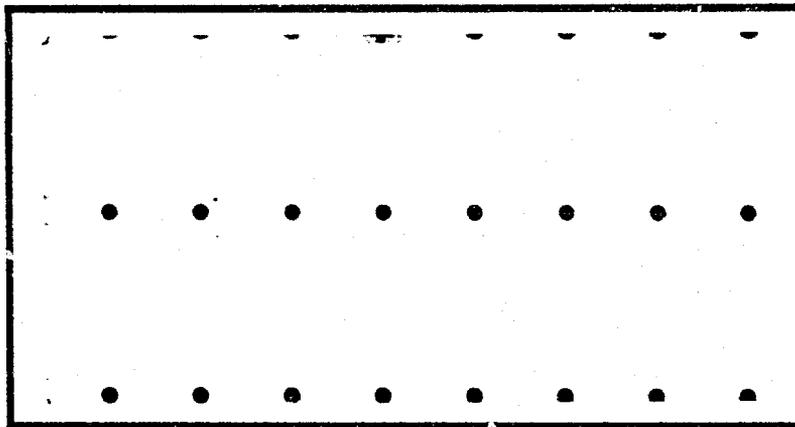
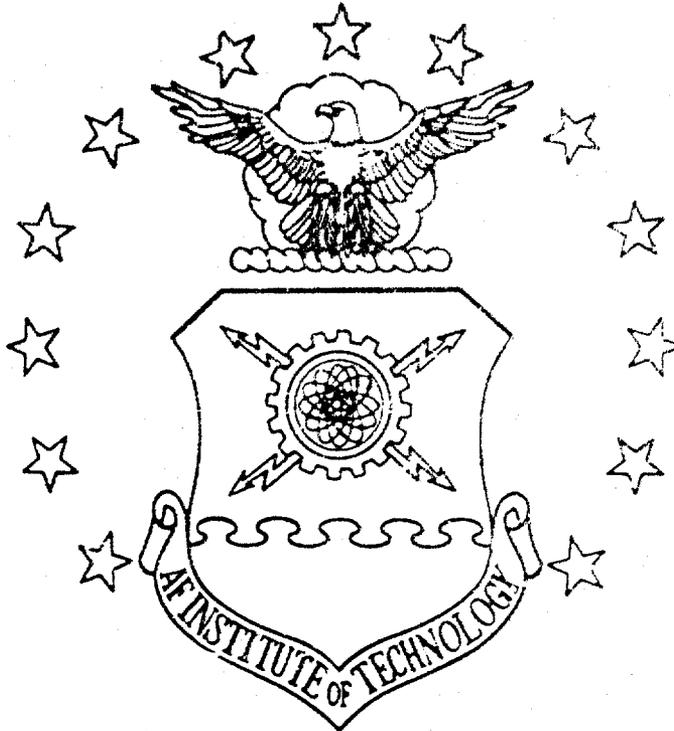


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CONTINGENCY CONTRACTING  
DURING LOW-INTENSITY  
CONFLICTS

THESIS

Robert L. Mason  
Captain, USAF

AFIT/GCM/LSL/88S-8

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CONTINGENCY CONTRACTING  
DURING LOW-INTENSITY  
CONFLICTS

THESIS

Presented to the Faculty of the School of Systems and Logistics  
of the Air Force Institute of Technology  
Air University  
In Partial Fulfillment of the  
Requirements for the Degree of  
Master of Science in Contracting Management

Robert L. Mason, B.S.  
Captain, USAF

September 1988

Approved for public release; distribution unlimited

## Preface

This thesis topic was researched to improve the United States' ability to fight future low-intensity conflicts. A properly supplied force can make the difference between victory and defeat. Contingency contracting is a means of supplying the forces. This research was accomplished to find methods of improving the process by which we conduct contingency contracting.

This thesis reviewed the history of contingency contracting and examined existing literature to locate gaps; areas where there is insufficient guidance available to contingency contracting officers. The second dimension of research involved conducting interviews with experts in the field of contingency contracting. Additional problems and recommended improvements arose from these interviews. I then combined the two dimensions of research to formulate my recommendations.

I would like to thank all those who assisted me in this effort, for without their help this thesis would not have been possible. I am indebted to all interviewees: their time is truly appreciated. I would also like to thank my advisor for his guidance and assistance. Finally, and most importantly, I want to thank my wife and administrative assistant, Donna, for her patience and understanding on those occasions when we were glued to the desk making changes to this thesis.

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Abstract

The purpose of this research project was to improve the United States' ability to sustain a force during future low-intensity conflicts via contingency contracting. This research was accomplished to recommend methods of improving the process by which we conduct contingency contracting.

This thesis reviewed the history of contingency contracting and researched the current state of contingency contracting to identify problems that exist. Research involved conducting interviews with experts in the field of contingency contracting.

This study identifies many issues of which contingency contracting officers should be aware. In addition, this thesis recommends several changes to the Federal Acquisition Regulation to assist contingency contracting officers in performing their duties.

# CONTINGENCY CONTRACTING DURING LOW-INTENSITY CONFLICTS

## I. Introduction

### Chapter Overview

The purpose of this chapter is to explain the issues and questions that have been examined in this research project. The general issue is described first, which allows the reader to better understand the specific problem. From the specific problem, the investigative questions were derived. Once answers to the investigative questions were found, the specific problem was solved. To allow completion of the research, it was necessary to establish the scope of research. Scope determined what would be investigated in the course of this research project. Definitions of several key terms are also included in this chapter. It is important that the reader understand the use of these terms.

### General Issue

Contingency contracting is one element of combat readiness that has received increased emphasis during recent years. Much of this attention stems from the excessive number of procurement laws written for peacetime contracting. Many of these 4000 laws restrict the Air Forces' ability to perform contracting during contingency

situations (12:33). Some of this legislation contains waivers that may be enacted only in the event of declared war. Although these waivers are important, their use is usually prohibited during low-intensity conflicts (12:33-34).

As stated in the USAF FY87 Report to Congress: "Low-intensity conflict will likely be the most pervasive threat to free world security for the remainder of this century" (5:15). Thus far, analysis of the problems inherent in a low-intensity conflict has received only limited attention from the Air Force.

This study was conducted to determine what, if any, legislative or policy changes should be made to improve the contingency contracting capabilities of the Air Force during future low-intensity conflicts.

#### Specific Problem

How can the Air Force improve its' capability to support a unit at a deployed location via contingency contracting? This question is extremely important. Frederic Huidakoper expressed the importance of preparation prior to a contingency as follows:

Adequate preparation for war has never yet in history been made after the beginning of hostilities without unnecessary slaughter, unjustifiable expense, and national peril. It is only in the years of peace that a nation can be made ready to fight. (16:7)

If existing legislation, regulations, or policies limit the Air Force's ability to perform contingency

contracting, they must be rectified. Contingency contracting officers must be able to support the mission without violating laws. There are many problems facing contingency contracting officers during a low-intensity conflict; however, fear of repercussion for violation of procurement laws should not top the list (12:34).

### Investigative Questions

To provide direction to the researcher, the following investigative questions were used as a means of answering the specific problem stated above.

1. What procedures have been/will be used in conflicts to perform contingency contracting at deployed locations, what problems existed, and what solutions were utilized?
2. What guidance is available to assist contingency contracting officers in performing these functions?
  - a. What legislation exists?
  - b. What regulations exist?
  - c. What written policies exist?
3. What changes, if any, should be made to the current legislation, regulations, and/or policy to improve the Air Force's ability to conduct contingency contracting?

### Definitions

1. Contingency: Throughout this paper this term is used to mean any military operation that involves force deployment in response to a perceived threat.

2. Deployment: 'The relocation of the force to a desired area of operations' (8:part 1-sect A-pg 4).

3. Host Country: The country that the force deploys into. During an actual contingency, this may or may not be a friendly country.

4. Low-Intensity Conflict: A limited confrontation involving military force. Limitations may be placed on weapons, on tactics, or on the level of conflict (5:15). This research project considered the term low-intensity conflict to be synonymous with undeclared war.

5. Contingency Contracting: This thesis considered this term to mean any local contracting done by deployed personnel while in the host country. It is important that the use of this term be clearly understood. In contrast to this use of the term, there are many other contracting functions performed during contingencies. These include contracting for weapon systems and contracting within the United States for supplies to be sent to the deployed forces.

### Scope

Each operational command of the Air Force has contingency plans of some form. These commands also have their own unique guidance to supplement higher regulations. Time constraints restrict this research to one command; however, the results of this research are relevant to all military organizations that perform contingency contracting

functions. Tactical Air Command (TAC) was selected for investigation for two reasons:

1. The mission of TAC requires early deployment to a location close to the area of operations.

2. The researcher previously worked as a base level contracting officer in TAC and understands its operations.

This research was not a review of all laws governing contingency contracting. Prior research has been accomplished in this area (3;6). It is an attempt to identify problems that may restrict contingency contracting under a specific set of conditions and to provide recommendations to eliminate or reduce the impact that the problems have on contingency contracting.

