefs with the requirements of ministering to members of different faiths or to persons of no particular faith who are brought to personal crises during war. Also, chaplains must use substantial discretion when requested for actions that certain faith groups consider essential but are inconsistent with the chaplain's personal religious beliefs, as opposed to civilian religious ministry professionals who provide specifically focused rites and sacraments according to their faith groups.

(5) Military chaplains also play an active, discretionary role in planning and preparation of activities when religion and other cultural issues and ideologies could have a pronounced influence on civil-military operations, psychological operations, or public affairs activities.

(6) If captured during an international armed conflict, unlike civilian or PSC employees performing religious or medical services, military chaplains and military medical personnel are not held as prisoners of war (POWs). They are retained persons who are permitted to attend to the religious and medical needs of U.S. POWs under the Geneva Convention. Their unique role is performed on behalf of the U.S. Government and cannot be delegated to DoD civilians or private sector contractors. (See Article 32 of the Third Geneva Convention (Reference (w)) and Articles 24, 28, and 30 of the Convention (I) for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field (Reference (x)).)

f. Criminal Justice and Law Enforcement Operations Performed in Operational Environments

(1) How enemy prisoners of war (EPWs), civilian internees (CIs), retained persons (RPs), other detainees, terrorists, and other criminals are to be treated when captured, transferred, detained, and interrogated during or in the aftermath of hostilities, as addressed in DoD Directive 2310.01E (Reference (y)), falls under the discretionary exercise of government authority. Responsibility for their handling as well as decisions concerning how they are treated cannot be transferred to private sector contractors.

(2) Consistent with Reference (g), control of prosecutions and performance of adjudicatory functions in support of UCMJ criminal justice proceedings are IG activities. Consistent with Reference (h) these activities must be performed by military personnel. Accordingly, this manpower shall be designated military and coded "A."

(3) Certain law enforcement operations, to include issuing warrants, making arrests, and preservation of crime scenes, are IG activities. According to Reference (g), direct conduct of criminal investigations is an IG activity. This includes interrogations and interviews conducted for law enforcement purposes. If these activities are carried out under the UCMJ as prescribed in Chapter 47 of Reference (h), or are performed in hostile areas where security necessary for DoD civilian performance cannot be provided, the operation shall use only military personnel. The Department of Defense shall build the appropriate mix of code "A" manpower and acquire and train the requisite military and civilian personnel to meet the requirements. Contractors, to include PSCs, are prohibited from performing law-enforcement activities. However, in areas where adequate security is available and expected to continue, properly trained and cleared contractors may perform special non-law-enforcement security activities that do not directly involve criminal investigations, so long as they are monitored by sufficiently trained government officials as required by Reference (g).

(4) Direction and control of confinement/correctional facilities for U.S. military prisoners in areas of operation are IG functions. Manpower performing these activities shall be designated military and coded "A" if the facility is for the confinement of offenders of the UCMJ as prescribed in section 951 of Reference (h) and the prisoners are under military command.

(5) Direction and control of detention facilities for EPWs, CIs, RPs, other detainees, terrorists, and other criminals in areas of operation are IG activities. Consistent with Chapter 47 of Reference (h) and Reference (y), these activities must be performed by military personnel. Manpower performing these activities shall be designated military and coded "A." This includes detention under the law of war as part of ongoing operations for their own protection or to remove potential threats from the battle space.

g. Intelligence and Counterintelligence Operations Performed in Operational Environments. Consistent with Reference (g), direction and control of intelligence and counterintelligence operations are IG activities. This includes the approval, supervision, and oversight of intelligence interrogations and detainee debriefings. Also, consistent with References (e), (f), and (g), intelligence and counterintelligence activities (to include intelligence interrogations and detainee debriefings) that require the exercise of substantial discretion in applying government authority and/or in making decisions for the government are IG. When performed in hostile areas where security necessary for DoD civilian performance cannot be provided, the manpower shall be designated military and coded "A." Otherwise, the manpower shall be designated DoD civilian and coded "A." (See subparagraph 2.a.(2) of this enclosure for exemptions.)

h. Federal Procurement Activities Performed in Operational Environments. According to Reference (g), Federal procurement activities with respect to prime contracts (to include determining what supplies or services are to be acquired; approving, awarding, administering, and terminating contracts; and determining whether contract costs are reasonable, allocable, and allowable) are IG. When performed in hostile areas where security necessary for DoD civilian performance cannot be provided, the operation shall use only military personnel. Otherwise, the operation shall be performed by DoD civilian manpower. The Department of Defense shall

build the appropriate mix of code "A" manpower and acquire and train the requisite military and civilian personnel to meet the requirements.

2. CRITERION B - EXEMPTION OF CS AND CSS DUE TO OPERATIONAL RISK. Section 118(b) of Reference (h) requires that the Department of Defense plan to successfully execute the full range of missions called for in the national defense strategy at a low to moderate level of risk. Consistent with Reference (a), certain commercial CS and CSS functions are exempted from private sector performance and designated for DoD civilian or military performance for risk mitigation purposes.

a. Exemption for Military CS and CSS

(1) Manpower authorities shall designate CS or CSS support functions for military performance and code the manpower "B" if, in the commander's judgment, performance of the function by DoD civilians or contractors or total reliance on DoD civilians or contractors would constitute an unacceptable risk. This includes situations where there is a significant risk that:

(a) The threat level could increase and military personnel would be needed on short notice to provide or augment a military capability. (Section 113 of Reference (h) requires the Department to maintain the capability to reconstitute or expand the defense capabilities of the armed forces on short notice to meet a resurgent or increased threat.)

(b) There would be an unsafe number of personnel in hostile areas who are not combatants.

(c) Activities that are closely associated with IG functions would be put at an inappropriate level of risk if contracted as addressed at subparagraph 1.b.(3) of Enclosure 5.

(d) DoD civilians or private sector contractors will not or cannot continue to perform their work. This includes situations where, in the commander's judgment:

1. The contractor can no longer fulfill the terms of the contract because the threat level, duration of hostilities, or other terms specified in the contract have changed significantly. (See paragraph 2.d. of Enclosure 5 of this Instruction for examples.)

2. A U.S., international, or HN law; SOFA or other IA; or HN support agreement has changed in a manner that affects the terms of the contract.

3. There is too great a risk that a contractor would default or not comply with the rules on the use of force.

(e) Security provided by contractors could prove inadequate due to the contractor's weapons, operational security, communications systems, or training. For example, contract security may be inadequate for a large cache of conventional arms, ammunitions, or explosives. In addition, a commander may determine that contract security is inadequate because there is too

great a risk that an encounter with an enemy or hostile force would lead to hostilities and necessitate assistance, reinforcement, or rescue. Contractors shall not provide security for nuclear weapons (in accordance with DoD 5210.41-M (Reference (z))) or other weapons of mass destruction, e.g., captured chemical, biological, radiological, or high-explosive weapons.

(2) There are prohibitions on the use of contractors for intelligence interrogations.

(a) Consistent with section 1038 of Reference (p), no enemy prisoners of war, civilian internee, retained personnel, other detainee, or any other individual who is in the custody or under the effective control of the Department of Defense or otherwise under detention in a DoD facility in connection with hostilities may be interrogated by contractor personnel unless the following four conditions are met:

1. The Secretary of Defense determines that a waiver to this prohibition is vital to the national security interests of the United States and waives the prohibition for a period of 60 days; or determines that a renewal of the waiver is vital to the national security interests of the United States and renews the waiver for an additional 30-day period (see section 3 of Enclosure 2 concerning submission of requests for waivers to the USD(I)).

2. The contract interrogator is properly trained and certified to DoD standards consistent with DoD Directive 3115.09 (Reference (aa)).

3. A sufficient number of properly trained and certified DoD military and/or DoD civilian interrogators supervise and closely monitor the contract interrogator in real time throughout the interrogation process to ensure that the contract interrogator does not deviate from the government-approved interrogation plan or otherwise perform any IG function.

4. A video and audio recording is made of the interrogation to the extent required by section 1080 of Reference (p) and consistent with Reference (aa).

(b) Consistent with section 1038 of Reference (p), in areas where adequate security is available and is expected to continue, contractor personnel with proper training and security clearances may be used as linguists, interpreters, report writers, information technology technicians, and other employees filling ancillary positions (including as trainers of, and advisors to, interrogators) in the interrogation of persons described above if:

1. Such persons are subject to the same rules, procedures, policies, and laws pertaining to detainee operations and interrogations as apply to government personnel in such positions in such interrogations; and,

2. Appropriately qualified and trained military or civilian personnel of the Department of Defense are available to oversee the contractor's performance and to ensure that contractor personnel do not perform activities that are prohibited under this section.

(3) Manpower authorities also shall designate CS or CSS support functions for military performance and code the manpower "B" if there is a law, IA, HN support agreement, or

regulatory impediment to contracting the support service and DoD civilians cannot perform the work. For example, as explained at subparagraph 1.b.(2) of Enclosure 5 of this Instruction, DoD Components may not award personal services contracts unless specifically authorized by statute.

(4) This manpower provides a ready and controlled source of technical competence (core capability) necessary to ensure an effective and timely response to a national emergency or crisis. Decisions about the number of CS and CSS units necessary to provide a core capability are based on the guidance for risk assessments at Enclosure 5 of this Instruction.

b. Exemption for Civilian CS and CSS

(1) Manpower authorities shall designate CAs that support the operating forces for DoD civilian performance and code the manpower "B" if, in the commander's judgment, performance of the function by PSCs or total reliance on PSCs would constitute an unacceptable risk.

