

**Headquarters
Department of the Army
Washington, DC
XXXXXXXXXXXX2000Army Regulation 715-30**

Effective xxxx2000

Procurement

Secure Environment Contracting

By Order of the Secretary of the Army:

Eric K. Shinseki
*General, United States Army
Chief of Staff*

Official:

Joel B. Hudson
*Administrative Assistant to the
Secretary of the Army*

History. This UPDATE printing publishes a revision of this publication. Because this publication has been extensively revised, the changed portions have not been highlighted.

Summary. This regulation concerns contracts and purchases made using simplified acquisition procedures, to be executed and administered in a secure environment. It establishes policies, procedures, documentation, reporting requirements, and oversight responsibilities for such contracts.

Proponent and exception authority. The proponent of this regulation is the Deputy Assistant Secretary of the Army (Procurement), Office of the Assistant Secretary of the Army (Acquisition, Logistics and Technology). The proponent has the authority to approve exceptions to this regulation that are consistent with controlling law and regulation.

Applicability. This regulation applies to the Active Army, the Army National Guard and the U.S. Army Reserve. Unless otherwise authorized by law, this regulation applies to all procurement actions required to be conducted in a secure environment (secure environment contracting (SEC)). SEC applies to support of special access programs, sensitive compartmented information requirements, TOP SECRET, and other approved (see Chapter 3 Section IV) secure contracting requirements. During mobilization, policies contained in this regulation may be modified by the proponent with the approval of the Secretary of the Army.

Management control process. This regulation is subject to the requirements of AR 11-2. It does contain internal control provisions.

Supplementation. Each MACOM/ HCA may supplement this regulation to the extent necessary. Supplements will be distributed to all subordinate contracting and requiring activities, with the objective of informing all concerned of MACOM/HCA procedures and offices that support SEC. A copy of any supplement shall be submitted to SAAL-PP thirty days prior to publication for review and approval.

Suggested improvements. Users are invited to send comments and suggested improvements on DA Form 2028 (Recommended Changes to Publications: Blank Forms) directly to the Office of the Assistant Secretary of the Army (Acquisition, Logistics and Technology), ATTN: SAAL-PP, Skyline 6, Suite 916, 5109 Leesburg Pike, Falls Church, VA, 22041-3201.

Distribution. This publication is available in electronic media only and is intended for command levels C, D and E for Active Army, Army National Guard and Army Reserve.

Distribution Restriction Statement

This publication contains technical or operational information that is for official Government use only. Distribution is limited to U.S. Government agencies. Requests from outside U.S. Government agencies for release of this publication under the Freedom of Information Act or the Foreign Military Sales Program must be made to OASA (ALT), ATTN: SAAL-PP, Skyline 6 Suite 302, 5109 Leesburg Pike, Falls Church, VA 22041-3201.

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SUMMARY of CHANGE

Chapter 1

Introduction

1-1. Purpose:

The purpose of this regulation is to ensure that contracts executed and administered in support of acquisitions by and for Army Sensitive Activities are conducted in accordance with existing laws and regulations; and to provide unique policies and procedures related thereto. Secure environment contracting is necessary to support activities having special security, operations security (OPSEC) or special access needs beyond those normally accorded collaterally classified documents. This regulation establishes special policies, procedures, documentation, reporting requirements, and oversight responsibilities in support of contracts that require secure environment contracting procedures. It emphasizes planning, contract flow processes, tailoring of those processes and accountability.

The regulation has been tailored to make it more accessible to all members of the secure environment contracting (SEC) acquisition team and community (through declassification); make the regulation more understandable and user friendly through streamlining, simplification and removing redundancies; "power-down" authority to those with the knowledge and responsibility for taking action while maintaining credible checks and balances and accountability; update the regulation to incorporate new acquisition reform legislation and regulation and Army policies; and to recognize the changes in Army organizational alignments and responsibilities.