## II. Literature Review

### Chapter Overview

This chapter reviewed the history of contingency contracting and investigated its present situation. The literature review was conducted for two primary reasons. A literature review was necessary to determine if further research was justified on this subject. It also provides additional background information on contingency contracting to increase understanding for both the author and the reader.

### Organization of Material

The material in this chapter is divided into two major sections: the history of contingency contracting, and the present situation. The historical perspective includes the Civil War, WWI, WWII, the Korean conflict, and the Vietnam conflict. The next section of this chapter includes a review of the current legislation, regulations, and policies that affect contingency contracting as defined in this thesis. The last two sections of the literature review point out potential problems and draw conclusions from the literature.

### Historical Perspective

Civil War. During the initial phases of this war, the procurement process was extremely nonproductive due to excessive record keeping. Shortly after the devastation at

Bull Run, the Quartermaster division emerged as a dynamic, efficient, procurement agency. It was during this war that Quartermaster personnel (contracting officers) were first assigned to work directly for various army divisions. These early contracting officers were deployed to the front lines with their divisions. This process marked improved support for the Army while reducing the supply lines (10:25-28).

The benefits of sustaining a battle without the need of supply lines are apparent in recalling Sherman's March. Sherman left Atlanta for Savannah with no supply line. This allowed him to move quickly without the need to wait for supplies. He was able to sustain his troops by conserving ammunition and foraging for food and fodder (1:37-8).

World War I. Contracting during WWI is best described as wasteful. The following quote by Brigadier General Charles G. Dawes summarizes procurement problems during WWI:

Sure we paid...We would have paid horse prices for sheep if sheep could have pulled artillery...It's all right now to say we bought too much vinegar or too many cold chisels, but we saved the civilization of the world...Hell and Maria, we weren't trying to keep a set of books. We were trying to win a war. (4:1)

World War II. The vast majority of the equipment and supplies used during WWII were purchased within the United States and shipped overseas. Local purchases were used very successfully in support of operation BOLERO. This operation is best described as a massive build-up of men

and material in the United Kingdom (15:55). Contingency contracting capitalized on excess British supplies and helped to alleviate the problems associated with the inadequate U.S. shipping capability (15:253-4).

The Government enacted several new laws during this war in an effort to control profits (16:7). The need to control profits arose from the Government's use of cost-plus-a-percentage-of-costs contracts. The Government attempted to set prices but lacked the expertise to determine a fair price (1:115).

Korean War. The Korean war was the first time contingency contracting was used to a large degree. Japan and Korea were able to supply many items critical to sustaining the U.S. forces deployed to Korea (1:139). However, several problems evolved when local procurement was attempted in South Korea.

South Koreans were not properly prepared to sell goods and services to the USFK. The people of the US procurement agency even had to teach Koreans how to cultivate sanitary vegetables, how to follow US procurement specifications, and other procedures. (2:79-80)

Vietnam Conflict. Contingency contracting was drastically reduced during the Vietnam conflict. "The very essence of mobility planning and material support is based on the declaration of a national emergency" (13:37). The fact that a national emergency was not declared severely limited the Air Force's contingency contracting capabilities. To reduce the time required to ship supplies to Vietnam, the Air Force did perform contracting in Korea

during the Vietnam conflict. This was possible due to the experience gained during the Korean War.

### Current Guidance

Legislation. Authority to perform extraordinary contractual actions is granted by the Defense Resources Act (P.L. 85-809) as amended by Public Law 93-155 (50 U.S.C. 1431-1435). The FAR summarizes this act as follows:

The Act empowers the President to authorize agencies exercising functions in connection with the national defense to enter into, amend, and modify contracts, without regard to other provisions of law related to making, performing, amending, or modifying contracts, whenever the President considers that such action would facilitate the national defense. (19:part 50-sect 101a)

This Act does not allow any method of contracting that encourages carelessness or laxity and cannot be used as authority to contract when other authority is available (19:part 50-sect 101). The Federal Acquisition Regulation (FAR) describes this Act in great detail and lists what is and is not authorized under this act. Procedures for reporting extraordinary contracting actions to Congress and procedures for making contract adjustments are listed in the FAR; however, this relief is only applicable when a national emergency has been declared (19:part 50).

The North Atlantic Treaty Organization Mutual Support Act (NATOMSA) of 1979, P.L. 96-323, is another piece of legislation that is extremely important to contingency contracting. This law authorized the Secretary to waive specified statutory provisions to facilitate the

acquisition of supplies. This Act does not relieve the Department of Defense of the responsibility to ensure compliance with the general principles of prudent procurement practices' (17:2425). Through this Act, the Department of Defense is authorized to acquire supplies on a reimbursement basis or under an agreement for replacement of the supplies with items of a similar nature. Nine statutory provisions are explicitly waived by this Act. These waivers apply when contracting with NATO governments or subsidiary bodies of a NATO government. The nine provisions, which are explicitly waived by this Act, are explained below:

1. Section 2207 of title 10 U.S.C. gives the United States the right to terminate a contract if gratuities are offered to U.S. government employees.

2. Section 2304 (g) of title 10 U.S.C. requires competitive negotiations when the small purchase threshold is exceeded.

3. Section 2306 (a) of title 10 U.S.C. prohibits the use of cost-plus-a-percentage-of-cost contracts.

4. Section 2306 (b) of title 10 U.S.C. requires that contracts resulting from negotiations include a warranty stating a commission was not paid to solicit the award of the contract.

5. Section 2306 (e) of title 10 U.S.C. requires notification for subcontract over \$25,000 resulting from all costs contracts and cost-plus-a-fixed-fee contracts.

6. Section 2306 (f) of title 10 U.S.C. requires certified cost and pricing data.

7. Section 2313 of title 10 U.S.C. authorizes the GAO to conduct audits.

8. Section 3741 of title 41 U.S.C.22 (as revised) prohibits members of Congress from benefiting from the contract.

9. Section 719 of the Defense Production Act of 1950 requires contractors to comply with cost accounting standards.

This Act was amended by Section 1104 of the Defense Authorization Act of 1987 (P.L. 99-661). Coverage was expanded to non-NATO countries. To qualify under this amendment a country must meet one of the following criteria (18:3963):

1. Have an alliance with the United States.
2. Permit stationing of U.S. forces within the country.
3. Agree to preposition material for the U.S.
4. Serve as a host country during exercises.

Regulations. Air Force Regulation 70-7 governs contingency contracting. 'This regulation establishes the requirement that a Contingency Contracting Support Program provide 24-hour capability for responsive contracting action during emergencies and deployments. It applies to all Air Force installations' (7:1). This three and one-half page regulation provides a very brief overview of all

phases of contingency contracting and relies heavily on the enactment of the Defense Resources Act. This Act, when invoked, will reduce the laws and rules regulating Government contracting. This short regulation spread itself very thin by discussing all aspects of emergency contracting. This regulation devotes only one short paragraph to local purchases within the host country (7).

Contingency contracting support plans for deployments provide for contracting actions to be completed according to all laws, executive orders, and regulations that apply. As a rule, deployed contracting officers are able to use small purchase procedures to buy required supplies and services.  
(7:para 7)

The Federal Acquisition Regulation (FAR) is the primary regulation which controls government contracting. The drafters of the FAR realized that at times it is in the best interest of the U.S. Government to deviate from the FAR. For this reason, Section 1.4 of the FAR contains provisions for processing request for deviations. There are two types of deviations: individual deviations and class deviations. Individual deviations affect only one contracting action. It would prohibit timely contracting actions in the event of a contingency if each contract required processing a separate deviation. Class deviations are used when an entire class, or group, of contracting actions must deviate from the FAR. Deviations, when approved, provide only for deviations from the FAR: they do not permit deviation from any requirements of law. Class deviations should not be used on a permanent basis.

Requirements for a permanent change to the FAR should be proposed when necessary (19:Chapter 1, Section 4).

An example of an approved class deviation is contained in appendix B. This allows contracting officers to deviate from the FAR when it is "determined to be necessary and appropriate to acquire services, supplies, or construction". All contracts to host nation governments within the United States Central Command (USCENTCOM) area of responsibility are covered by this deviation. The original class deviation for this area, which lasted three years, was approved on 28 June 1985. A new deviation was approved in June of 1988 which will remain in effect until June 1991.

Handbook. There is one excellent handbook for wartime contingency contracting titled Wartime Contingency Contracting Handbook. This handbook provides guidance for contracting officers in contingency situations. This handbook also concentrates on situations where a national emergency has been declared, but offers some guidance on contingency contracting without a declared national emergency. Although this handbook has been widely distributed, it is not official Air Force policy (4).