(2) This includes:

(a) E-E manpower that provides continuity of operations for essential functions, maintains the availability of combat-essential systems, or performs duties critical to combat operations in overseas locations during a crisis when other civilians are evacuated as provided by Reference (t).

(b) Manpower that performs personal services, or that performs activities that are closely associated with IG functions that would be put at an inappropriate level of risk if contracted (see subparagraphs 1.b.(2) and (3) of Enclosure 5).

(3) This manpower is exempted from private sector performance and designated for DoD civilian performance. These positions cannot be vacated or eliminated during a mobilization or other national emergency without seriously impairing the ability of the activity to function effectively. These positions are also designated as key following the procedures in Reference (u) to indicate that they are not to be filled by Ready Reservists who can be called to active duty.

(4) Examples include supply and maintenance of strategic weapon systems, Army units at echelon above division, Army logistical support elements that deploy to hostile areas, technology escort units that retrieve chemical and biological weapons in forward areas, and Navy ships with CS missions that are part of the combat logistics force.

c. Threat Levels. Because operational risk often depends on the threat level in a geographic region, coding for this manpower should be reevaluated as threat levels change.

3. CRITERION D - EXEMPTION OF MANPOWER DUAL-TASKED FOR WARTIME ASSIGNMENTS. Consistent with Reference (a), manpower authorities shall establish sufficient manpower in the infrastructure so that an adequate pool of personnel is available for critical assignments in the operating forces during a mobilization or other national emergency. Manpower authorities shall consult mobilization and crisis planners within the DoD Component

to identify personnel in the infrastructure who are needed for assignments in the operating forces during such emergencies. The manpower shall be coded "D" to indicate the incumbents are dual-tasked for wartime assignments (i.e., assigned to positions in the infrastructure and also counted for assignments in the operating forces).

a. Military Manpower Designated for Wartime Assignments. Manpower in the infrastructure shall be designated military and coded "D" if the incumbents are active military or Active Guard and Reserve who are designated for assignments in the operating forces or serve as replacements for personnel in the operating forces during a mobilization or other national emergency, but perform CAs in the infrastructure during peacetime. For example, the Navy uses active-duty military from the shore establishment to stand-up fleet hospitals and to staff hospital ships with medical personnel during emergencies. Also, Air Force unit type code military are coded "D." This manpower is designated military and exempted from private sector performance because the incumbents are needed for assignments in the operating forces during a mobilization or other national emergency before Reserve Component personnel are recalled and before post-mobilization recruits (i.e., personnel acquired after mobilization) can be trained and assigned to the operating forces to support or sustain a military operation.

b. Civilian Manpower Designated for Assignments During a Mobilization or Crisis. Manpower in the infrastructure shall be designated DoD civilian and coded "D" if the incumbents are designated for assignments in operating forces overseas or serve as alternates or replacements for personnel in overseas assignments in the operating forces during a mobilization or other national emergency. For example, E-E personnel who are assigned overseas during a crisis or who replace E-E personnel assigned to positions in overseas locations according to Reference (t) are coded "D." These positions are also designated as key following the procedures in Reference (u) to indicate that they are not to be filled by Ready Reservists that can be called to active duty. Also, DoD civilians who are dual-status military technicians covered by section 115(c) of Reference (h) who train the Selected Reserve (SELRES) or maintain or repair equipment issued to the SELRES or Active Component forces during peacetime are coded "D" if they are designated for military wartime assignments in units of the SELRES.

c. Designations for Assignments. Manpower authorities shall consult mobilization and crisis planners within the DoD Component to determine the number and skills required for these assignments and centrally manage the coding for this manpower.

4. CRITERION E - DoD CIVILIAN AUTHORITY, DIRECTION, AND CONTROL. The IG duties in this section are inherent to DoD civilian authority, direction, control, and accountability of the Department of Defense consistent with Reference (h). Manpower analysts shall designate this work for civilian performance and code the manpower "E." If the incumbents also have emergency-essential responsibilities, the manpower also shall be designated E-E as provided by Reference (t). If the positions cannot be vacated or eliminated during a mobilization or other national emergency without seriously impairing the ability of the activity to function effectively, the manpower shall be designated as key following the procedures in Reference (u) to indicate that they are not to be filled by Ready Reservists that can be called to active duty.

a. Civilian Leadership and Control. Manpower shall be designated civilian and coded "E" if the incumbents are directly and ultimately accountable for accomplishment of missions, discretionary exercise of DoD authority, or judgments relating to monetary transactions and entitlements. This includes ultimate control of the acquisition, use, or disposition of U.S. property (real or personal, tangible or intangible). It includes the authority to obligate Federal funds or to commit the Department of Defense to take or not take action by contract, policy, regulation, authorization, order, or otherwise. Examples include the duties and responsibilities vested in the Secretary of Defense; Secretaries of the Military Departments; Directors of Defense Agencies and DoD Field Activities; and other civilian officials specified in sections 131-142, 3013-3022, 5013-5026, and 8013-8022 of Reference (h). This also includes program/project managers, contracting officers, and other officials delegated management authority (direction and final decision making) and accountability for:

(1) Conduct of foreign relations and determination of foreign policy according to Reference (g), including implementation of IAs and treaties covered by DoD Directive 5530.3 (Reference (ab)), law of war under DoD Directive 2311.01E (Reference (ac)), and foreign military sales and security assistance programs.

(2) Recommendations and responses to Congress for changes to governing legislation and comments to draft legislation on matters concerning the Department of Defense.

(3) Determination of policies, directives, and regulatory guidance to include determining the content and application of regulations, consistent with Reference (g). However, contractors may perform services that involve or relate to the development of regulations so long as the work is properly reviewed by government personnel according to Reference (g).

(4) Approval of strategic plans according to section 306 of Reference (d), as well as program goals and objectives (including national security objectives).

(5) Determination of DoD program priorities for budget requests and determination of budget policy, guidance, and strategy according to Reference (g).

(6) Discretionary decisions concerning the effective, efficient, and economical organization, administration, and operation of the Department of Defense, such as decisions to transfer a function, power, or duty; delegate authority; or approve support agreements, cooperative agreements, and non-procurement transactions.

(7) Direction and control of certain functions and operations, to include intelligence and counterintelligence operations and activities, criminal investigations, and adjudications (other than those relating to arbitration or other methods of alternative dispute resolution) according to Reference (g).

(8) Control of treasury accounts and the administration of public trusts and grants according to Reference (g).

(9) Direction and ultimate control over the acquisition, use, or disposal of property (real or personal, tangible or intangible), to include the collection, control, and disbursement of appropriated and non-appropriated funds according to References (e), (f), and (g).

b. Civilian Expertise and Experience. Manpower shall be designated civilian and coded "E" if Defense officials require the incumbent's judgment and insight to make informed decisions and preclude sole reliance on contract advisory assistance. The incumbents of these positions enable Defense officials to maintain ultimate control and accountability of government operations, federally funded projects, contracts, or government property or funds. Their role is closely associated with, and inherent to, the decision maker's. They perform an active and informed role in policy development, program execution, contract administration, and judiciary or fiduciary matters. They also perform a discretionary role in establishing objectives, setting priorities, judging risks, or deciding on a course of action by narrowing the number of alternatives and recommending the DoD-preferred position based on their corporate knowledge; technical expertise; and advice, opinions, and recommendations provided by sources inside and outside the Department of Defense. Examples include manpower that has been delegated authority to:

(1) Establish terms for IAs, treaties, foreign military sales, and security assistance programs. However, contractors may assist in these activities by gathering information or providing advice, opinions, or recommendations.

(2) Draft or develop proposed changes to governing legislation and comments to draft legislation and draft Congressional testimony, responses to Congressional correspondence, or agency responses to audit reports from the Inspector General, the Government Accountability Office, or other Federal audit entity according to Reference (g). However, contractors may provide background information to assist governmental personnel with these activities.

(3) Interpret, develop, or evaluate legal opinions and implementing policy for laws, E.o.s, treaties, and IAs. However, contractors may assist government personnel by providing non-legal advice according to Reference (g).

(4) Draft, develop, or evaluate strategic plans, justifications for strategic plans, planning options, priorities, and strategies required under section 306 of Reference (d); and draft or develop performance goals, performance indicators, performance plans, program evaluations, and program performance reports required under sections 1115 and 1116 of Reference (e).

(5) Develop or evaluate program and budget requests. However, contractors may assist government personnel with these activities through workload modeling, efficiency studies, fact finding, feasibility studies, "should-cost" analyses, and other analyses per Reference (g).

(6) Maintain control and accountability of government operations, federally funded programs and projects, contracts, and Federal property and funds. However, contractors may assist government personnel with these activities through workload modeling, fact finding, feasibility/efficiency studies, and other analyses of a non-discretionary nature to support program

management, acquisition planning, and evaluations as provided by Reference (g). Manpower shall be designated DoD civilian and coded "E" if they are responsible for:

(a) Administering and managing government operations to include discretionary decisions on the reorganization and improvement of activities. However, contractors may assist government personnel by providing advice, opinions, ideas, or recommendations; gathering information; and performing other non-discretionary services that involve or relate to reorganizing or improving activities consistent with Reference (g).

(b) Systems acquisition management. However, according to section 2383 of Reference (h), contractors may support government personnel in acquisition planning by gathering information; providing advice, opinions, recommendations, or ideas; and assisting in program monitoring, milestone and schedule tracking, and other non-discretionary tasks.