Specifically it has been revised to accomplish the following:

- Declassifies the regulation in its entirety by removing classified material without changing the intent or substance (chapters 1,2,3 and appendixes).
- Revises the definition of SEC to eliminate reference to specific applications (chapter 1, paragraph 1-3).
- Updates terminology to conform to recent changes in policy, law, or regulation (chapters 1, 2, 3 and appendixes).
- Corrects assignments of responsibilities, addresses and points of contact, and changes or eliminates references to revised or defunct organizations and offices. (chapters 1,2,3 and appendixes)
- Addresses the collection and maintenance of past performance information and its use in source selection (chapter 3, paragraphs 3-5 and 3-8).
- Addresses the use of the Government Purchase Card for simplified purchases and as a payment mechanism for these and larger procurements.(Appendixes B and C)
- Incorporates the mandates, policies and procedures of Federal Acquisition Regulation Part 12, encouraging the acquisition of commercial items using commercial practices. (Appendixes B.2 b.(1) and B.3.m)
- Amends the Management Control Evaluation Checklist to reflect new coverage in the regulation and revised authorities and responsibilities. (Appendix. C).

1-2. References

Required and related publications and prescribed and referenced forms are listed in Appendix A.

1-3. Explanation of Abbreviations and Terms

Abbreviations and special terms used in this regulation are explained in the glossary.

1-4. Policy and Courses of Action

The Army policy and procedures for SEC are as follows:

a. The contracting officer, after consulting with the requirements, security and legal representatives, will determine if SEC methods are applicable. Disagreements will be resolved by the Principal Assistant Responsible for Contracting (PARC) or designee. In order for the contracting officer and other requisite functional personnel to perform this function, or to effect an SEC procurement, they must be fully cleared to the level of the DD Form 254 and read on to any and all requirements covered by the prospective contract action.

b. SEC will be planned, executed, and administered in accordance with the body of law and regulations pertaining to the contracting function. All personnel necessary to review and execute SEC shall obtain appropriate security clearances. The requirement for special clearances shall not be used to eliminate participation of requisite personnel in the SEC process. SEC is not to be considered an exception to the requirement to perform advance procurement planning. The references in Appendix A prescribe pertinent contracting and security laws, regulations, policies, and ethics for affected Army personnel.

c. Classification guides prepared in accordance with AR 380-5 and AR 380-381 will include guidance on classification of procurement and related acquisition documents.

d. SEC will only be conducted by warranted contracting officers, duly authorized representatives of the contracting officer and properly appointed ordering officers. The contracting officer, legal counsel, and other functional personnel will be indoctrinated to a program at a level commensurate with their responsibility to plan, review, award, and administer the contracting requirement.

e. Contracting officer warrants, specifically limited by time, dollar amount and/or function, shall be issued by Heads of Contracting Activities (HCAs) or their designated representative as necessary to accommodate SEC requirements.

f. SEC contracting responsibilities will be accomplished through the established chain of command and HCA structure.

g. Contracts must comply with all appropriate statutes and Federal/DOD/DA regulations. For contracting in a secure environment, established contracting offices and officials may be authorized to obtain or approve deviations from procedures prescribed by regulations, but only as specified in those regulations. Notwithstanding the need for security and flexibility; adherence to sound contracting procedures is mandatory, including as a minimum:

- (1) Authorization and validation of requirements
- (2) Certification of fund availability.
- (3) Legal sufficiency.
- (4) Procurement integrity.
- (5) Fair and reasonable price.
- (6) Appropriate determinations.
- (7) Appropriate contract audit and administration.
- (8) Retention of contract files
- (9) Personal accountability for all actions taken.

h. SEC procedures may not be applied to procurements involving foreign technology transfer (see DFARS 225.871).

i. SEC generally supports the following principal mission areas, organizations and activities:

- (1) Special Operations Forces (SOF).
- (2) Special intelligence operations
- (3) Research and development associated with sensitive advance weapons and technology.

j. SEC involves two essential differences from the normal contracting process as follows:

(1) Requests for assistance and guidance in specific situations as set forth below should be submitted through MACOM/ SEC procurement channels to Office of the Deputy Assistant Secretary of the Army (Procurement) ATTN: SAAL-PP, 5109 Leesburg Pike, Suite 302, Falls Church, VA 22041-3201:

(a) Authorization for deviations, waivers, or the use of nonstandard contracting methods not otherwise authorized by this regulation.,

(b) Obtaining SEC support from existing Army HCAs and contracting offices.