#### Policies and Problems

Contingency contracting is not a new problem for the United States. In almost every conflict that involved the United States there have been problems obtaining supplies. The current Air Force policy is that every contracting

agency must provide support for deployment of the units normally supported. This support includes contingency contracting as defined previously (7:1).

The Air Force policy for contingency contracting during wartime is clear; however, current policies rely heavily upon the declaration of a national emergency. The United States has been involved in many low-intensity conflicts over the last 30 years without the declaration of war. Therefore, it is important that the Air Force establish policies and provide guidance to contingency contracting officers for contracting during future low-intensity conflicts.

Another potential problem that exists is the lack of quality training conducted to prepare contingency contracting officers.

Ideally, the Air Force practices in peacetime the way it plans on operating in wartime. However, using some of these exceptions in peacetime, such as buying items from communist countries, could subject the CCO (contingency contracting officer) to criticism for overstepping legal boundaries. (4:7)

A method must be developed to provide contingency contracting officers with realistic training to prepare them for actual deployment. The Wartime Contingency Contracting Handbook is a valuable tool, but it alone is not enough.

### Conclusions

This literature review was conducted to evaluate literature on the subject of contingency contracting and to

validate the requirement for this research. Many legislative and regulatory provisions were found which may restrict the Air Force's ability to conduct contingency contracting. The restrictive provisions are not listed in this literature review because it is not possible to determine what affect, if any, each provision will have during an actual contingency. Two research projects had previously been conducted which review procurement laws and regulations to determine which ones may be waved during contingency contracting (3;6).

History should always be considered when evaluating a military issue. Past experiences show that little contingency contracting has been performed by the United States. The majority of this was performed in Korea with several problems.

In summary, a literature search revealed that there are several statues, regulations, and policies designed to provide relief from procurement rules in the event of a contingency. The following list summarizes the relief available to assist contingency contracting:

Defense Resources Act allows the President to waive many procurement laws in the event of a national emergency.

NATO Mutual Support Act (as amended) authorizes the Secretary of Defense to waive many procurement laws when contracting with a host government. This Act provides no relief for contracting with foreign private companies at deployed locations.

AFR 70-7 implements the Defense Resources Act.

Class Deviations from the FAR allows contracting officers to use judgement when applying the FAR. Previous class deviations apply only to contracts with the host government.

The Defense Resources Act, as implemented by AFR 70-7, relies too heavily on declaration of war prior to deployment. There is a lack of information regarding contingency contracting without declaration of a national emergency. NATOMSA and approved class deviations allow contracting officers more flexibility to use judgement. Although these drastically improve the contracting officer's ability to support the depleted unit without requiring a declaration of national emergency, their application is limited. They apply only to contracts with the host government and do not apply to contracts written to private companies. Further research should be conducted on this subject and guidance must be made available to assist contingency contracting officers prior to their being sent into an actual contingency.

This literature review and the literature review by Lt Nancy King (11:para 4b) both identified lack of realistic training as another deficiency that exists. Future research should concentrate on finding a means to correct this deficiency. A mode of training must be developed that will allow contingency contracting officers to train in a realistic environment. This training should

cover contingency contracting during both national emergencies and limited deployments (11:para 4b).

### III. Methodology

#### Chapter Overview

The research methodology involved several steps. The research design was selected based on the problem as previously stated. The methods of data collection are described. The last step of the methodology established the process of content analysis. This chapter will explain each of these steps.

#### Research Design

Exploratory studies are used for research of a new problem or a problem that has existed but not been researched. The objective of an exploratory study is "to define the problem more specifically, and determine how the research task will be carried out" (9:58).

A formal design should be used after the problem is clearly defined. This type of research is well structured and focuses on finding a definitive solution to a small section of the problem using quantitative values. This solution can then be combined with other research studies to solve the entire problem (9:65-68).

This problem required an exploratory design. The literature review revealed that no research had been conducted concerning contingency contracting during low-intensity conflicts. The specific question stated in chapter I did not support the use of quantitative data at this stage of the investigation. The problem was explored

using qualitative data gathered from experienced contracting personnel.

### Data Collection

The objective of this research project was to solve the specific problem by analyzing the results obtained from interviews. From the interviews and literature review the investigative questions, which are repeated below, were answered in an unbiased manner.

Investigative questions.

1. What procedures have been/will be used in conflicts to perform contingency contracting at deployed locations, what problems existed, and what solutions were utilized?

2. What guidance is available to assist contingency contracting officers in performing these functions?

- a. What legislation exists?
- b. What regulations exist?
- c. What written policies exist?

3. What changes, if any, should be made to the current legislation, regulations, and/or policy to improve the Air Forces ability to conduct contingency contracting?

Data collection relied heavily on interviews because contingency contracting "experts" know what has been done in the past and can best predict problems that will occur in a future low-intensity conflict.

Subjects. To achieve the desired information, the interviewees had to be contingency contracting "experts". To qualify as an expert, a contingency contracting officer had to understand military planning and have recent experience as a contracting officer at a deployed location during an actual contingency. It was not a requirement that a contracting officer be an officer in the Air Force. They may have been officers, enlisted, or civilians; however, few civilian contracting officers were used as contingency contracting officers.

The above requirements were found to be excessively restrictive for this research effort. It was acknowledged that recent experience as a contracting officer at a deployed location during an actual conflict would have been optimal; however this experience was not prevalent. This requirement had to be changed to recent experience as a contracting officer at a deployed location during an actual contingency or a realistic exercise.

The expert contingency contracting officers were used to solve each of the investigative questions. As experts in this field, these interviewees were military personnel qualified to predict the contracting functions required in the event of a low-intensity conflict.

1. Personnel had to have been involved in planning for deployments within the past five years.

2. Personnel had to have experience as a contingency contracting officer during an actual conflict or a realistic exercise during the past five years.

Several subjects were located that had the desired qualifications. Those interviewed were currently involved in planning deployments and had numerous experiences as contingency contracting officers. These experiences will be described in more detail in chapter IV.

Interview Limitations. Several problems arose when training was substituted for actual experience. These problems were discussed in chapter II. Lack of experience during a "real" contingency may decrease the reliability of the research. However, this should not affect the results of this exploratory study.

Procedure. Interviews with an informal structure were chosen because they allowed the greatest flexibility. This flexibility was essential to adequately answer the investigative questions. All interviews were conducted in person or by telephone depending on time, monetary constraints, and the location of the interviewee. The interviews were not recorded on tape to stimulate honest answers. This was decided due to the controversial nature of contingency contracting. A summary from each interview was sent to the interviewee for confirmation of content and context. All interviews clearly stated the research objective. This objective was made clear to motivate the interviewees to be as helpful as possible. For this

reason, the interview questions were written to appear to be informational rather than an inspection of the individual's organization (9:201-204).

Interview Guide. The questions to be asked during the interviews were developed from the investigative questions. These interview questions were first tested on Capt Tim Ceteras, previously Base Contracting Officer at Plattsburgh AFB, NY. Although Capt Ceteras has not performed contingency contracting before he has participated in several deployments for local emergencies. After Capt Ceteras' recommendations were incorporated into the interview guide, it was examined by Guy S. Shane, PhD, AFIT, Department of Organizational Sciences. Dr. Shane is an expert in the area of research methods. His review was necessary to ensure the validity of the questions. Appendix A contains a copy of the final interview guide that was used.

All interviews used open-ended questions. The interviewer maintained an informal atmosphere to stimulate discussion. The questions from the interview guide were used in conjunction with ad-hoc questions directed to ensure all areas were discussed during each interview.

The interviews were divided into the following three sections: background information, general questions, and a contingency contracting scenario. The background information was used to assure that the interviewees were 'experts'. Most of the background information does not

appear in this thesis because this information would jeopardize the interviewees' right to remain anonymous. The general questions were a direct method of obtaining answers to the investigative questions. Once asked, each general question was discussed with the interviewee. These discussions were detailed so as to allow each question to be answered thoroughly. Occasionally these discussions provided answers to other general questions.

The scenario was used to increase validity by asking a similar question in another context. Validity can be improved by asking the same question in another format (9:94). The scenario was also used to increase reliability. Interviewees were placed in a frame of reference, through the scenario, which made it easier to recall past experiences. Most details were intentionally omitted from the scenario so the interviewee could fill in the details from past experiences. This allowed each interviewee to tailor the scenario to their experiences. The details included in the scenario were used to limit the discussion to contracting issues. For this reason, many logistical problems (transportation and communication) were not discussed.

#### Content Analysis

Once collected, the data was analyzed to solve the specific problem. The data collected was organized into two areas in chapter IV: problems and recommended improvements. The problem section also includes the

solution used to resolve the problem. Recommended improvements are those of the interviewees - not the author of this thesis. These results have been determined to be general or specific. General results are those that can be applied to many scenarios. Specific results are those that only apply to one specific situation. Whenever possible, specific results have been generalized if it was determined to be in the best interest of this project.