(c) Allocating resources (dollars and manpower) and obligating Federal funds. However, employee utilization of government credit cards for the purchase of office supplies or temporary duty travel does not meet the funds obligation criteria specified here.

(d) With respect to prime contracts, determining what supplies or services are to be acquired by the government. However, according to Reference (g), an agency may give contractors authority to acquire supplies at prices within specified ranges and subject to other reasonable conditions deemed appropriate by the Department of Defense, subject to government oversight and acceptance.

(e) Awarding, terminating, and administering contracts for goods and services to include ordering changes to contract performance or contract quantities, taking action based on evaluation of contract performance, and accepting or rejecting contract products or services as prescribed in Reference (g). However, subject to applicable conflict-of-interest laws and regulations, contractors may assist in the development of statements of work and provide technical evaluations of contract proposals, so long as the contractor's involvement is properly administered. In such cases, the government must not allow the contractor to perform in conflicting roles that might bias its judgment, or to gain an unfair competition advantage by virtue of access to confidential business information or other sensitive information.

(f) Approving any contractual document (including documents defining requirements, incentive plans, and evaluation criteria) or participating as a voting member on any source selection boards or performance evaluation boards according to Reference (g). However, contractors may participate as technical advisors to a Source Selection Evaluation Board according to section 2383 of Reference (h).

(g) Determining whether contract costs are reasonable, allocable, and allowable according to Reference (g).

(h) Determining what government property (real or personal, tangible and intangible) is to be disposed of and on what terms. However, contractors may be given authority under government oversight to dispose of property identified by the government at prices within clearly

specified ranges as determined by the government and subject to other reasonable conditions deemed appropriate by the Department of Defense consistent with Reference (g).

(i) Consistent with Reference (g), collecting, controlling, and disbursing fees, royalties, duties, fines, taxes, and other public funds unless the function involves:

1. Activities authorized by statute, such as sections 3711 and 3718 of Reference (e) relating to private collection contractors and private collection services.

2. Collection of fees, fines, penalties, or other charges from visitors to or patrons of mess halls, post or base exchange concessions, and similar entities or activities, or from other persons, where the amount to be collected is easily calculated or predetermined and the funds collected can be easily controlled using standard cash management techniques.

3. Routine voucher and invoice examination.

(7) Maintain direction and control of the Defense workforce and contract services to include responsibility for:

(a) Actions to commission, appoint, direct, or control military and civilian personnel of the United States, consistent with Reference (e), to include the selection or non-selection of individuals for Federal government employment (including the interviewing of individuals for employment) and the approval of position descriptions and performance standards for Federal employees according to Reference (g). However, when activities are identified for competition or private sector performance, concomitant supervisory duties may also be designated for competition or private sector performance if they are not otherwise IG.

(b) Volunteers including those covered by section 1588 of Reference (h), and direct- and indirect-hire foreign national employees.

(c) Personal service contracts and general service contracts. However, contractors may be used for contract quality control and performance evaluation or inspection services under government oversight, provided guidelines for products or services can be specified and contractor involvement properly administered. In such cases, contractors must be precluded from influencing official evaluations of other contractors, and from gaining access to confidential business information or other sensitive information according to Reference (g).

(d) Supervision of contractor performance of acquisition functions required by section 2383(a)(2)(A) of Reference (h).

(8) Represent DoD interests at official functions, negotiations, and hearings, or conduct activities involving criminal justice, labor relation, law enforcement, or entitlement matters. Examples include:

(a) Control and performance of adjudicatory functions other than those relating to arbitration or other methods of alternative dispute resolution according to Reference (g).

However, contractors may assist government personnel with these activities by gathering information or providing advice, opinions, recommendations, or ideas.

(b) Negotiation (e.g., endangered species negotiations and re-negotiations for Federal personnel rules for bargaining units). However, contractors may assist government personnel with these activities by gathering information or providing advice, opinions, and recommendations.

(c) Certain law enforcement operations. This includes the authority to execute and serve warrants, make arrests without a warrant, and other duties assigned to special agents of the Defense Criminal Investigative Service according to section 1585a of Reference (h). It also includes the preservations of crime scenes. However, properly trained and cleared contractors may perform special non-law-enforcement security activities that do not directly involve criminal investigations according to Reference (g).

(d) Direct conduct of criminal investigations according to Reference (g).

(e) Conduct of employee labor relations. However, contractors may serve as arbitrators or provide alternative methods of dispute resolution according to Reference (g).

(f) Conduct of administrative hearings to determine eligibility for security clearances or eligibility to participate in government programs; addressing actions that affect matters of personal reputation according to Reference (g); or resolving matters related to government employment except as provided in Chapter 11 of Reference (d).

(g) Approval of Federal license applications (except for vehicles or support equipment) and inspections according to Reference (g).

(9) Develop and clarify policy, to include DoD decisions regarding responses to requests for information in accordance with section 552 of Reference (d) (also known and hereafter referred to as “the Freedom of Information Act (FOIA)”) and administrative appeals of denials of FOIA requests. However, according to Reference (g), contractors may assist government officials with routine responses that, because of statute, regulation, or agency policy, do not require the exercise of any judgment in determining whether documents are to be released or withheld.

(10) Conduct test and evaluations (T&E) to determine the potential utility and operational suitability and effectiveness of systems and technologies; or the suitability of critical human design and human factors engineering features for systems that will be operated or maintained by DoD civilians. However, contractors may be used to provide direct support to organic T&E activities under government oversight and according to applicable laws.

(11) Direct or control intelligence and counterintelligence operations consistent with Reference (g), and perform intelligence activities that require the exercise of substantial discretion in applying government authority and/or in making decisions for the government consistent with Reference (e), (f), and (g). This includes clandestine intelligence operations. It

also includes direction, control, approval, supervision, and oversight of intelligence interrogations and detainee debriefings and, consistent with References (e), (f), and (g), performance of those aspects of intelligence interrogations and detainee debriefings that require the exercise of substantial discretion in applying government authority and/or in making decisions for the government. (See subparagraph 2.a.(2) of this enclosure for additional exemptions.)

c. Support to Agencies Outside the Department of Defense. Manpower shall be designated civilian and coded "E" if they provide advisory assistance on defense-related matters on behalf of the Department of Defense while on permanent duty outside the Department of Defense (e.g., to Congress, the White House, and other Federal or State agencies). This manpower is established by formal request and approved following procedures in DoD Directive 1000.17 (Reference (ad)) or some other formal approval process.

d. Support Provided to International Organizations and Foreign Nations. Manpower that provides advisory assistance and support to international organizations and foreign nations on defense-related matters shall be designated civilian and coded "E" if the work requires proficiencies that are not authorized to be obtained from the private sector or other government agencies. For example, exchanges of civilian personnel between the Department of Defense and defense ministries of foreign governments intended to encourage a democratic orientation of defense establishments of other countries as prescribed in section 168 of Reference (h) are coded "E."

5. CRITERION F - MILITARY-UNIQUE KNOWLEDGE AND SKILLS

a. Military Advice and Counsel. Manpower shall be designated military and coded "F" if the incumbents are specifically required by Reference (h) to provide military advice and counsel to the President, Congress, National Security Council, Secretary of Defense, senior DoD officials, or Secretaries, Under Secretaries, and Assistant Secretaries of the Army, Navy, and Air Force. Examples include the Chairman and Vice Chairman of the Joint Chiefs of Staff; Chiefs, Vice Chiefs, Deputy Chiefs, and Assistant Chiefs of Staff of the Army, Air Force, and Marine Corps; Chief, Vice Chief, Deputy Chiefs, and Assistant Chiefs of Naval Operations; and Commandant and Assistant Commandant of the Marine Corps. These are IG responsibilities, established by post or appointment under Reference (h), that require extensive military judgment based on military experience and cannot be transferred to DoD civilians or to the private sector.

b. Accomplishment of Military Missions. CCDRs are responsible to the President and Secretary of Defense for the execution of military missions. These are IG responsibilities established under Reference (h) that require military judgment based on extensive military experience and cannot be transferred to DoD civilians or to the private sector. This manpower shall be designated military and coded "F."

c. Policy and Procedure. Manpower in infrastructure activities shall be designated military and coded "F" if the incumbents have the authority to commit the Department of Defense to take action by direction, order, policy, regulation, contract, authorization, or otherwise; or have

responsibility for activities listed in paragraph 4.a. of this enclosure and the work requires military-unique knowledge and skills. This includes program directors, managers, directors of line operations, or principal staff elements, and other military personnel that are delegated these authorities and whose recent military training and current military experience are required for the successful performance of the prescribed duties.

d. Military Justice. Manpower in infrastructure activities responsible for military justice on behalf of the United States shall be designated military and coded "F." These are IG responsibilities established by Reference (h) that require military representation and cannot be transferred to DoD civilians or to the private sector. For instance, responsibility for the administration of justice under the UCMJ in general and special courts-martial, summary courts-martial, courts of inquiry, and other legal proceedings is assigned to the Judge Advocates General, military judges, and judge advocates (staff judge advocates, prosecutors, defense counsel, and appellate counsel), as defined in section 801 of Reference (h). The exercise of judicial and non-judicial punishment under the UCMJ is a responsibility assigned to commanding officers, as defined in section 801 of Reference (h), pursuant to sections 822-824 and section 815 of Reference (h).

e. Law Enforcement Under the UCMJ. Manpower that issue warrants, make arrests, preserve crime scenes, or (consistent with Reference (g)) conduct criminal investigations shall be designated military and coded "F" if the duties are carried out under the UCMJ as prescribed in Chapter 47 of Reference (h).