(c) Technical advice about contract types, functional procedures, and use of appropriate contracting techniques to achieve unique or complex objectives.

(2) Use of special procedures, when authorized per paragraph (1) above may be required during the contracting process to minimize risks of security compromise. These would include special procedures for the following:

(a) Solicitation

(b) Audit

(c) Reporting of statistics

(d) Collection and use of past performance information

(e) Storage of information

(f) Resolution of disputes

(g) Payments (e.g. use of commercial credit cards/cash)

(h) Use of a prime contractor to mask identification of contracting parties.

(i) Contract administration.

(j) SEC programs will establish procedures for reporting alleged or suspected criminal activity to the USACIDC per DOD Instruction 5505.2, AR380-381, and AR195-2.

1-5. Exceptions

Requests for exceptions to this regulation shall be submitted to HQDA (see address in paragraph 1-4j(1)), and will include:

a. A reference to the provisions to which the exception is required.

b. A brief statement of the facts in support of the exception and mission impact should it not be approved.

c. A reference to any other provision of law or regulation that affects the exception.

d. An indication of when (in time) the exception is required to meet planned procurement lead times.

1-6. Objectives

Objectives of this regulation are as follows:

a. To establish and maintain a secure contracting capability that provides user and procurement personnel with appropriate procedures for acquiring supplies, services, and construction in a manner that is legal, supports the mission and security requirements and is in the best interest of the U.S. Government.

b. To ensure identification and use of adequate checks and balances, accountability and oversight, and define reporting responsibilities for SEC, in order to assure adherence to appropriate regulations, policies and procedures.

Chapter 2

Responsibilities

2-1. Assistant Secretary of the Army (Acquisition, Logistics and Technology) (ASA (ALT))

The ASA (ALT) will

- a. Develop SEC policies and special contracting procedures and support.
- b. Assure appropriate Army management and implementation of SEC procedures and functions.
- c. Provide oversight of SEC execution.
- d. Coordinate SEC actions with the appropriate DA and DoD staff elements.
- e. Approve exceptions to this regulation.

2-2. Assistant Secretary of the Army Financial Management (ASA (FM))

The ASA(FM) will-

- a. Develop financial and budgeting guidance for SEC.
- b. Implement staff support and execution review for SEC requirements at program appropriation level.
- c. Provide cost estimating support for selected SEC actions.
- d. Ensure coordination with ASA(ALT) on SEC activities.

2-3. Director of Information Systems for Command, Control, Communications, and Computers (DISC4)

The DISC4 (SAIS-SDC) will –

- a. Review and approve, in coordination with ASA (ALT), SEC Federal information processing (FIP) requirements as required.
- b. Provide technical advice and assistance on information systems security, and system accreditation required in AR 380-19, Information Systems Security.
- c. Ensure coordination with ASA (ALT) on SEC activities.

2-4. Office of the General Counsel (OGC)

The OGC will provide legal advice concerning SEC to the OASA(ALT) and has legal oversight for SEC matters.. On an as needed basis, OGC will also provide a legal member to the OASA(ALT) SEC oversight team.

2-5. Deputy Chief of Staff for Operations and Plans (DCSOPS)

The DCSOPS will--

- a. Review combat developments, concepts, systems, and operations and identify those that require extraordinary security.
- b. Approve requirements for acquisition of nonstandard items of equipment for Special Operations Forces (SOF).
- c. Ensure coordination with ASA(ALT) on SEC activities.

2-6. Deputy Chief of Staff for Logistics (DCSLOG)

The DCSLOG will--

- a. Provide guidance and oversight of integrated logistics support efforts for programs requiring SEC.
- b. Support requirements for procurement of nonstandard items of equipment for special missions, to include requirements for expedited procurement requests.
- c. Ensure coordination with ASA (ALT) on SEC activities

2-7. Deputy Chief of Staff for Intelligence (DCSINT)

The DCSINT will--

- a. Coordinate with and assist other Army staff agencies in intelligence assessment, threat assessment, and necessary counterintelligence support to operational security (OPSEC) for the

execution of SEC.