Chapter V contains analysis and recommendations. The analysis compares and combined the results of the interviews with the results from the literature review. Although recommendations in this section may have come from the interviewees, all recommendations listed in this section were first analyzed by the researcher.

## IV. Interview Results and Analysis

### Chapter Overview

Interviews were used to conduct this research for reasons previously stated. The informal structure of the interviews had both a positive and negative affect on the research. As designed, the informal interviews allowed a free flow of information, some of which was controversial in nature. In fact, some interviewees asked that specific information not be included in this report. Although this information was not included in this thesis, it did provide added insight to understanding the problems and recommended improvements that were made by the interviewees.

The negative aspect of interviews with an informal structure was that the result of the interviews were difficult to analyze. All the required information was obtained from each interviewee; however, unsolicited information was also discussed. This unsolicited information may not appear as results in this chapter but was used as background information when formulating the recommendations listed in chapter V.

### Interview Process

Monetary and time constraints dictated that a combination of personal and telephone interviews be used. Interviews were conducted from 3 March to 7 June 1988.

## Background Information

Rank. The interviewees' rank ranged from SMSgt to Lt Col. There was no apparent relationship between rank and the interviewee's response.

Time in Service. The average time in service for the interviewees was twelve years.

Education. All of the interviewees had at least a two-year associate degree. Officers interviewed had either a BS or a MS degree.

Experience. The interviewees used for this research possessed an impressive resume of experiences. All interviewees had an unlimited contracting warrant. They had conducted contingency contracting in several countries in support of exercises. These exercises varied in size. Some were very large involving approximately 8000 troops and lasting several months.

## Problems Identified

All interviewees stated that they would follow the FAR to the greatest extent possible to ensure the protection of the United States; however, they all admitted that during an actual contingency they would do what was required to support the deployed force. During each interview, several areas were identified that had previously caused problems. These situations were resolved due to the initiative of the contingency contracting officer. The problems mentioned most frequently are described below.

Unacceptable Clauses. Many clauses required by the FAR contained dictation unacceptable to foreign governments and foreign contractors. The controversial word "sovereign" is contained in several clauses including Disputes and Examination of Records. Many governments feel they are equal, not subordinate, to the United States. For this reason, they object to our use of this term.

The approved class deviation dated 28 June 1985 (appendix B) allowed the contracting officers to use modified or alternate contract clauses that were mutually acceptable. This class deviation is limited to those requirements not based on law.

Another clause that caused concern in many countries is the gratuities clause. Bribes and kickbacks are common business practices in many countries. When this problem arose, the contracting officer had to convince the contractor to accept the contract with this clause. Although this problem was resolved, it required time: something we may not have in an actual contingency.

Favoritism. The American attitude that the low bidder should get the contract is not universal. Many foreign countries use business practices that are totally different from ours. They find it hard to believe that once you have entered negotiations with them that you would consider going to another contractor. They also believe that if they treat you right or if they have political contacts you will give them the contract.

Several situations that involved favoritism were discussed during the interviews. The following example shows the type of favoritism a contingency contracting officer must be prepared to deal with: One rental car company is owned by a gentleman whose brother is a General in the host military. From previous experience in this country the CO knows that cars from other rental agencies are not allowed on military bases. In this case the CO was forced to rent cars from the General's brother although he was not the low bidder. The CO documented the contract file to explain that only cars from this rental agency could be used to satisfy the needs of the U.S. Government.

Fear of Written Contracts. Every CO interviewed complained of problems getting foreign contractors to sign documents. Often contractors were insulted when asked to sign a document. They believe that a handshake should be sufficient. This problem was further complicated when the contractor could not read English. Contractors often speak enough English to agree on a verbal contract, but will not sign something they can not read. For small purchases, the contingency contracting officers made verbal agreements and documented the files to explain why the standard forms 44 were not signed. A witness to the verbal agreements also signed the files.

Time. Some foreigners have a different perspective of time than Americans do. They feel "If it doesn't get done today we'll do it tomorrow, or the next day, or the next

day ...' Although stalling is an acceptable technique in negotiating, they take it to an extreme. Interviewees agreed that this was a major problem during exercise but did not know the extent to which it would effect an actual contingency. Prior to most exercises, contracting personnel conduct a pre-deployment site survey (PDSS) to perform contracting functions prior to the actual deployment. PDSS allow time to accomplish contract negotiations. Time may prove to be a critical factor during an actual contingency.

Training and Experience. One interviewee suggested that training should be improved. Although there are some experienced contingency contracting officers, the majority of the contracting officers in TAC lack experience. The following example illustrates how lack of training and experience may affect performance.

During an exercise a new contingency contracting officer told the using organization that three sources were required on a form 9 to order supplies. The using organization stated that there were not three sources for the supplies within the country. The contracting officer told the organization that if they did not have three sources they could not get the supplies. An experienced contingency contracting officer corrected the problem, procured the supplies, and explained to the new contracting officer that the primary job is to support the deployed unit.

## Recommended Improvements

Each interviewee had his own personal recommendations to improve TAC's ability to conduct contingency contracting. These recommendations will be listed below without prejudice, and the researchers recommendations will follow in chapter V.

1. The limit for small purchases during contingencies should be raised from \$25,000 to \$100,000. The limit for standard forms 44 and imprest funds should also be increased. These changes are necessary to decrease the amount of formal contracts being written during contingencies. All interviewees agreed with this proposed change. A case is currently being prepared for submittal to the DAR Council to change the FAR. A copy of the case in draft form is in appendix C.

2. Contingency Contracting must receive greater emphasis from high level AF officers. As one interviewee said, "Many high level officers feel contracting will take care of itself during a contingency."

3. Contingency contracting officers must be given a set of guidelines to follow. The Wartime Contingency Contracting Handbook (4) provides good guidance but "nothing a contingency contracting officer can hang his hat on". This interviewee recommended incorporating the guidance from this handbook into AFR 70-7. According to several interviewees, contingency contracting officers need official guidance that states in a contingency 'do your

best to follow the FAR, but supporting the deployed unit comes first.' This guidance is necessary so inexperienced contingency contracting officers will follow the intent of the FAR, not the letter of the FAR.

4. Rewrite AFR 70-7. This regulation relies totally on the Defense Resource Act which will only be invoked if the United States is attacked. This regulation should be rewritten to give specific and general guidance to contingency contracting officers in the event of a contingency.

5. Keep regulations to a minimum. Contracting is already overregulated; therefore, existing regulations should be modified rather than new regulations written.

6. Give each Head of the Contracting Agency (HCA) authority to declare contracting emergencies and to approve deviations of the FAR and other regulations once a contracting emergency is declared. This would elevate the choice, support the force or follow the FAR, to a responsible level yet allow the decision to be made timely. This will stop inexperienced over-stressed contingency contracting officers from making this decision.

7. Contingency contracting officers should be properly trained. Every contracting office should ensure that each individual tasked as a contingency contracting officer is trained in contingency contracting.

8. A kit should be developed for each country we have plans to deploy into. This kit should contain, at a

minimum, the following: a business directory, a two-way foreign language dictionary, a telephone book, maps, and historical pricing and source data from previous purchases in that country.

### Lessons Learned

During their deployments, the interviewees learned many important lessons. Several key items are listed below to help future contingency contracting officers:

1. Remember you are the guest. Always be respectful of the host country's customs and beliefs.
2. Problems are best resolved through political channels. Don't hesitate to elevate a potential problem to the local American embassy.
3. Do not take on additional duties; you won't have time.
4. Insist that only one or two people be designated to approve requests. This will eliminate many unnecessary or duplicate purchases.
5. Remember your job is to support the deployment.
6. Document sufficiently to justify your actions.

## V. Analysis and Recommendations

### Data Analysis

For the most part, laws, regulations, experience, and training focus on the American culture. Contingency contracting officers, as well as those that make the rules contingency contracting officers must follow, must realize that at deployed locations contracting must be conducted in a foreign culture. As one interviewee stated, "we are teaching them (foreign contractors) how we operate, but they are also teaching us about their culture." The latter part may be the best aid in future deployments.

All interviewees had the imagination required to find a way to get the job done. They also had the experience and training to keep everything legal, and they documented any questionable circumstances. These contracting officers should be rewarded for their outstanding performance by "untying their hands" in the event of a contingency. Once a contracting emergency has been declared, contingency contracting officers must be allowed to operate more freely to support the deployed force. The contingency contracting officers have proven that they will do their best to get supplies and services at a fair and reasonable price for the given situation.