f. Administration of Military Confinement/Correctional Facilities. Manpower responsible for the direction and control of military confinement/correctional facilities shall be designated military and coded "F" if the facility is established for the confinement of offenders of the UCMJ as prescribed in section 951 of Reference (h), and the prisoners are under military command.

g. Military-Unique Knowledge and Experience. Manpower shall be designated military and coded "F" if Defense officials require the incumbent's military-unique judgment and insight to make informed decisions and preclude sole reliance on contract advisory assistance. The incumbents of these positions enable Defense officials to maintain ultimate control and accountability of government operations, federally funded projects, Federal contracts, government property, and funds. Their role is closely associated with, and inherent to, the decision maker's. They perform an active and informed role in policy development, program execution, contract administration, and judiciary or fiduciary matters. The incumbents ensure that DoD officials are properly connected to the warfighting establishment and are aware of the warfighter's perspective on programs and actions intended to support military operations. They perform a discretionary role in establishing objectives, setting priorities, assessing alternatives, judging risks, and deciding the course of action on military-related matters by narrowing the number of alternatives and recommending the preferred position. They decide the DoD preferred position based on their military-unique knowledge and experience; technical expertise; and advice, opinions, recommendations, and ideas provided by sources inside and outside the Department of Defense. (The required knowledge and experience must be more substantial than what DoD civilians with prior military experience could provide.) This includes activities

identified and examples listed in paragraph 4.b. and subparagraphs 5.g.(1) through (5) of this enclosure.

(1) Manpower that determines operational requirements and gaps in military capabilities shall be designated military and coded "F" if the work entails judgment based on military-unique knowledge and experience acquired through recent assignments in the operating forces.

(2) Manpower that provides military training shall be designated military and coded "F" if it meets the following criteria.

(a) Training shall be designated military and coded "F" if the instructor commands military trainees (as with basic training) or provides training that is specifically designed to acculturate military personnel on military standards or conventions. In addition, training of military doctrine or tactics is IG if the course material is evolving and not yet covered by government practice, policy, or procedures, or the training requires military expertise that can only be acquired through recent operational experience. Training is also IG if military presence is needed to demonstrate military leadership; to ingrain responsibility for the proper use of deadly force and proper conduct during armed conflicts; or, through example, to reinforce the integrity of the military command structure. Training functions that require substantial discretion are IG. For example, oversight of the instruction and approval of the curriculum are IG functions.

(b) Training that is coded "F" may be imparted formally in a classroom or in a unit. Examples include drill instructors; commandants of cadets at military academies; instructors in fleet training centers and schools that provide tactical aviation or field training based on current operational experience; and Active Component advisors to the United States National Guard and United States Army Reserves.

(c) Contractors may assist government instructors or provide training on the mechanics, supply, maintenance, functionality, or operation of military equipment or weapons, provided the course material is approved by government personnel and proper oversight of the instruction is maintained.

(3) Manpower that performs research, development, test, and evaluation shall be designated military and coded "F" if the work requires judgment concerning the potential utility of emerging technologies; strategies for integrating new systems with fielded systems on the battlefield or in the fleet; critical human design and human factors engineering features; or appropriate tests for operational suitability and effectiveness.

(a) This includes activities at program development agencies, testing facilities, aircraft plants, shipyards, or other armament production centers where recent "hands-on" experience and military judgment are needed to provide an independent and objective evaluation of operational effectiveness and suitability of acquisition systems that will be operated and supported by military personnel. (Defense policy requires that during operational test and evaluation, "typical" military users operate and maintain the test systems under conditions that

realistically simulate combat stress and peacetime environments if military personnel will be operating and maintaining the systems once they are fielded and/or deployed.)

(b) This does not include positions covered by section 1722 of Reference (h) that are competed for fill by both DoD civilian and military personnel unless the work requires military-unique judgment.

(4) How enemy EPWs, CIs, RPs, other detainees, terrorists, and other criminals are treated when captured, transferred, detained, and interrogated during or in the aftermath of hostilities (as addressed in Reference (y)) falls under the discretionary exercise of government authority. Responsibility for their handling as well as decisions concerning how they are to be treated cannot be transferred to the private sector to contractors who are beyond the reach of government controls. This does not include support functions performed by linguists, interpreters, report writers, command, control, communication, computer, and information technology technicians, etc., provided sufficient safeguards are implemented to ensure the work is non-discretionary and properly performed. (See Enclosure 5 of this Instruction.)

(5) Manpower that performs certain law enforcement functions, to include issuing warrants, making arrests, and preserving crime scenes, shall be designated military and coded "F." Consistent with Reference (g), manpower for the conduct of criminal investigations for EPWs, CIs, RPs, other detainees, terrorists, or other criminals shall be designated military and coded "F" if the individuals are detained under the law of war as part of ongoing operations for their own protection or to remove potential threats from the battle space. However, properly trained and cleared DoD civilians and contractors may perform special non-law-enforcement security activities that do not directly involve criminal investigations according to Reference (g).

(6) Manpower that directs and controls detention facilities for EPWs, CIs, RPs, other detainees, terrorists, and other criminals outside the areas of operation shall be designated military and coded "F" (consistent with Chapter 47 of Reference (h) and Reference (y)) if the individuals are detained under the law of war as part of ongoing operations for their own protection or to remove potential threats from the battle space.

(7) Manpower that directs and controls intelligence and counterintelligence operations consistent with Reference (g), and performs intelligence or counterintelligence activities/operations that require the exercise of substantial discretion in applying government authority and/or making decisions for the government consistent with References (e), (f), and (g) shall be designated military and coded "F" if the required knowledge and skills are military-unique. (See Enclosure 5 of this Instruction.) This includes clandestine intelligence operations and direction, control, approval, supervision, and oversight of intelligence interrogations and detainee debriefings and, consistent with References (e), (f), and (g), performance of those aspects of interrogations and detainee debriefings that require the exercise of substantial discretion in applying government authority and/or making decisions for the government. (See subparagraph 2.a.(2) of this enclosure for additional exemptions.)

h. Support to Agencies Outside the Department of Defense. Manpower that provides advisory assistance to agencies outside the Department of Defense on defense-related matters on

behalf of the Department shall be designated military and coded "F" if the work requires military-unique knowledge and skills.

(1) This includes personnel in permanent duty stations outside the Department of Defense established by formal request and approved following procedures in Reference (ad) or some other formal approval process. Examples include attachés to U.S. embassies and couriers for the State Department, as prescribed in sections 711-720 of Reference (h).

(2) This does not include military support provided to eligible organizations and activities outside the Department of Defense that is incidental to military training, accomplished through innovative readiness training covered by DoD Directive 1100.20 (Reference (ae)) or interagency support to a DoD activity by a DoD activity according to DoD Instruction 4000.19 (Reference (af)).

i. Support Provided to International Organizations and Foreign Nations. Manpower that provides advisory assistance and support to international organizations and foreign nations on defense-related matters on behalf of the Department of Defense shall be designated military and coded "F" if the work requires military-unique knowledge and skills acquired through recent assignments in the operating forces. Examples include:

(1) Military details to republics in the Western Hemisphere to assist in military matters according to section 712 of Reference (h).

(2) Support to North Atlantic Treaty Organization military commands and agencies if the manpower is not part of DoD internal management or command structure.

(3) Exchanges of military personnel between the Department of Defense and defense ministries of foreign governments and between units of the Military Services and units of foreign armed forces to encourage a democratic orientation of defense establishments and military forces of other countries as prescribed in Reference (h).

6. CRITERION G - EXEMPTION FOR ESPRIT DE CORPS. Consistent with Reference (a), manpower authorities shall exempt a limited number of CAs in the infrastructure from private sector performance for esprit de corps, to foster public support for the Department of Defense and assist in meeting recruitment and retention objectives. This manpower shall be designated DoD civilian or military and coded "G" as explained in this section. These exemptions are intended to demonstrate DoD commitment to the men and women who serve in defense of the Nation and engender group spirit, camaraderie, and a sense of pride.

a. Military Esprit de Corps

(1) Examples of military esprit de corps include:

(a) Military bands that wear military uniforms and perform during peacetime and war to promote group spirit and pride.

(b) Honor guards such as the 3rd Infantry Old Guard and Honor Guards, who perform at funerals and other ceremonies during peacetime and war to promote group spirit, a sense of pride, and honor.

(c) Navy Blue Angels who demonstrate military expertise to the public.

(d) Superintendents at the U.S. Military Academy, the U.S. Naval Academy, and the U.S. Air Force Academy, covered by Reference (h), and Reserve Officers' Training Corps instructors, who all serve as military role models.

(e) The Army Director of Religious Education who provides religious education and counseling to soldiers and their family members. (Chaplain assistants in garrison assignments are not included.)

(f) A set number of military recruiters who wear military uniforms to instill a sense of pride in military service and serve as military role models for potential recruits.

(2) These exemptions are for functions that can be performed by DoD civilians or, in some cases, the private sector, but without the same effect. Military performance of these activities carries special meaning for military personnel, their families, and the public.

