



DEPARTMENT OF THE ARMY
U.S. ARMY CORPS OF ENGINEERS
WASHINGTON, D.C. 20314-1000

CECT-ZA

20 October 2008

MEMORANDUM FOR ALL USACE COMMANDS (DIRECTORS/CHIEFS OF CONTRACTING)

SUBJECT: Procurement Instruction Letter (PIL) 2009-01, Follow-on USACE Defense Base Act (DBA) Insurance Mandatory Requirements Contract with CNA Insurance

1. DBA Insurance is necessary to ensure contractor employees have workmen's compensation insurance in the event of an injury or fatality. This is particularly critical considering some of the high risks our contractors take to support the effort in Iraq and Afghanistan. Every effort must be taken to ensure contractor employees are covered by DBA insurance to avoid any situations where there is an injury or fatality and a contractor employee isn't covered.
2. USACE has entered into its 3rd Single-Source centrally-managed DBA Insurance contract. This contract covers all USACE and Joint Contracting Command Iraq/Afghanistan (JCC-I/A) contracts with performance overseas. This follow-on USACE and JCC-IA-wide mandatory requirements contract was awarded to Continental Insurance Company, dba CNA Insurance, effective 1 October, 2008 to provide the statutorily mandated DBA Insurance coverage for all USACE and JCC-I/A contractor employees working overseas, with the exception of Hawaii and Alaska. Rutherford International is the administrative Broker for CNA Insurance. The contract is effective from 1 October 2008 through 30 September 2009 with one 12 month Option Period and is posted on the HQUSACE Directorate of Contracting website.
3. The new fixed rates for this mandatory requirements contract are as follows:

Service	\$4.00	per \$100 of employee remuneration
Construction	\$7.50	per \$100 of employee remuneration
Aviation	\$20.00	per \$100 of employee remuneration
Security	\$12.50	per \$100 of employee remuneration
4. DBA insurance is required for employees of contractors and their subcontractors at every tier unless the U.S. Department of Labor (DOL) has granted a written country waiver (see FAR 28.305) AND the waiver is included in the contract, List of Country Waivers (see Enclosure 3). No waiver applies to any employee who is: hired in the U.S.; a resident of the U.S.; or, a citizen of the U.S.
5. All USACE and JCC-I/A contractors and subcontractors procuring DBA insurance (i.e. **renewing coverage or obtaining new coverage**), for a USACE or JCC-I/A contract, shall purchase such DBA insurance under this requirements contract unless one or more of the following exceptions apply:

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- a. The contractor or subcontractor has a DBA self-insurance program approved by DOL; or
- b. The overseas place of performance is covered by a DOL country waiver listed on the Technical Exhibit #2, List of Country Waivers; or
- c. The USACE or JCC-I/A contractor is a personal services contractor whose employees are covered by the Federal Employees Compensation Act.

6. Pre-Award and Post-Award Responsibilities:

a. Mandatory DBA Requirements.

1) Solicitation: Enclosure 1 contains the Special Solicitation Requirements which shall be utilized in all solicitations for USACE and JCC-I/A, with contractor and subcontractor employees working overseas, with the exception of Hawaii and Alaska. It is the Contracting Officer's responsibility to place the applicable Special Solicitation Requirement (Fixed Price or Cost Reimbursable) into the appropriate section of the solicitation and to ensure that Offerors/Bidders are aware of the statutorily mandated DBA.

2) Contract: Enclosure 2 contains the Special Contract Requirements which shall be utilized in all contracts for USACE and JCC-I/A, with contractor and subcontractor employees working overseas, with the exception of Hawaii and Alaska. It is the Contracting Officer's responsibility to place the applicable Special Contract Requirements into the appropriate section of the contract and to ensure that Offerors/Bidders correctly priced DBA insurance and the successfully awarded Contractor's maintain a valid DBA Insurance policy with CNA Insurance.

3) Failure to Comply: The Special Contract Requirements have been revised to include the 'failure to comply' language. This emphasizes the Government's ability to enforce compliance with the statutorily mandated DBA, and informs contractors that their contract can be terminated for default/cause if Primes or Subcontractors fail to comply.

b. When to Allow Performance or issue the Notice to Proceed (NTP). It is the Contracting Officer's responsibility to ensure that the successfully awarded Contractor obtains and maintains valid DBA Insurance with CNA Insurance, before allowing performance.

c. Separately Price DBA Insurance Contract Line Item Number (CLIN). A separate CLIN will be established for DBA Insurance, so Offerors/Bidders are aware of the mandatory requirement and the rates and payments are easier to track and audit.

7. Oversight and Accountability: NCO leadership is responsible and accountable to ensure oversight and compliance with the DBA insurance requirement. Oversight and accountability can be performed through HQ Program and Evaluation reviews, PARC Reviews, and other internal reviews and assessments to ensure compliance with the statutorily mandated DBA Insurance Program. Each Regional PARC will coordinate a point of contact with the RCC or

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CCC for Contracting Officer's Representative (COR) nominations. There may be one or more COR(s) per Region, depending on the volume of DBA Insurance requirements within that Region. The appropriate RCC/CCC will submit a nomination to the HECSA Contracting Officer for appointment of a COR for their Division/Center. The COR will monitor the Contractor's performance and serve as the focal point for technical issues for their Division/Center as designated.

8. If you have any questions or need additional information, please contact the USACE DBA Subject Matter Expert (SME), Ms. Lynn M. Harper at (540) 665-3998 or the HECSA Contracting Officer, Ms. Susan M Burchell, at (703) 428-7406.

FOR THE COMMANDER:



KIM D. DENVER
Director, National Contracting Organization
U.S. Army Corps of Engineers

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