### Recommendations

1. Give the Head of the Contracting Activity (HCA) the authority to declare a contracting emergency and

authorize waivers from procurement laws and regulations. This would place the decision to waive existing legal requirements at the proper level. This decision must be made at a level high enough to have sufficient responsibility and authority; yet, low enough to allow expedient action.

2. Increase the dollar thresholds for small purchases, SF 44's, and imprest funds during contracting emergencies in accordance with appendix C. This would allow contingency contracting officers greater latitude to support the deployed force without using formal contracts.

3. Expand class deviation to cover foreign contractors as well as foreign governments in the event a contracting emergency is declared. There is no evidence that shows that foreign governments are less likely to take advantage of us than foreign contractors are.

4. Expand NATO Mutual Support Act to cover foreign contractors as well as foreign governments in the event a contracting emergency is declared.

5. Rewrite AFR 70-7. Incorporate the ideas from the Wartime Contingency Contracting Handbook. Also include a statement to the effect of "contingency contracting officers must do their best to follow the FAR and procurement regulations; however, their primary duty is to support the force". It is extremely important that contingency contracting officers have a written policy to this affect.

6. Develop contracting deployment kits for each country we may deploy into. As a minimum, these kits should contain maps, a local business directory, a two-way foreign language dictionary, telephone books, and pricing history from purchases made within that country.

## VI. Summary and Conclusions

This thesis was written to recommend improvements to supplying forces via contingency contracting during future low-intensity conflicts. Research determined that there are several problems which restrict TAC's ability to conduct contingency contracting. The problems have been analyzed and the recommendations in chapter V resulted from this analysis.

### Areas for Future Research

1. Evaluate the level of experience of personnel selected to perform duties of the contingency contracting officer in the event of a deployment. Determine if the requirements for contingency contracting officers are satisfactory and if more training should be conducted.
2. Reapplication of this study. This study should be applied to other major commands to determine if similar problems exist.
3. Implementation of these recommendations. A follow-on study should be accomplished to determine what action should be taken to implement the recommendations identified in this thesis.

Appendix A: Interview Questionnaire

SECTION I: Background Information

1. Name. (optional) \_\_\_\_\_
2. Rank. \_\_\_\_\_
3. Time in service. \_\_\_\_\_
4. What is your current position? \_\_\_\_\_
5. How long have you had this position? \_\_\_\_\_
- 6a. Do you have a Contracting Officer's warrant? \_\_\_\_\_  
b. What type of warrant? \_\_\_\_\_
7. How long have you had a warrant? \_\_\_\_\_
8. Highest Level of education completed.  
----- High School or equivalent  
----- Some College  
----- 4 year college degree, type \_\_\_\_\_, in \_\_\_\_\_  
----- Advanced degree, type \_\_\_\_\_, in \_\_\_\_\_

SECTION II: General Questions

1. Briefly describe your experience as a contingency contracting officer. Include locations and times. (no classified information)
2. How did legislation and regulations affect your ability to support the deployed unit? Explain your response.
3. Please identify any areas where you feel procurement legislation or regulations are too restrictive during contingencies.
4. Please identify any procurement legislation or regulations that are particularly helpful in conducting contingency contracting during undeclared conflicts.
5. Please identify any problems that may arise while conducting contingency contracting functions in the absence of a declared national emergency.

### SECTION III: Contingency Scenario

Please read the scenario and answer the questions that follow.

A small developing country (Country X) has been invaded by its neighbor. The invading country is communist with many Soviet advisers. At country X's request the United States has deployed a squadron of fighter planes and military personnel to fly and support the planes. There has been no declaration of war nor of national emergency. Civil engineering deployed first to convert the airport to an American base and has improved the runway to allow the planes to land. While en route you, the CCO, learn the following: Most citizens of country X speak english, there is a satisfactory highway and rail system in the host country, and the country's communication network is intact but obsolete.

Upon your arrival in country X you meet with the wing/base commander, civil engineering, and a representative from the host government. You are given a list of required items and told the host government representative will assist you but cannot accept contracts on behalf of the local merchants. You then go downtown to meet the local businessmen and to obtain the required items.

1. Based on your experiences, anticipate the requirements and list any potential problems you feel may arise from the above scenario. Please state any assumptions you feel are necessary.

2. Rate how you feel the deployed force could be supported. Explain your response.

- The force could be supported within the law.
- The force could be supported with a slight bending of the law. For example splitting requirements.
- To support the force it would be necessary to violate several procurement laws.

### SECTION IV: Conclusion

Please add any additional comments or recommendations.

Appendix B: Example of a Class Deviation



OFFICE OF THE UNDER SECRETARY OF DEFENSE

WASHINGTON DC 20301 - 3060

RESEARCH AND  
ENGINEERING  
(AM/IA)

28 JUN 1985

MEMORANDUM FOR ASSISTANT SECRETARY OF THE ARMY (RD&A)  
ASSISTANT SECRETARY OF NAVY (S&L)  
ASSISTANT SECRETARY OF THE AIR FORCE (RD&L)

SUBJECT: Approval of Class Deviation Authority from the Federal  
Acquisition Regulation and DoD FAR Supplement for  
USCENTCOM Components

By memorandum of 3 May 1985, the Principal Deputy Assistant Secretary of Defense (Manpower, Installations & Logistics) forwarded a 23 January 1985 USCENTCOM request for a class deviation for use by USCENTCOM components in Southwest Asia.

Pursuant to FAR 1.404(b) and DoD FAR Supplement 1.402(b), deviation from the provisions of the Federal Acquisition Regulation and the DoD FAR Supplement, other than those provisions based upon requirements of law, is hereby authorized in the case of contracts and agreements to be made by USCENTCOM components with Governments within the USCENTCOM Area of Responsibility (AOR). The deviation will be employed only where it has been determined to be necessary and appropriate to acquire services, supplies, or construction from sovereign host nation Governments or Government Agencies. The deviation only permits use of alternative solicitation provisions and contract clauses other than those based upon requirements of law. The deviation does not extend to internal contracting procedures prescribed by the FAR or DoD FAR Supplement. All current internal procedures with respect to pricing and documentation of pricing decisions will continue to be observed.

Each of the departmental control points identified in the request for deviation will ensure that the approved deviation is properly monitored and controlled. To do so, each control point will maintain a deviation log reflecting the numbers of contracts to which the deviation has applied, contractual dollar value, and extent of the regulatory deviations employed. Each control point will submit a copy of its implementation guidance for controlling this deviation to OUSDRE(AM)(IA) within 90 days. That implementing guidance will provide for an annual report to OUSDRE(AM)(IA) reflecting the extent of usage of the deviation. Further, six months prior to the expiration of this deviation, the Departments will submit a report to the Director for

International Acquisition, OUSDRE(AM) (IA). This report, based upon the required deviation logs, will detail the extent to which this deviation has been employed and will contain a recommendation with supporting rationale as to continued need for the deviation.

This deviation will remain in effect until June 1988.



MARY ANN GILLECE  
DEPUTY UNDER SECRETARY  
(ACQUISITION MANAGEMENT)

Appendix C: Draft of Changes Proposed by JCS  
to Improve Contingency Contracting



THE JOINT CHIEFS OF STAFF  
WASHINGTON, D.C. 20301-5000

J4M-256-88  
12 April 1988

THE JOINT STAFF

MEMORANDUM FOR THE DIRECTOR, DEFENSE ACQUISITION REGULATION  
COUNCIL

Subject: Contingency Contracting

1. The military Logistics Directors, in conjunction with OSD, have determined that a weakness in support during contingency operations has been on-the-scene contracting. As a first step to correct this deficiency, J-4 successfully completed an effort that defined "contingency" and "contingency contracting" and established procedures for the warfighting CINCs to use in recommending that the Secretary of Defense declare a contingency. Both of these actions were coordinated and approved by formal Joint Staff procedures. Copies of these approved actions are at Enclosures A and B respectively.
2. Contingency operations can be improved further through Federal Acquisition Regulation (FAR) modifications. Specifically, increases in the thresholds of small purchase procedures, Standard Forms 44, and imprest funds were highly recommended by the people who have done the job in the past and will be tasked to do it in future contingencies. Enclosures C and D are our recommended changes to the FAR. Enclosure C addresses specific regulatory changes needed and Enclosure D is the OSD legislative proposal that seeks to increase the small purchase procedure threshold.
3. We appreciate your assistance in making the regulatory changes we recommend and in reviewing the draft legislative proposal which is being prepared for DOD coordination. We will provide you a copy of the coordinated legislative proposal when it is forwarded to OMB. The J-4 action officer for this is Lt Col Ron Wasson, 697-5464, who is ready to assist you in any way he can to expedite the incorporation of these proposals in the Defense FAR Supplement.

A handwritten signature in black ink, appearing to read "Edward Honor".