(3) In the manpower mix order of precedence, "Exemptions for Military and Civilian Wartime Designations (dual status)," code "D," takes precedence over esprit de corps. Therefore, manpower that promote esprit de corps during peacetime but are dual-tasked for wartime assignments (such as Thunderbirds, Golden Knights, Army Marksmanship Units, and Parachute Units that demonstrate military expertise to the public) are coded "D." Only manpower that promote military esprit de corps during peacetime and war are coded "G."

b. Civilian Esprit de Corps

(1) Examples of civilian esprit de corps include faculty at the U.S. Military Academy, U.S. Naval Academy, and U.S. Air Force Academy, as authorized by Reference (h), and principals and faculty at DoD Dependents' Schools to demonstrate family support, promote quality of life, and foster camaraderie for recruitment and retention purposes.

(2) These exemptions are for functions that can be performed by the contractors but without the same effect. Direct involvement by DoD civilians demonstrates DoD dedication to family matters and carries special meaning for military members and their families.

7. CRITERION H - EXEMPTION FOR CONTINUITY OF INFRASTRUCTURE OPERATIONS. Consistent with Reference (a), manpower authorities shall provide sufficient manpower for the efficient and effective operation of the Department of Defense. This includes manpower needed for continuity of operations during peacetime, crisis, or war.

a. Continuity of Operations During National Emergency or War. During a national emergency or war, when military and DoD civilian personnel dual-tasked for wartime assignments (code "D") are reassigned to operating units, their vacant positions might not be backfilled immediately, or at all, depending on the wartime mission and workload. However, because high numbers of vacant positions can impair the ability of an activity to function effectively, activities with critical wartime missions that employ code "D" manpower must retain sufficient manpower to continue operations until critical vacated positions are filled.

(1) Manpower in the infrastructure shall be designated civilian and coded "H" if the positions cannot be vacated or eliminated during a national emergency or war without seriously impairing the ability of the activity to function effectively. This manpower serves as a corps capability during a national emergency or war. For example, the Department requires a corps capability for training critical skills. Manpower authorities also shall designate these positions as key positions following the procedures in Reference (u) to indicate that they are not to be filled by Ready Reservists that can be called to active duty.

(2) Decisions to code manpower "H" shall be made in conjunction with decisions to code manpower "D" as addressed in section 3 of this enclosure.

b. Continuity of Peacetime Operations

(1) CAs with manpower that are designated for rotation (code "J") or career development (code "K") must have sufficient manpower to continue operations as personnel transfer in and out of the activity. (See sections 9 and 10 of this enclosure.) Manpower shall be designated civilian and coded "H" if it is needed for continuity of operations in CAs where there is high personnel turnover due to rotation or career development. This manpower serves as a corps capability during peacetime. Decisions to code manpower "H" shall be made in conjunction with decisions to code manpower "J" and "K." Also, decisions on the numbers of civilians needed for the continuity of direct patient care shall be determined in conjunction with decisions for shared health care as provided by DoD Instruction 6025.5 (Reference (ag)).

(2) Some activities require personal services for their efficient and effective operation. Consistent with Subpart 37.104 of Reference (g), personal services may not be contracted unless specifically authorized by statute. Determination as to what qualifies as personal services is often tied to how the work is performed or administered. A key indicator of personal services is when the government must exercise relatively continuous supervision and control over the personnel performing the work. This includes situations where (due to the nature of the service or the manner in which it is provided) government direction or supervision is needed to adequately protect the government's interests, retain control of the function involved, or retain full personal responsibility for the function supported in a government official or employee. (See subparagraph 1.b.(2) of Enclosure 5 of this Instruction for examples.) When assessing these positions, particular attention should be paid to services that are closely associated with IG functions since they often require the type of continuous supervision or control that is prohibited under section 37.104 of Reference (g). This includes, but is not limited to, functions listed in section 7.503(d) of Reference (g). Also, not all personal services are prohibited from being contracted. This includes personal services for experts and consultants authorized under section

129b of Reference (h) and health care authorized under section 1091 of Reference (h). Manpower shall be designated civilian and coded "H" if the incumbents provide personal services that are required for the efficient and effective operation of an activity but are prohibited from being contracted.

(3) CAs that are closely associated with IG functions may be designated for DoD civilian performance rather than contracted when the manpower is needed to respond quickly and efficiently to constantly changing priorities or peak workloads within IG activities, or to properly administer or retain control of operations. This includes, but is not limited to, functions listed in section 7.503(d) of Reference (g). For example, this includes civilian personnel that would be needed to perform acquisition functions closely associated with IG functions as required by section 2383(a)(1) of Reference (h). To be coded "H," the manpower must be needed as a ready and controlled source of technical or professional expertise (a core capability) to quickly respond to recurring or sporadic surges in IG workload or to enable managers to more effectively manage or control work that is associated with IG functions so that IG responsibilities are not put at risk and continuity of operations is maintained. (See subparagraph 1.b.(3) of Enclosure 5 of this Instruction for examples.)

c. Emergency Operations Critical to the Department of Defense. Manpower in CAs in the infrastructure shall be designated civilian and coded "H" if they are needed to provide a ready and controlled source of technical competence for emergency operations involving skills and equipment critical to the Department of Defense. Examples include firefighting and rescue operations at areas with chemical, biological, nuclear, or other agents that require special firefighting equipment or training.

d. Core Logistic Capabilities with Unique Skills. Manpower in logistics functions shall be designated civilian and coded "H" if they are needed to provide a ready and controlled source of technical competence necessary for an effective and timely response to a mobilization or other national emergency involving skills unique to the Department of Defense. Manpower for the maintenance and repair of Navy nuclear propulsion systems at Navy shipyards is an example.

8. CRITERION I - MILITARY AUGMENTATION OF THE INFRASTRUCTURE DURING WAR. During a crisis, military personnel in IG activities in the infrastructure (code "F") that are dual-tasked for wartime assignments may be reassigned to operating units and their vacated positions might not be backfilled immediately, or at all, depending on the wartime mission and workload of the activity. Manpower needed to backfill critical positions vacated by active-duty military shall be designated military and coded "I" if the duties require military-unique knowledge and skills. Also, manpower that is needed to augment infrastructure activities during a mobilization or other national emergency due to increased workload shall be designated military and coded "I" if the work requires military-unique knowledge and skills.

a. Determining Manpower Requirements. Manpower authorities shall use a formally approved process for determining mobilization or crisis demands as required by Reference (a) and centrally manage the coding for this manpower within the DoD Component.

b. Continuity of Operations During Crises. This work is IG and designated military because it is needed for continuity of operations during a mobilization or other national emergency and the work requires military-unique knowledge and skills.

9. CRITERION J - EXEMPTION FOR CIVILIAN/MILITARY ROTATION. Consistent with Reference (b), DoD Component shall provide a rotation base for overseas and sea-to-shore rotation. This coding shall be centrally managed within the DoD Component by manpower officials. Decisions to code manpower "J" shall be made in conjunction with decisions to code manpower "H" and "K." (See sections 7 and 10 of this enclosure.)

a. Civilian Rotation. Manpower authorities shall designate manpower in CAs in the infrastructure that perform work that could be considered for private sector performance as civilian code "J" if it is needed to provide a rotation base for civilian positions outside the United States. This shall be done when the number of civilian manpower coded "A" through "I" is not sufficient to satisfy peacetime rotation needs. This manpower is designated civilian and exempted from private sector performance because it is needed to maintain civilian overseas tour lengths and civilian personnel turnover at appropriate levels as required by section 1586 of Reference (h). This manpower shall be determined by civilian series and based on assignment, rotation, and other relevant policies. Manpower authorities shall consult the DoD Component HR authorities to verify the validity of these requirements and ensure the numbers are determined using a formally approved process.

b. Military Rotation. Manpower authorities shall designate manpower in CAs in the infrastructure that would not otherwise require military incumbents as military code "J" if it is needed to provide a rotation base for overseas or sea-to-shore assignments. This shall be done when the number of manpower coded "A" through "I" is not sufficient to satisfy peacetime rotation needs. This manpower is designated military and exempted from private sector performance because it is needed to maintain military tour lengths and personnel turnover at appropriate levels and, by so doing, keep recruitment, retention, and training costs to a minimum. This manpower shall be determined by occupational specialty and based on assignment, rotation, and career development policies and personnel tempo goals governed by DoD Directive 1315.07 (Reference (ah)). Manpower authorities shall consult military personnel officials to verify the validity of these requirements and ensure the numbers are determined using a formally approved process.

10. CRITERION K - EXEMPTION FOR CIVILIAN/MILITARY CAREER DEVELOPMENT. Consistent with Reference (a), DoD Components shall provide reasonable opportunities for the development of both military and civilian personnel. This coding shall be centrally managed within the DoD Component. Decisions to code manpower "K" shall be made in conjunction with decisions to code manpower "H" and "J." (See sections 7 and 9 of this enclosure.)

a. Civilian Career Development. Manpower authorities shall designate manpower in CAs in the infrastructure that perform work that could be considered for private sector performance as civilian code "K" if it is needed to provide career-broadening opportunities for civilian

personnel. This shall be done when the number of manpower coded "A" through "J" does not provide adequate developmental assignments and day-to-day work experiences necessary to produce competent leaders, administrators, and personnel with skills critical to the Department of Defense. To be coded "K," the manpower must provide career-broadening assignments for developing critical technical or leadership skills (competencies) that cannot be taught or directly acquired, or acquired in sufficient numbers from the private sector. Manpower authorities shall consult DoD Component HR authorities to verify the validity of these requirements and ensure the numbers are determined using a formally approved process.

b. Military Career Development. Manpower authorities shall designate manpower in CAs in the infrastructure that do not otherwise require military incumbents as military code "K" if it is needed to provide career paths for development of military-unique competencies. This shall be done when the number of manpower coded "A" through "J" does not provide adequate career development opportunities for the military coded "A," "B," "D," "F, "and "I." This manpower is designated military and exempted from private sector performance because it is needed to provide developmental assignments and day-to-day work experiences necessary to produce military leaders and develop military-unique knowledge and skills. Manpower authorities shall consult military personnel authorities to verify the validity of these requirements and to ensure they are determined by military occupational specialty using a formally approved process that considers options for combining occupational specialties and restructuring grade requirements.