- b. Identify requirements for FMA and nonstandard items for sensitive intelligence activities.
- c. Ensure all DCSINT activities/programs develop appropriate security classification guides for SEC and make them available to SEC offices and ASA (ALT).
- d. Ensure coordination with ASA (ALT) on SEC activities.

2-8. U.S. Army Chief of Engineers (USACE)

The USACE will--

- a. Provide military construction support for all military construction Army (MCA) approved facilities in accordance with AR 415-15.
- b. Provide reimbursable construction support for SEC customers when requested by the host installation commander as demonstrated in the installation master plan, AR 210-20, or with waiver by the MACOM owning the installation.
- c. Acquire real property, to include lease, for SEC customers in accordance with AR 405-10, and in coordination with the Technical Management Office (TMO) DACS-DMP.
- d. Coordinate and consult with SEC customers on all support requirements that exceed the security requirements identified in AR 380-5 prior to initiating USACE support. The office responsible is CEMP-ZF, Washington, D.C., 20314-1000.
- e. Ensure coordination with ASA (ALT) on SEC activities.

2-9. The Surgeon General (TSG)

The TSG will--

- a. Provide support for medical research, development, acquisition, and packaging of medical supplies and services as required.
- b. Review and approve all medical program SEC requirements.
- c. Ensure coordination with ASA (ALT) on SEC activities.

2-10. Office of the Judge Advocate General (OTJAG)

The OTJAG will--

- a. Provide legal advice on SEC matters (in coordination with the Office of General Counsel).
- b. Review all policy guidance on SEC for legal sufficiency (in coordination with the Office of the General Counsel).
- c. Provide a legal member to the OASA(ALT) SEC oversight team.

2-11. Chief, Technology Management Office (TMO) (DACs-DMP)

The Chief, TMO will--

- a. Register all Special Access Programs and oversees Army sensitive activities.
- b. Ensure coordination with ASA (ALT) on SEC activities.

2-12. Director, Technology Application Office (TAO),

The Director, TAO, will:

- a. Provide support to the Army Information Mission Area (IMA):
 - 1. Special Access Programs
 - 2. Prospective Special Access Programs
 - 3. Special Operations Forces
 - 4. Sensitive activities,
- b. Ensure coordination with ASA (ALT) on SEC matters.

2-13. The Commanding General, U.S. Army Criminal Investigation Command (CG, USACIDC)

The CG, USACIDC will--

a. Investigate all suspected or alleged criminal activity in or directed against SEC per AR 195-2 and DOD Instruction 5505.3.

b. Conduct periodic Economic Crime Threat Assessments (ECTA), Crime Prevention Surveys (CPS), and Target Analysis in the SEC to identify crime-conducive conditions, undetected criminal activity, and assist in risk assessment per AR 195-2 and AR 380-381.

2-14. Commanders of Major Army Commands (MACOMs)

MACOM commanders will--

a. Establish capability (or an MOU for support) to execute and monitor SEC in assigned commodities and/or areas of responsibility, including any special training required for acquisition team personnel.

b. Provide for adequate secure facilities in which to conduct SEC, and secure telecommunications as required.

c. Provide for legal review of actions so designated in AFARS Subpart 1.6, of all SEC for which they are designated as the responsible HCA.

d. Assure financial and budgetary support is available for SEC.

e. Assure security clearance and OPSEC support to SEC.

f. Develop security classification guides (SCGs) for items to be procured by SEC prior to release of procurement information to industry. Ensure all SCGs are available to SEC contracting offices and ASA(ALT).

g. Provide copies of all oversight schedules by 1 October of each fiscal year, and copies of reports to DACS-DMP and SAAL-PR within 30 days after issuance.

2-15. Deputy Assistant Secretary of the Army (Procurement) (DASA(P)), OASA(ALT)

The DASA(P) will—

a. Process SEC actions requiring HQDA or higher-level approval.

b. Perform procurement management assistance visits and oversight reviews of activities conducting SEC.

c. Develop and promulgate procurement policies affecting SEC.