EDWARD HONOR  
Lieutenant General, USA  
Director for Logistics  
The Joint Staff

**Subject:** Recommendation for Changes to the DOD Dictionary of  
Military and Associated Terms (JCS Pub 1)

**To:** Interoperability Integration Division  
J-7, OJCS, Pentagon

1. The following changes are recommended for JCS Pub 1:

a. Add: contingency--an emergency involving military forces caused by natural disasters, terrorists, subversives, or by required military operations. Due to the uncertainty of the situation, contingencies require plans, rapid response and special procedures to ensure the safety and readiness of personnel, installations and equipment.

b. Add: contingency contracting--contracting performed in support of a peacetime contingency in an overseas location pursuant to the policies and procedures of the Federal Acquisition Regulation System.

**Reason:** Based upon lessons learned from operations and exercises it has been determined that contingency contracting is a weakness throughout the Department of Defense. In order to correct this deficiency, OJCS is reviewing contingency contracting procedures with the goal of formalizing and establishing procedures for the combatant commanders.

2. Point of contact for this action is: Lt Col Ron Wassom, USAF.

Autovon 227-5464

Submitted by: Lt Col Ron Wassom, USAF  
OJCS J-4 (LPD)  
Washington DC 20301-5000

2-57.1. Role of Commanders of Unified Commands and CINCFOR in Contingency Contracting. Commanders of unified commands or CINCFOR may recommend that contingencies be declared in their areas of responsibility. Under an approved contingency, special contingency contracting authority and procedures may be invoked. Contracting remains the functional responsibility of the Services and USCINCSOC.

a. Contingency and contingency contracting are defined in JCS Pub 1 as follows:

(1) Contingency. An emergency involving military forces caused by natural disasters, terrorists, subversives, or by required military operations. Due to the uncertainty of the situation, contingencies require plans, rapid response, and special procedures to ensure the safety and readiness of personnel, installations, and equipment.

(2) Contingency Contracting. Contracting performed in support of a peacetime contingency in an overseas location pursuant to the policies and procedures of the Federal Acquisition Regulatory System.

b. The following procedures will be followed for declaration of a contingency:

(1) When the commander of a combatant command determines that a contingency should be declared, the command's J-4 will prepare a message for the CINC's release to the Chairman, Joint Chiefs of Staff. The message will explain the nature of the contingency, recommend the duration of the declaration (not to exceed 90 days), and justify the need for declaring the contingency.

(2) The Chairman, Joint Chiefs of Staff, will review the request and forward it to the Secretary of Defense for approval. Upon declaration of the contingency, the Chairman, Joint Chiefs of Staff, will notify the CINC who will, in turn, notify the component commands that will take part in contingency operations.

(3) The duration of the declaration can be adjusted as long as the total time of the contingency does not exceed 90 days. Adjustments will be approved by the Chairman, Joint Chiefs of Staff.

(4) Contingencies may not be declared solely for exercise purposes. The declaration of a contingency and the resulting actions may be simulated during exercises.

(5) Special contracting authorities and procedures under the Federal Acquisition Regulations System that may be invoked upon the declaration of a contingency are contained in the Defense Federal Acquisition Regulation Supplement (DFARS).

(6) Unified commands and FORSCOM are responsible for ensuring that contingency contracting efforts are planned by the components and coordinated in preparation for and during contingency operations. The unified command will facilitate contracting, resolve conflicts, provide information on requirements and sources, take steps to reduce duplication of effort, and provide assistance to the components whenever possible.

I. PROBLEM:

A. Reference: The Defense Federal Acquisition Regulation Supplement (DFARS) Section 13.505-3, Standard Form (SF) 44, Purchase Order-Invoice Voucher. This provision imposes a dollar limitation of \$2,500 for all purchases except aviation fuel and oil. This dollar ceiling is too restrictive and authorization for higher limits on a case-by-case basis is too cumbersome to effectively use this small purchase method during contingencies declared by the Secretary of Defense.

B. Reference: DFARS Section 13.4 - Imprest Fund. The DFARS does not specify a dollar ceiling for use of this small purchase procedure. The Federal Acquisition Regulation (FAR) Section 13.404 specifies that a single transaction is not to exceed \$500 or such other limits as have been approved by the agency head. The \$500 limit is too restrictive to effectively use this small purchase method during contingencies which have been declared by the Secretary of Defense. Higher limits, approved by the agency head, must be in place if this method is to be effectively employed.

II. RECOMMENDATIONS:

A. Revise DFARS Section 13.505-3 to provide for a maximum ceiling equal to the small purchase procedure ceiling when using SF 44 procedures during a contingency declared by the Secretary of Defense. The increased ceiling should apply only to warranted contracting officers who have warrants for small purchase procedures or higher. For buying, ordering, and other non-warranted purchasing officials, the SF 44 ceiling should remain at the level stated in DFARS Section 13.505-3.

B. Revise DFARS 13.404 to provide for a ceiling of \$2,500 when using the Imprest Fund procedures during a contingency declared by the Secretary of Defense. The Imprest Fund allocation should be increased, at the discretion of the controlling official, to a maximum of \$100,000 (DFARS 13.402b).

III. DISCUSSION. Past experiences in exercises and actual operations have clearly demonstrated that on-the-scene contracting for logistic supplies is necessary for successful military operations. Contracting rules and procedures, however, that are intended for routine use during peacetime have not been responsive to contingency operations in the past. Contingencies are characterized by emergency actions that require rapid response and streamlined procedures. Although the Federal Acquisition Regulation makes provisions for some emergency situations, the requirements of overseas commanders during contingency operations are not specifically addressed. Moreover, there are no FAR provisions or section of the FAR that are specifically designed to support the on-scene commander during contingency operations. Warfighting

commanders see the thresholds for the SF 44 and the imprest funds as too low for contingency operations. These procedures are the ones that are used most during emergency situations and should be more flexible to provide the on-scene commander the logistic support required to successfully prosecute his mission. During a contingency declared by the Secretary of Defense, it is essential that logistics support be provided in a timely manner. Much of this support must be obtained through contracting channels by a warranted contracting officer. The regulatory and statutory guidance prescribed by the FAR and DFARS often inhibits the timely satisfaction of these urgent requirements. Experience gained by the Services during previous contingency operations has clearly demonstrated that the current dollar limitations on simplified small purchase procedures greatly reduce their utility. The Services and other Department of Defense Agencies strongly advocate improving contracting support for contingency operations. By raising the dollar ceilings of the Imprest Fund from \$500 to \$2,500 and the SF 44 ceiling in line with the small purchase procedure ceiling, contracting support can be made significantly more responsive and effective. These increased limits would only apply to those agencies required to provide contracting support to the forces involved in a contingency declared by the Secretary of Defense. These revised ceilings would permit use of these simplified small purchase procedures for a majority of the urgent requirements in a contingency operation. These changes, together with other existing regulatory and statutory provisions that may be used during contingencies, will greatly improve contracting support to the forces.

OFFICE OF THE DIRECTOR,  
CONTRACT POLICY & ADMINISTRATION

Date: 15 March, 1988

*Memo for:* Mobilization Legislation Members

SUBJECT: MOBILIZATION LEGISLATION, FINAL DRAFT

Please review this package and make what I hope will turn out to be final comments and recommendations prior to official request for your department's coordination through the Legislative Reference process.

The inclusion of contingency contracting in Section 4 of the legislation is to satisfy a separate requirement of the JCS.

I would like your response by 31 March if possible.

Carl Brotman  
697-8336

P/CPA

**MEMORANDUM FOR GENERAL COUNSEL, OSD**

**ATTENTION: Director, Legislative Reference Service**

**SUBJECT: Proposed Legislation "To Amend Inappropriate Requirements in Procurement Laws for the Period of a Declared National Emergency or Contingency"**

The attached proposed legislation is submitted to rectify the need for expedited procurement procedures during a period of emergency. This proposal is intended to relieve the Department of Defense of the burden of procurement practices which are irrelevant and detrimental to the national security during a declared national emergency or a peacetime contingency involving United States forces in overseas locations. Request the attached be processed for transmittal to the Office of Management and Budget for approval.

**Attachment**

**Coordination:**  
**OAGC (Logistics)** \_\_\_\_\_  
**D/LPA** \_\_\_\_\_  
**JCS** \_\_\_\_\_

**cc: OASD (LA)**

Honorable James C. Miller, III  
Director, Office of Management  
and Budget  
Washington, D.C. 20503

Dear Mr. Miller:

The attached legislative proposal, DoD - , "To amend inappropriate requirements in procurement laws for the period of a declared national emergency or contingency," is forwarded for review in accordance with Office of Management and Budget Circular A-19.

I believe that the remedial objectives of this proposed legislation are important for the national defense and should be given high priority in the administration's program. There is a recognized need for expedited procurement procedures for all executive procurement agencies during an emergency. This proposal is intended to relieve these agencies, including the Department of Defense, of the burden of normal procurement practices which are irrelevant and detrimental to the national security situation during a declared national emergency or a peacetime emergency involving United States forces in overseas locations. Adoption of this proposal will permit issuance of standby regulations which can be put into effect immediately when the appropriate "trigger" events occur.