11. CRITERION L - EXEMPTED BY LAW, E.O., TREATY, OR IA

a. Law and E.o. Military and civilian manpower shall be coded "L" if the activity is not IG or exempt from private sector performance for reasons covered by criteria A through K but is restricted from private sector performance due to a law or E.o., including:

(1) Manpower that performs firefighting and security guard functions at DoD military installations/facilities covered by section 2465 of Reference (h), that are not coded "A" through "K."

(2) Manpower that performs depot-level maintenance and repairs functions necessary to provide a "Core Logistics Capability" or comply with the "50 percent rule" as specified in sections 2464 and 2466 of Reference (h), that are not coded "A" through "K."

(3) Manpower in activities that are not coded "A" through "K" with access to trade secrets that cannot be properly protected from contractors as required by section 1905 of title 18, U.S.C. (Reference (ai)).

(4) Manpower in activities that are not coded "A" through "K" that performs CAs because HN laws prevent the use of contract support or performance by U.S. or foreign national (FN) civilians.

(5) Dual-status military technicians that are not coded "A" through "K," but are required to meet Congressional end-strength floors in section 115 of Reference (h).

b. Treaties and IAs

(1) Manpower shall be designated FN civilian and coded "L" if the terms of a treaty or IA specifically require the United States to use direct- or indirect-hire FNs, or make it impractical to convert from FN support. For example, under the Army's cost-sharing agreements with the governments of Korea and Japan, 70 percent and 100 percent of the costs of the FN workforces are borne by the Korean and Japanese governments, respectively.

(2) Manpower shall be designated U.S. civilian and coded "L" if, due to a SOFA, using other than U.S. civilians would require increasing FN authorizations beyond what is required. (The U.S. and FN civilian workforce mix is agreed upon in each SOFA and varies by country.)

(3) Manpower shall be designated military or DoD civilian and coded "L" if, due to a treaty, SOFA, or other IA, private sector contract support may not be used and military or DoD civilian performance is required.

12. CRITERION M - EXEMPTED BY DoD MANAGEMENT DECISION. Manpower authorities shall code military and civilian manpower "M" if a DoD official who exercises management authority over a functional area has exempted the manpower from private sector performance for reasons not covered by criteria A through L. This authority is vested in the Heads of the DoD Components as listed in section 2 above the signature of this Instruction. Under Secretaries of Defense with subordinate Assistant Secretaries of Defense can delegate this authority to those Assistant Secretaries of Defense or equivalent levels; however, this authority shall not be delegated below the Assistant Secretaries of Defense or equivalent level.

a. Pending a Final DoD Decision. Manpower that has been exempted from private sector performance based on a formally approved DoD Component exemption that is not covered by criteria A through L and has not yet been formally reviewed by OSD shall be coded "M." This restriction is temporary, pending a formal DoD review. Supporting documentation for the decision must be maintained by the DoD Component.

(1) CAs that could be performed by civilian personnel may be designated for military performance and coded "M" on an exception basis if the DoD Component manpower authority has determined that the required work must be performed by military personnel for reasons not covered by criteria A through L. In such cases, there must be sufficient justification and appropriate documentation to support the decision. These designations shall be reviewed at least every 2 years to ensure the validity of the exemption.

(2) IG work that is normally performed by civilian personnel may be designated for military performance and coded "M" on an exception basis if the manpower authority has documentation to show that the required work must be performed by military personnel for reasons not covered by criteria A through L. For example, IG work that is performed in a remote location where a sufficient number of civilians with the appropriate knowledge, skills, and abilities are not available and cannot be recruited and trained may be designated for military

performance. These designations shall be reviewed at least every 2 years to ensure the validity of the exemption.

b. Pending Resolution of the Workforce Mix During a Crisis. Manpower in activities that are established on an emergency basis shall be coded "M" pending final resolution of the appropriate workforce mix. For instance, manpower may be designated M on an emergency basis to respond to increased threat levels; to address a time-sensitive, high-priority national defense need; or as a safeguard against premature loss or interruption of an essential support function during a mobilization or other national emergency.

c. Pending Change of Authorized Military End Strength. If the Department of Defense is unable to obtain immediate relief from floors set on military personnel strengths in section 115 of Reference (h) or the annual National Defense Authorization Act, manpower authorities shall code the manpower "M."

13. SUBJECT TO REVIEW FOR PRIVATE SECTOR PERFORMANCE OR DIVESTITURE. DoD Components shall designate all other manpower in CAs by using codes "P," "R," "W," or "X" as provided in this enclosure. DoD Components shall periodically review the work to determine if it can be more efficiently or cost-effectively performed by another source or eliminated.

14. CRITERION P - PENDING RESTRUCTURING OF CAs. DoD Components shall use code "P" for all DoD military or civilian manpower in CAs that are pending the results of an approved major restructuring initiative that has been approved in writing. This code is limited to major restructuring initiatives, such as base closures; functional realignments; functional assessments; or consolidation actions. Coding for this manpower is temporary, normally not to exceed 3 years, pending the schedule of the formally approved restructuring initiative.

15. CRITERION R - SUBJECT TO REVIEW FOR PUBLIC-PRIVATE COMPETITION. DoD Components shall use code "R" for military or civilian manpower performing CAs if:

a. The DoD civilian and/or military manpower is performing the activity as a result of a public-private competition that was performed in accordance with Reference (f).

b. The DoD civilian and/or military manpower is performing work in an activity that has a performance decision pending in a public-private competition.

c. The DoD Component has determined, based on a comparison of the costs (as provided by Reference (j)), that a new, expanded, or contracted requirement for a CA can be performed at less cost by DoD civilian employees than by the private sector.

d. If the DoD Competitive Sourcing Official has determined, based on a review of documentation provided by the contracting officer, that there is not satisfactory commercial source following the procedures in Reference (f).

e. The DoD Component has determined that the civilian and/or military manpower may be considered for a future public-private competition pending the outcome of a management determination.

16. CRITERION W - NON-PACKAGEABLE CA. DoD Components shall designate manpower performing CAs with code "W" when a competition is not possible because the work has been certified as not packageable for competition with the private sector by the DoD Component's Competitive Sourcing Official. This criterion differs from criterion H, which applies to CAs that are closely associated with IG functions (see subparagraph 7.b.(3) of this enclosure).

17. CRITERION X – ALTERNATIVE TO PUBLIC-PRIVATE COMPETITION. DoD Components shall designate manpower with code "X" if the CA can be contracted without performing a public-private competition. This includes certain aspects of research and development as provided by section 114 (note) of Reference (h); architecture and engineering as provided by section 4540 of Reference (h) and section 609 of title 40, U.S.C. (Reference (aj)); and natural resources management planning as provided by section 670(a) of title 16, U.S.C. (Reference (ak)). This also includes manpower performing CAs that have undergone, or are identified to undergo, a public-private partnership, divestiture, privatization initiative, or intra-governmental support agreement with a non-DoD agency. CAs are also coded "X" if they have been designated in writing as a high-performing organization by the DoD CSO, or if the military manpower in a CA has been identified for future conversion from military to civilian performance. This criterion differs from criterion L, which applies if a law, E.o., treaty, or IA prohibits any means of contracting.

ENCLOSURE 5

GUIDANCE FOR RISK ASSESSMENTS

1. RISKS TO OVERSIGHT/CONTROL OF IG AND CAs. The degree of government involvement and expertise necessary to keep sufficient oversight and control of government operations will vary by function and situation, depending on such factors as delegation of approval authority, complexity of operation, geographic dispersion of the activity, regulatory authority, and consequence of default. The following factors should be considered when conducting risk assessments to preclude ceding governmental control and authority of IG functions to the private sector where there is insufficient public accountability and transparency. This list is not all-inclusive and should be expanded to address the specific activity under review. These factors should be considered when determining the source of support for functions in both the operating forces and support establishment.

a. Contract Advisory Assistance

(1) Need for Informed, Independent Judgment. Discretionary decisions made by government officials must be based on informed, independent judgments, and must not be unduly influenced or controlled by private contractors who are beyond management controls applicable to public employees and who might not have objectives in concert with the public's best interests. Although a DoD official may consider a contractor's advice when making a decision, the official may not rely solely or so extensively on a contractor's recommendations that, by so doing, the decision no longer reflects an independent judgment. For example, although a contractor may develop options for a government decision maker, or develop options for expanding decisions already made by government officials, the contractor may not be given the authority to decide on a course of action for the government. DoD Components shall:

(a) Ensure contract advisory assistance is not used to support a government decision without thorough knowledge and understanding of the work submitted by the contractor and recognition of the need to apply independent judgment in the use of the work products.

(b) Take steps to ensure that a contractor's involvement on a project is not so extensive or so far advanced that the government does not have the ability (sufficient time, information, or resources) to develop and consider options other than those provided by the contractor (such as during staff coordination of products developed by contractors).

(c) Ensure that contractors do not have undue influence in the final decision to include determining which, and how, options or recommendations are provided to Defense officials for a final decision; or why an option is recommended to the deciding official as the government's preferred alternative.