2-16. Heads of Contracting Activities (HCAs)

HCAs shall--

a. Establish a SEC capability or establish an MOU with an existing SEC contracting activity to accommodate any SEC requirements which may arise.

b. Develop and promulgate implementing SEC policies and procedures to the extent necessary.

c. Provide secure space in which to conduct SEC.

d. Perform oversight of their SEC organizations and actions and ensure that appropriate internal controls are in place.

e. Provide oversight review schedules and/or methodology by 1 October of each fiscal year. Copies of reports shall be provided to DACS-DMP and SAAL-PP, within 30 days after issuance.

2-17. Program/Project/Product Managers and other Requirements Sponsors

Program/Project/Product managers and other managers with requirements for SEC will--

a. Ensure that the cognizant contracting officer, legal counsel, and other functional personnel (such as auditors, cost/price analyst, logistician, logistics manager and reviewing officials) are indoctrinated to the program at a level commensurate with their responsibilities to plan, review, award, and administer the contracting requirement.

b. Furnish the contracting officer all documents necessary to validate requirement approvals.

c. Prepare planning documents necessary for orderly program execution, to include all supporting documents necessary to process the contracting requirement.

2-18. Secure Environment Contracting Officers

a. All contracting officers and supporting personnel engaged in the SEC process will be familiar with the contents and requirements of this regulation.

b. The contracting function, to be performed correctly, must be supported by accurate and complete data from the requiring activity (including such documentation as independent government estimates, technical input to justifications and approvals, statements of work, and procurement planning information). Data supporting SEC procurement shall not be "sanitized" to classify it at a lower level. Communications between contracting officers and the requiring activity shall not be impeded for security reasons, but security requirements must be observed. The contracting officer and requiring activity shall work together to ensure all necessary security conditions (such as appropriate program briefings, secure work area, storage capability and secure telecommunications equipment) are met to enable complete and timely participation by the contracting office. In order to enhance the contracting officer/customer relationship, and to provide general guidance for requiring personnel, Contracting Officers will provide the "Requiring Activity Contract Support Guide" (Appendix B) to customers along with any command or local supplementation.

Chapter 3 Special Contracting Procedures, Decision and Execution Process

Section I General

3-1. Scope

This section addresses those unique SEC procedures and processes that may be used throughout the secure environment contracting cycle as necessary to protect sensitive activities and the integrity of the procurement process. It also addresses special decision and approval levels and procedures.

3-2. Requirements Decision Process

All requirements for special contracting procedures in a secure environment, described in paragraph 1-4 above, must be justified and validated in accordance with paragraphs 3-11 and 3-12 below.. See the Requiring Activity Contract Support Guide at Appendix B for more details.

3-3. Contracting Process

General.

(1) All contracts executed in a secure environment will be accomplished in accordance with the appropriate statutes and Federal/DOD/DA regulations and procedures, and authorized exceptions as set forth in this regulation.

(2) Full and open competition will be obtained in accordance with Title 10, United States Code, Sections 2304-2305 (10 USC 2304-2305), as implemented by FAR Part 6, as supplemented. The sensitivity of SEC may necessitate contracting under circumstances requiring other than full and open competition. Contract approval authorities for justifications for other than full and open competition are contained in FAR Part 6, as supplemented. In keeping with security considerations, it may be necessary to restrict competition to only cleared sources. When disclosure of the Army's needs (through synopsis or otherwise) would compromise the national

security (e.g., violate security restrictions), the authority of 10 U.S.C. 2304(c)(6), as implemented by FAR 6.302-6, shall be used as the principal authority to limit the sources for solicitation of proposals, in preference to other authorities which may apply (e.g., FAR 6.302-1 or 6.302-2). Justification for use of this authority should state the grave damage that would occur to the national security if the requirement were to become publicly known. This exception should not be used if it is possible to write an unclassified synopsis and have it published without any damage to the security posture of the program or action. The National Security exception provides authority to limit competition to those sources that can be cleared or are cleared, but does not by itself justify going to a single source ("The...agency...shall request offers from as many potential sources as is practicable under the circumstances.") . If the procurement can only be made from a single source, the justification for other than competitive procedures should include those reasons a particular source was chosen, and cite the relevance of any other pertinent facts in paragraph 10 of the J&A. When limited special security billet structures preclude soliciting all cleared contractors in a competition, efforts should be made to distribute recurring procurement opportunities among different cleared sources.