I therefore request your early attention to, and support for, this proposal.

Sincerely,

Kathleen Buck

Honorable James Wright  
Speaker, House of Representatives  
Washington, DC 20515

Dear Mr. Speaker:

In the event of a declaration of a national emergency, federal procurement agencies will suspend or defer procedures and practices that are not essential for mobilization in order to decrease procurement administrative lead time (PALT) and hasten the delivery of required supplies and services. This proposal is intended to permit, during a national emergency, the executive procurement agencies, including the Department of Defense (DoD), to modify or discontinue certain peacetime procedures established by statute that unnecessarily delay the award of contracts. In addition, one procedure would be modified solely for the Department of Defense in the case of a peacetime emergency involving United States military forces in overseas locations.

#### Purpose of the Legislation

The Federal procurement statutes contain restrictions which, while appropriate under normal conditions, impede Federal agencies from implementing their procurement missions during emergency conditions. Insufficient provisions exist in current law for the modification or suspension of these requirements during a declared national emergency by the Congress.

The Competition in Contracting Act (Codified at 10 U.S.C. 2304 and 41 U.S.C. 253), establishes competition requirements for contracts. A required procedure is the preparation, coordination and approval of lengthy and complex justifications for departure from competitive procedures (full and open competition) under certain

circumstances; e.g. (1) the procurement is urgent and the United States would be seriously injured unless the number of sources are limited or (2) the sources are limited by international treaty or by a foreign government reimbursing the agency for the cost of the procurement. Many supplies and services during a declared national emergency will be urgently required and/or required by international organizations or foreign governments under Host Nation Support and the Foreign Military Sales (FMS) program. In these specific circumstances, valuable procurement lead time and personnel resources would be saved by permitting the contracting officer to document the file and obtain local approval rather than prepare, coordinate and obtain high level approval of complex justifications to depart from full and open competition.

The Competition in Contracting Act also establishes a ceiling not to exceed \$25,000 for small purchases and simplified procedures (10 U.S.C. 2304(g) and 41 U.S.C. 253). Increasing the small purchase threshold to \$100,000 during a declared national emergency will significantly increase the number of purchases which can be accomplished under simplified procedures, thereby reducing lead time and expediting delivery of required supplies and services. Furthermore, the higher threshold would also apply to limited procurements of the Department of Defense when the Secretary of Defense declares a contingency; i.e., a peacetime emergency involving military forces in overseas locations. Contingencies can be caused by natural disasters, terrorists, subversives or by required military operations. Due to the uncertainty of the situation, contingencies require plans, rapid response and special procedures to ensure the safety and readiness of personnel, installations and equipment.

The Truth in Negotiations Act (10 U.S.C. 2306 (a) ) requires contractors to submit cost or pricing data prior to entering any contract using procedures other than sealed bidding or where prices result from price competition or catalog prices, if the contract will exceed \$100,000. This requirement delays expeditious contracting and expends limited resources. Sixty-five percent of the actions subject to these requirements fall between \$100,000 and \$500,000, but represent only 6 percent of the dollar amounts subject to these requirements. Raising the threshold to \$500,000 will significantly reduce workload and lead time. Even though certified cost or pricing data would not be attained on actions of less than \$500,000, contractors would be required to provide limited pricing data sufficient for contracting officers to determine fair and reasonable prices.

The conditions which create the declared emergency will require full mobilization of the nation's industrial base. Under these circumstances, certain programs established in peacetime for the benefit of small business are not required during the emergency because the mobilization effort will fully involve all sectors of the economy, including the small business sector. These programs include, under the Small Business Act (Title 15), the rules concerning the Certificate of Competency procedure (Section 637 (b) (7) ), subcontracting plan procedures (Section 6327 (d) (4) and (5) ), and the requirements for small business goals (Sections 644(g) and (h) ). The small business sector will be utilized to capacity and the cited programs are not required to enhance small business participation during the emergency period. The administration of these programs is resource intensive and will waste resources which must be applied to the emergency situation. In addition, the certificate of competency and subcontracting procedures add lead time to the award process and prevent the expeditious delivery of urgently needed supplies and services.

Two affirmative action programs (for the handicapped (29 U.S.C. 793 (a) ) and for disabled veterans and Vietnam veterans (38 U.S.C. 2012 (a) ) impose resource-consuming administrative procedures for simplified contracts below the small purchase threshold, but in excess of \$2,500 and \$10,000, respectively. During the emergency, these procedures should be restricted to contracts above the small purchase threshold. The impact on the handicapped and affected veterans would be minimal because the statutes are applicable on a company-wide basis for any contractor where there is a contract in excess of the small purchase threshold.

This proposal would amend the statutes cited above during a declared national emergency (and a declared contingency in the case of the Department of Defense). I ask that the Congress consider and enact this emergency legislation proposal as expeditiously as possible.

Sincerely,

A BILL

To amend inappropriate requirements in procurement laws for the period of a declared national emergency or contingency.

1 Be it enacted by the Senate and House of Representatives of  
2 the United States of America in Congress assembled, that  
3 this act may be cited as the "National Emergency  
4 Procurement Act."

5 Section 2. Section 2304(f) of title 10 and section 253(f)  
6 of title 41 United States Code are amended by adding the  
7 words: "and (6)" after the words "paragraph (2)" in the  
8 first sentence and by adding the following new paragraph  
9 after paragraph (5): "(6) The justification and approval  
10 required by paragraph (1) is not required for the period of a  
11 declared national emergency in the case of a procurement  
12 permitted by subsections (c) (2) or (4). However the  
13 contracting officer shall document the contract file with the  
14 basis for use of the authority and the documentation shall be  
15 reviewed and approved at a level above the contracting  
16 officer."

17 Section 3. Subsections 253(g)(2) and (3) of title 41 United  
18 States Code are amended by adding after "\$25,000", the words  
19 "\$100,000 for the period of a declared national emergency.)"

1 Section 4. Subsections 2304(g)(2) and (3) of title 10 United  
2 States Code are amended by adding after "\$25,000", the words  
3 " (\$100,000 for the period of a declared national emergency  
4 or the occurrence of a contingency declared by the Secretary  
5 of Defense)".

6 Section 5. Sections 2306(a) of title 10 and 254(d) of title  
7 41 United States Code are amended by adding the following  
8 subsection (e): "(e) For the period of a declared national  
9 emergency, the threshold in subsections (a) through (d)  
10 above, shall be \$500,000 in lieu of \$100,000."

11 Section 6. Section 637(b)(7) of title 15 United States Code is  
12 amended to insert immediately following the number (7) the  
13 words "Except during the period of a declared national  
14 emergency,".

15 Section 7. Subsections 637(d)(4) and (5) of title 15 United  
16 States Code are amended to insert immediately following the  
17 numbers (4) and (5), the words "Except during the period of a  
18 declared national emergency,".

19 Section 8 Subsections 644(g) and (h) of title 15 United States  
20 Code are amended by inserting at the beginning of the first  
21 sentence of each of the paragraphs, the words "Except during

1 the period of a declared national emergency".

2 Section 9. Section 793 of title 29 United States Code is  
3 amended by adding to the beginning of the first sentence of  
4 subsection (a), "Except as provided in subsection (d) below,"  
5 and a new subsection (d) is added as follows: "(d) During the  
6 period of a declared national emergency, any contract in an  
7 amount less than the ceiling for small purchase as established  
8 in section 2304(g)(2) of title 10 and 253(g)(2) of title 41  
9 shall not be subject to the requirements of subsection (a)  
10 above."

11 Section 10. Section 2012 of title 38 United States Code is  
12 amended by adding to the beginning of the first sentence of  
13 subsection (a), "Except as provided in subsection (e) below,"  
14 and a new subsection (e) is added as follows: "(e) During the  
15 period of a declared national emergency, any contract in an  
16 amount less than the ceiling for small purchase as established  
17 in section 2304(g)(2) of title 10 and 253(g)(2) of title 41  
18 shall not be subject to the requirements of subsection (a)  
19 above."

## Rationale for Changes

### Section 2.

10 U.S.C. 2304 and 41 U.S.C. 253, require the preparation and coordination of lengthy, time consuming Justifications and Approvals justifying deviation from competitive procedures (full and open competition) under circumstances such as urgency or requirements of international organizations or foreign governments under the Foreign Military Sales (FMS) program. At the time of a declared national emergency, Executive Agencies will be required to procure significantly increased quantities of supplies and services by the most expeditious means, but with limited personnel resources. Many of these supplies and services will be urgent or will be required by international organizations or foreign governments under the Foreign Military Sales (FMS) program. Under these circumstances, valuable procurement lead-time and personnel resources will be saved by permitting the contracting officer to document the file simply and obtain approval from a higher level to deviate from full and open competition, permitting the procurement process to proceed without delay.