(2) Government Oversight. To safeguard the government's authority, when plans and recommendations are developed by a PSC or by joint public-private teams, government personnel alone shall be responsible for a final review, revision, or comment on the product.

Defense officials shall conduct risk assessments to determine whether there are a sufficient number of knowledgeable and experienced government employees available to maintain sufficient oversight of the project; to determine whether the contractor has met the terms of the contract and provided a complete and objective product; and review and revise the contractor's recommendations to the extent necessary to ensure the decision expresses the views of the Department of Defense, conforms to Defense policy, complies with the law, and supports public interests; and to provide an alternative point of view or recommendation to the deciding official.

b. Contract Support Services

(1) Discretionary Decisions. As provided at paragraph 1.b. of Enclosure 3 of this Instruction, IG functions include, among other things, activities that require either the exercise of substantial discretion when applying Federal Government authority, or value judgments when making decisions for the Federal Government. Although some support services involve discretionary decisions, not all discretionary decisions are IG. For a decision to be IG, it must commit the government to a course of action when two or more alternative courses of action exist and have sufficient consequence to the Department of Defense to warrant government control. Consistent with Reference (f), decisions are not IG if they can be limited or guided by existing policies, procedures, directions, orders, or other guidance that identify specific ranges of acceptable decisions or conduct and where the decisions can be subjected to final approval or regular oversight by agency officials. DoD officials shall review projects in enough detail to determine the risks and consequences to contracting the service. As a part of this review, they must determine if the consequences of the discretionary decision (to include possible unintended consequences) are of sufficient significance to the Department of Defense to warrant government control. This shall include determining whether the way the function is performed would result in inappropriate contract relationship (e.g., personal services), inappropriately affect assignment of liability, or inappropriately circumvent the Federal Government's standards of conduct.

(2) Personal Services. Some support services require a level of government supervision and control that is inappropriate in a contractual arrangement. Subpart 37.104 of Reference (g) states that contracts for personal services shall not be awarded unless specifically authorized by statute, i.e., authorized by sections 129b and 1091 of Reference (h). A personal services contract is characterized by the employer-employee relationship it creates between the government and the contractor's personnel. This kind of relationship occurs when, due to the terms of the contract or the manner of its administration during performance, contractor personnel are subject to the relatively continuous supervision and control of a government officer or employee. Particular attention should be paid to services that are closely associated with IG functions since they often require the type of continuous supervision or control that is prohibited under section 37.104 of Reference (g). The following should be used as a guide in assessing whether or not the work is personal in nature:

(a) Due to the inherent nature of the service or the manner in which it is provided, government direction or supervision of the employees is required (directly or indirectly) in order to adequately protect the government's interest; retain control of the function involved; or retain full personal responsibility for the function supported in a duly authorized Federal officer or employee.

(b) Services are applied directly to the integral effort of the DoD Component in furtherance of assigned function or mission.

(c) Comparable services, meeting comparable needs, are performed in the same or similar situations using military or DoD civilian personnel.

(d) The service is performed on-site; the government furnishes principal tools and equipment; and the need for the service can reasonably be expected to last beyond 1 year.

(3) Contract Support Services Involving Discretionary Decisions. Contractors may provide a support service if the required level of performance or quality of service is specified in the contract in quantifiable and measurable terms and is not left to the discretion of the contractor, and a DoD official has final approval of the product or service through a government review or test. Support services shall not be contracted if discretionary decision making is involved which cannot be adequately covered by the terms of the contract or cannot be separated from the services provided (i.e., it is an inherent part of the service provided). Particular attention should be paid to services that are closely associated with IG functions since they often involve discretionary decisions that cannot be adequately covered by the terms of the contract. DoD Components shall conduct risk assessments to verify if the DoD official, in the administration of the contract, would have to:

(a) Regularly address policy issues not covered, or not adequately covered, by DoD issuances, doctrine, or other formally approved document.

(b) Regularly or routinely provide guidance on procedural matters of a discretionary nature because the Department of Defense does not have established practices or procedures or a clear vision for how to accomplish the work.

(c) Regularly change how the service is performed to match evolving law, policy, doctrine, or tactics because the situation is so fluid that revisions are needed on a recurring basis (such as security services performed in uncontrolled, unpredictable, unstable high-risk environments).

(d) Supervise and control the daily activities of the contractor as opposed to reviewing or testing the final product because how the services are performed and with what consistency is critical to an acceptable outcome.

(e) Retain the right to add or remove employees from the project for other than security or misconduct reasons, as opposed to specifying performance standards, because the activity is too complicated to specify how or what should be accomplished or ranges of acceptable actions (such as time-sensitive projects where a short suspense drives decisions about the scope of work and what can reasonably be accomplished in the allotted timeframe).

(f) Intervene in operations involving FN individuals or other Federal agencies not governed by the same laws, treaties, E.o.s, rules, regulations, or policies as DoD personnel (e.g.,

Central Intelligence Agency agents) in order to mediate policy or procedural differences, or prevent other parties from usurping DoD authority.

(4) Maintaining a Core Capability for Critical Operations. Even if a support function does not entail discretionary decisions or personal services, DoD Components shall review the function to verify whether the work should be performed by government personnel to provide a core capability for readiness or risk mitigation purposes, or for continuity of operations as addressed at sections 2, 3, 7, and 8 of Enclosure 4 of this Instruction.

2. RISKS TO COMMAND AND OPERATIONAL CONTROL. The following should be used to assess the risks of using military, DoD civilian, and private sector contractor personnel to accomplish Defense missions.

a. Readiness Reporting. If commanders do not have visibility of the readiness of critical support elements, they may not be able to judge the readiness of the military forces to conduct and/or sustain military operations. The less information the commander has to assess the readiness of DoD civilians and Defense contractors who are responsible for providing critical support functions, the greater the risk. The following should be considered when assessing whether to use DoD civilians and Defense contractors to provide critical support in operational environments:

(1) Whether readiness reporting is addressed to the commander's satisfaction by the contractor under the terms of the contract.

(2) Whether there are historical records/studies indicating whether Defense contractors or DoD civilian E-E employees perform satisfactorily under environmental conditions, threat levels, and for the length of time required.

b. Replacing Lost Support. The fewer options the Defense officials have for replacing lost support, the greater the risk. When conducting risk assessments, the following should be considered:

(1) Whether an alternative source of support can be obtained from an alternative private sector provider in sufficient time. The higher the number of contractors that can provide the support service, the lower the risk of using contract support.

(2) Whether an alternative source of in-house support can be obtained in sufficient time. The higher the number of in-house sources, the lower the risk of using contract support.

c. Continuity of Operations During Hostilities

(1) Sustainability. Contractors that cannot replace contractor employees who are killed, injured, or otherwise lost; rotate personnel during a protracted conflict; or replace equipment, supplies, and tools, represent an inappropriate risk to combat operations. The higher the number of contract personnel or resources needed to sustain a conflict, the higher the risk.

(2) Surge Capability. Contractors might be able to perform a support function during peacetime but lack the resources or technology to increase or surge operations during a crisis. Contractors that have a limited capacity (e.g., adequate facilities) or capability (e.g., adequate equipment, tools, or trained personnel) to increase or surge operations to the required operating tempo (OPTEMPO), represent a risk to military operations. The higher the increase in OPTEMPO required for a mobilization or other national emergency, the higher the risk.

(3) Information Assurance. Military commanders should verify whether contractors can safeguard information and information systems consistent with policy in DoD Directive 8500.1E (Reference (al)). If they cannot, there is a risk that disrupted communications could delay or prevent timely delivery of critical services or supplies and adversely impact military operations.

d. Operational Control in Hostile Environments

(1) Risk of Non-Performance. Section 802(a)(10) of Reference (h) states that in time of declared war or a qualifying contingency operation, persons serving with or accompanying an armed force in the field are subject to the UCMJ. However, because desertion (covered under Article 85 of the UCMJ) and absence without leave (covered under Article 86 of the UCMJ) both apply to "a member of the armed force," neither UCMJ offense is likely to apply to a civilian who is serving with or accompanying the armed forces in the field during a declared war or qualifying contingency operation, but who is not actually a member of the armed force. As a result, DoD civilian and DoD contractor employees arguably may quit their jobs or not perform their duties without risk of criminal prosecution under the UCMJ. If the risk of non-performance is high enough to adversely impact the readiness status of the unit, commanders should switch to an alternate source of support.

(2) Misbehavior Before the Enemy. Section 899 of Reference (h) punishes "misbehavior before the enemy," to include, among other things, running away and cowardly conduct in the presence of the enemy and not affording all practicable relief and assistance to other troops when engaged in battle. Section 899 of Reference (h) only applies to members of the armed forces. Therefore, this offense is not likely to apply to a civilian who is serving with or accompanying the armed forces in the field during a declared war or a qualifying contingency operation, but who is not actually a member of the armed forces. Depending on the scenario, heavy dependence on DoD civilian or contractor personnel could represent an inappropriate risk.

(3) Reconstitution of Support Functions and Cross-Utilization of Personnel. If support units are attacked or sustain damage, the military commander may require direct control and unconstrained use of all available personnel to reconstitute essential support functions. The ability of field commanders to reconstitute support functions and/or sustain operations is maximized if personnel can be cross-utilized to perform more than one function.

(a) Flexibility. Commanders often cannot compel DoD civilians or contractor employees to perform work or assume risks that were not agreed upon under the terms of their employment or covered in the terms of the contract. In emergency situations, a military commander may direct DoD civilians to take lawful actions. However, a military commander

may only direct contractor employees to take lawful actions so long as those actions do not require them to assume IG responsibilities and the actions are covered by the terms of the contract. Because contract personnel may not perform IG duties, use of contractors may limit the commander's flexibility in crisis situations and represent an inappropriate risk.

(b) Responsiveness. Generally, contractor employees (unlike U.S. and foreign national civilian and military personnel) are not under the direct supervision of the military commander. The contracting officer, or designee, serves as the liaison between the commander and the defense contractor for directing or controlling the contractor's performance. Separate command and contractual lines of authority could hamper or overly complicate the commander's control and constitute an inappropriate risk.

(4) Disciplinary Authority. Defense contractors are responsible for ensuring that their employees perform under the terms of the contract and comply with applicable laws, directives, regulations, and orders. During a declared war or a qualifying contingency operation, UCMJ jurisdiction over DoD contractor personnel serving with or accompanying the armed forces overseas is governed by Reference (h), Executive Order 12473 (Reference (am)), and the Secretary of Defense Memorandum (Reference (an)). Limits in Reference (an) could overly complicate operations in high-risk situations.

(5) Restrictions Due to Laws and IAs. Laws and IAs often restrict how DoD civilians and DoD contractors can be utilized.

(a) Law of War. During international armed conflicts, if civilians who are authorized to accompany armed forces are captured, they are entitled to POW status under Reference (y). It is not a violation of the law of war for DoD civilians and Defense contractor employees who are authorized to accompany the armed forces in the field during hostilities to be issued a weapon on the authority of the Combatant Commander for individual self-defense as addressed in References (n), (o), and (t). However, while supporting military operations, DoD civilians and contractor employees may be at risk of injury or death incidental to enemy actions while supporting military operations. Also, under the law of war, civilians accompanying the armed forces may be directly targeted for such time as they take a direct part in hostilities but, if captured, do not lose their entitlement to POW status.

(b) Local National (LN) and HN Laws and IAs. Absent a SOFA or other IA or international law to the contrary, contractor employees might be subject to the domestic criminal laws of the HN. For example, use of force by contractor employees may be strictly limited by LN and HN law and not protected by IAs and SOFA provisions. Contractor personnel who exceed the limits imposed by applicable laws and agreements may be subject to prosecution and civil liability. In addition, in certain situations, IAs and HN support agreements might restrict services that can be contracted by limiting contracted services to HN contractors or by prohibiting contractor use altogether.

(c) U.S. Law and U.S. Government Regulations. U.S. law and U.S. Government regulations also impose restrictions on the use of Defense contractors. For example, IG functions may not be contracted and the Department of Defense may not award a personal

service contract except when authorized by statute. (See subparagraph 1.b.(2) of this enclosure concerning personal services.) Also, U.S. laws restrict the types of weapons that can be exported or procured for use by the private sector.

(6) Rules Governing Security Services. Consistent with subpart 52.225-19 of Reference (g) and subpart 252.225-7040 of Reference (l), contractor personnel performing security functions are authorized to use deadly force in self-defense and when use of such force is consistent with the terms and conditions contained in the contract or with their job description and terms of employment.

(a) Consistent with Reference (n), geographic CCDRs issue rules on the use of force that govern the use of weapons by civilians. Rules on the use of force that govern PSCs are different from the rules of engagement applicable to military forces. Rules of engagement may authorize military forces to respond offensively. Although rules on the use of force may authorize PSCs to use deadly force in defense of hostile acts or demonstrated hostile intentions, they may not authorize PSCs to use offensive tactics as a means of achieving their mission/contract objective. Security that requires the type of tactics that are authorized only to military forces (as discussed in paragraph 1.d. of Enclosure 4 of this Instruction) should not be contracted because the security entails IG responsibilities that are uniquely military.

(b) Threat levels are neither static nor uniform across all regions of a conflict. Even though it may be appropriate for PSCs to provide security services at certain times and in certain regions of a conflict, contract security services may have to be curtailed or suspended if the level of hostilities increases significantly. They also may have to be curtailed if the terms or conditions contained in the contract no longer apply or it appears that the contractor can no longer fulfill the terms of the contract without assuming IG responsibilities. Commanders must use judgment when making these decisions and err on the side of caution to avoid the inadvertent transfer of IG responsibilities to the private sector. According to Reference (f), in order to avoid transferring IG authority to a contractor, government officials must consider the provider's authority to take action that will significantly and directly affect life, liberty, or property of individual members of the public. Requiring officials must consider the likelihood of the provider's need to resort to force in support of a police or judicial activity; whether the provider is more likely to use force, especially deadly force; and the degree to which the provider may have to exercise force in public or relatively uncontrolled areas.

e. Risk of Active Duty Service Determinations for Civilian or Contractual Groups. Commanders shall not hire or plan to use DoD civilians or contractor employees in a manner that could qualify as active military service. Consistent with DoD Directive 1000.20 (Reference (ao)), active duty service is considered to be equal to active military service for purposes of qualifying for Department of Veterans Affairs benefits, based on the extent to which the group was under the control of the U.S. armed forces in support of a military operation or mission during an armed conflict. A determination of active duty service that is considered to be equivalent to active military service is made based on the extent to which the group was under control of the U.S. Armed Forces in support of a military operation or mission during an armed conflict. The extent of control must be similar to that exerted over military personnel and is determined based on the uniqueness of service; organizational authority over the group;

integration into military organization; subjection to military discipline; subjection to military justice; prohibition against members of the group joining the armed forces; and receipt of military training and/or achievement of military capability. This issue is particularly relevant to PSCs operating in hostile environments that are at risk of performing IG responsibilities.

f. Operational/Logistic Footprint. Manpower analysts shall verify whether use of civilians or contractors would increase the size of the operational "footprint" (e.g., personnel numbers or physical security needs) or the logistic "footprint" (e.g., medical support, mess, transportation, or supplies) beyond that required by military personnel. A large operational/logistic footprint could limit the commander's flexibility in certain situations and represent an inappropriate risk.

g. Use of Indigenous Personnel. Military commanders shall verify whether contractors plan to employ indigenous personnel to fulfill contract needs and the concomitant threat to the security of U.S. personnel. The use of local workers during a fluid counterinsurgency mission or the use of members of one ethnic group to the exclusion of others could create unrest and raise the risk of sabotage. For example, use of indigenous personnel as linguists for support when interrogating prisoners may invite problems when personnel from one ethnic or religious group are asked to translate conversations involving prisoners from another ethnic or religious group.

h. Operational Security. Defense officials do not have visibility into the contractor's hiring practices and background checks and should assess the risk of using contractors for operations that entail operational security.

3. RISKS TO FISCAL RESPONSIBILITIES. When assessing the merits of contracting functions, manpower authorities shall also assess whether it would require more manpower to develop the statement of work; award and execute the contract; and assess the quality of the final product or service, than it would take to perform the service with government personnel. These costs should be considered when conducting cost comparisons required by Reference (j).

GLOSSARY

PART I. ACRONYMS AND ABBREVIATIONS

CA	commercial activity
CCDR	Commanders of the Combatant Commands
CI	civilian internee
CS	combat support
CSS	combat service support
E-E	emergency essential
E.o.	Executive order
EPW	enemy prisoner of war
FN	foreign national
FOIA	Freedom of Information Act
HN	host nation
HR	human resources
IA	international agreement
IG	inherently governmental
IGCA	Inherently Governmental Commercial Activities
LN	local national
OMB	Office of Management and Budget
POW	prisoner of war
PSC	private security contractor
RP	retained person
SELRES	Selected Reserve
SOFA	status of forces agreement
T&E	test and evaluation
UCMJ	Uniform Code of Military Justice
USD(AT&L)	Under Secretary of Defense for Acquisition, Technology and Logistics
USD(P&R)	Under Secretary of Defense for Personnel and Readiness
USD(I)	Under Secretary of Defense for Intelligence

PART II. DEFINITIONS

Unless otherwise noted, these terms and their definitions are for the purposes of this Instruction.

combat. When determining what is IG, an authorized, deliberate, destructive, and/or disruptive action against the armed forces or other military objectives of another sovereign government or other armed actors on behalf of the United States (i.e., planning, preparing, and executing operations to actively seek out, close with, and disrupt and/or destroy an enemy, hostile force, or other military objective). Includes employing firepower and/or other destructive/disruptive capabilities to the foregoing ends. This definition is not intended and should not be construed to limit in any way the inherent right of an individual to act in self-defense.

combat power. Defined in Joint Publication 1-02 (Reference (ap)).

commander's intent. A clear, concise statement of what the force must do to succeed with respect to the enemy and the terrain and the desired end state. It provides the link between the mission and concept of operations by stating the key tasks that, along with the mission, are the basis for subordinates to exercise initiative when unanticipated opportunities arise or when the original concept of operations no longer applies.

concept of operations. Defined in Reference (ap).

hostile act. Defined in Reference (ap).

hostile environment. Defined in Reference (ap).

hostile force. Defined in Reference (ap).

hostile intent. Defined in Reference (ap).

operating forces. Defined in Reference (ap).

operation. Defined in Reference (ap).

preemptive attack. Defined in Reference (ap).

qualifying contingency operation. Military contingency operation conducted for the purpose of engaging an enemy or a hostile force in combat. Disciplinary authority over civilians under Article 2(a)(10) of the UCMJ is governed by References (h), (al), and (am).

rules of engagement. Defined in Reference (ap).