### Section 3.

"Small purchases" are characterized by simplified procedures, reduced paper work and shortened Procurement Administrative Leadtime (PALT). It is estimated that these procedures shorten delivery by approximately three months. A "small" purchase is currently defined at 41 U.S.C. 253(g)(2) as being a purchase or contract for an amount which does not exceed \$25,000. It is expected that mobilization will result in a large increase in contract awards and that inflation will cause an increase in contract prices. These factors combined will increase the number of large purchases, thus taxing limited contracting resources. Applying the simplified small purchase procedures to awards between \$25,000 and \$100,000 for agencies other than the Department of Defense during a declared national emergency will achieve faster delivery by months and will significantly increase the number of purchases which can be accomplished under simplified procedures, thereby enhancing their ability to respond in a timely manner and reducing PALT.

### Section 4.

The change in Section 3 increasing the small purchase threshold from \$25,000 to \$100,000 shall also be applicable to the Department of Defense during a declared national emergency, in which case it may apply to perhaps an additional 100,000 awards.

Further, for the Department of Defense alone upon declaration of a contingency situation by the Secretary of Defense, the increased threshold shall apply to overseas purchases for a limited period during a peacetime emergency involving United States military forces in overseas locations. This authority will permit frontline contracting officers to use simplified procedures to make expeditious purchases (without seizure), to accept immediate delivery, and to overcome language barriers, currency exchange problems and other hostile environmental conditions.

#### Section 5.

10 U.S.C. 2306a, states that contractors shall submit cost or pricing data and shall certify that the data submitted is accurate, complete and current prior to entering any contract under other than sealed bids if the price of the contract will exceed \$100,000. Within DoD during FY 86, over 100,000 actions fell within the requirements for such data. Of these actions, approximately 30,000 exceeded the \$500,000 threshold.

National emergency conditions will require that significantly increased quantities of supplies and services be procured very quickly by limited personnel resources. It is likely that the number of awards in each of these categories will increase during mobilization due to an increase in the total number of awards and an increase in the average dollar value per contract.

These increases will strain existing limited contracting personnel resources and place a substantial workload burden on the likewise limited personnel assets of the Contract Audit Agencies.

Because contracts cannot be executed without receipt of the data and certification, contracting for and delivery of urgently required supplies and services would be delayed. Even if waivers from these requirements were to be processed to the agency head for his exercise of statutory authority, the magnitude, in terms of numbers of waivers requested, would inundate the head of the agency.

Raising the threshold for submission of certified cost or pricing data will reduce the workload for acquisition personnel and the contractor as well. Contractors would be required to provide limited data sufficient for contracting officers to determine fair and reasonable prices. This will allow concentration on awarding and administering contract requirements. Keeping the threshold as currently stated restricts our ability to respond quickly to increased requirements with limited resources during mobilization and greatly increases administrative lead-time. Conversely, increasing the threshold during mobilization will significantly enhance our ability to respond in a timely manner and reduce administrative lead-time.

## Section 6

Pursuant to Section 637 (b) (7) of 15 U.S.C. (Small Business Act), whenever a contracting officer finds that a small business concern is ineligible for award for reasons of non-responsibility, the contracting officer must refer his findings to the Small Business Administration (SBA) for final determination.

Recognizing that it may be false economy to award based on lowest evaluated price alone, contracting officers are required to award only to firms determined to be responsible; that is, only to firms determined able to perform the proposed contract taking into account circumstances such as financial resources, production capability and ability to meet delivery requirements. Notwithstanding the foregoing, when the contracting officer determines a small business concern to be non-responsible, he must delay award and refer the matter, together with appropriate documentation, to the SBA regional office. The SBA region offers the small business concern the opportunity to apply for a Certificate of Competency (CoC), receives the CoC application from the small business concern, performs an on-site investigation and develops a recommendation.

Advance notice to the contracting officer is provided if a CoC is to be issued by the SBA. Actions valued over \$500,000

must be forwarded by the SBA region to the SBA central office for decision. If the contracting officer, upon notice from SBA that a CoC is recommended, continues to question the ability of the concern to perform and disagrees with the SBA region's recommendation for issuance of a CoC, he must request that the matter be referred to the SBA central office.

In the event that the contracting officer disagrees with an intended decision by the central office to issue a CoC, he must file a formal appeal through departmental channels to the SBA. In any case, the final determination as to issuance of a CoC and thus the ultimate decision of responsibility for a small business concern, rests with the SBA.

The CoC process is a time consuming effort that requires action and documentation by various levels within SBA, the procuring agency and the small business concern. Based on conservative time frames established in the Federal Acquisition Regulation, the minimum time for processing a CoC is 45 days and 90 days if a formal appeal is filed. During this period, award must be delayed. To apply the CoC process during periods of national emergency is unnecessarily bureaucratic, time consuming, inefficient and has a negative impact on our ability to respond during a crisis.

Section 7.

Conditions during a declared national emergency require that significantly increased quantities of supplies and services to be procured very quickly by limited personnel resources. The requirement in title 15, section 637 (b), that successful offers/bidders develop and submit subcontracting plans and that the contracting officer evaluate the plan and negotiate needed changes prior to award of the contract, delays award and increases PALT.

DoD activities alone award approximately 9000 contracts requiring subcontracting plans each year. It is expected that the number of contracts awarded during a declared national emergency requiring subcontracting plans will rise significantly due to an increase in the total number of awards, an increase in the delivery quantities per award and inflation in unit prices. It is also expected that under declared emergency conditions small business capabilities will be used to their maximum capacities. Therefore, suspending the requirement for submission and approval of subcontracting plans prior to award is proper and will reduce lead times and speed up deliveries.

Section 8.

Title 15 section 644 requires the application of small business award goals and the collection and reporting of award data. Conditions during a declared national emergency require that significantly increased quantities of supplies and services be urgently procured by limited personnel resources. It is expected that under such conditions small business capabilities will be used to their maximum capacities. Therefore, goaling small business awards and the collection and reporting of award data as required by title 15 section 644 will be non-productive and will divert needed resources from the task of awarding contracts.

Section 9.

Title 29 section 743(a) specifies a contract threshold of \$2,500 for establishing affirmative action programs for the services of handicapped persons. Conditions during a declared national emergency will require expedited purchase of significantly increased quantities of supplies and services using limited personnel and administrative resources. It is expected that under such conditions the services of handicapped persons in the market place will be used to a maximum. Thus affirmative action programs for contracts under the small purchase threshold (currently \$25,000) will be non-productive

and will divert needed resources from the task of awarding contracts. Small purchases procedures, characterized by simplified procedures, reduced paperwork, and shortened PALT will be utilized to the maximum extent. The threshold for small purchase procedures during a declared national emergency will be specified in 10 U.S.C 2304(g) and 41 U.S.C. 253(g). Therefore, it is necessary to amend the specific threshold of \$2,500 in title 29 section 743(a) in favor of language referencing the small purchase threshold at 10 U.S.C. 2304(g) and 41 U.S.C. 253(g), thus enhancing the ability to respond in a timely manner and reducing PALT.

#### Section 10.

Title 38 section 2012 specifies a contract threshold of \$10,000 for establishing affirmative action programs for the services of disabled veterans and Vietnam veterans. Conditions during a declared national emergency will require expedited purchase of significantly increased quantities of supplies and services using limited personnel and administrative resources. It is expected that under such conditions the services of disabled veterans and Vietnam veterans will be used to a maximum. Thus affirmative action programs for contracts under the small purchase threshold will be non-productive and will divert needed resources from the task of awarding contracts. Small purchases procedures, characterized by simplified procedures, reduced paperwork, and shortened PALT will be

utilized to the maximum extent. The threshold for small purchase procedures during a declared national emergency will be specified in 10 U.S.C. 2304(g) and 41 U.S.C. 253(g). Therefore, it is necessary to amend the specific threshold of \$10,000 in 38 U.S.C. 2012 in favor of language referencing the small purchase threshold at 10 U.S.C. 2304(g) and 41 U.S.C. 253(g), thus enhancing the ability to respond in a timely manner and reducing P&MT.

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### Vita

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The purpose of this research project was to improve the United States' ability to sustain a force during future low-intensity conflicts via contingency contracting. This research was accomplished to recommend methods of improving the process by which we conduct contingency contracting.

This thesis reviewed the history of contingency contracting and researched the current state of contingency contracting to identify problems that exist. Research involved conducting interviews with experts in the field of contingency contracting.

This study identifies many issues of which contingency contracting officers should be aware. In addition, this thesis recommends several changes to the Federal Acquisition Regulation to assist contingency contracting officers in performing their duties. Keywords:

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