3-4. Announcement of Contract Awards

a. SEC contracts require Congressional and public notification upon award in accordance with FAR 5.303, DFARS 205.303, and AFARS 5.303.

b. If notification to Congress is not classified, then normal notification procedures shall be used. If using normal procedures would cause a security violation, notifications should be made through secure channels as described below:

(1) Secure channels of Congressional notification shall be used to comply with DFARS 205.303(a)(iii). This requirement cannot be waived. In accordance with regulations relating to notification of contract awards, the contracting officer should transmit information to the properly cleared point of contact in the MACOM Office of the Principal Assistant Responsible for Contracting (OPARC) (if this is normally required for unclassified contracts) and be transmitted by secure fax (if classified) to:

Technology Management Office, ATTN: DACS-DMP Contracts Officer 200 Army Pentagon, Room ID711 Washington, DC 20310-0200. Concurrently, information for U.S. Army Materiel Command (AMC) awards should be transmitted by secure Fax to the U.S. Army Materiel Command, ATTN: AMCRDA-AC. TMO will ensure compliance with appropriate Congressional notification requirements. This procedure satisfies the requirement of DFARS 205.303(a)(iii) or any other Congressional notification requirement based in law.

(2) There are other publicity requirements, not based in statute, from which an appropriate waiver or deviation may be sought if compliance is not possible for security reasons. Some examples are:

(a) FAR 5.303(a) and DFARS 205.303a(ii) requirements for public announcement,

(b) The DFARS 205.303(ii)(A) requirement for submitting information to the Office of the Assistant Secretary of Defense (Public Affairs); and

(c) The AFARS requirements for detailed notification for awards in excess of \$100 million (White House/Secretary of Army notice requirement) will be met if information is forwarded to properly cleared personnel in SAAL-PP. However, if a secure fax is not available classified faxed material may be sent through TMO (address and number above).

c. For other Congressional notification requirements listed below the secure notification process must be followed if release of classified information is involved. Other publication or notification requirements must be met unless that requirement is *not required by statute*, and the regulation, or other source of the requirement, is properly waived. Other regulations (not an all-inclusive list) that require Congressional notification or certification in the specific circumstances cited in the regulation follow:

- (1) FAR 6.302-7 ("public interest" exception to full and open competition--notification required if used)
- (2) DFARS 206.302-5 ("authorized or required by statute" exception to full and open competition--notification required if used)
- (3) DFARS 225.7011-2 (notification required for awards to foreign governments or firms)
- (4) DFARS 236.601 (requires 21 day advance notification of award of an architect-engineer or construction design contract for military construction)
- (5) AFARS 46.770-8 (waiver and notification procedures concerning warranties)
- (6) DFARS 249.7001 (notification is required for any contract termination involving a reduction in employment of 100 or more contractor employees)

3-5 Application of Past Performance in Source Selection

In order to properly consider past performance in source selection for SEC awards, contracting officers shall solicit from offerors' information on relevant classified (non-SAP) as well as unclassified prior contractual efforts. As a minimum, offerors shall be required, for non-SAP classified efforts, to identify the relevant contract number and a point of contact at the contracting or contract administration organization. Contracting Officers should utilize Past Performance Information Management System (PPIMS), DoD's Past Performance Automated Information System (PPAIS) and any locally maintained classified Past Performance data to the maximum extent possible. If information is still considered to be insufficient, contracting officers may contact DACS-DMP/SAAL-SO (ATTN: Contracts Officer) to find out if there is relevant SAP past performance information available.

3-6. Protest Procedures

When a SEC contracting officer receives a protest (whether a GAO protest or an agency protest), the contracting officer shall promptly notify the appropriately cleared servicing legal office.

3-7. Contract Award Reporting for SEC

a. Secure Environment Contracting actions are not exempt from reporting in the Defense Contract Action Data System (DCADS). DD Forms 1057 (Monthly Contracting Summary of Actions (\$25,000 or Less)) and DD Forms 350, Individual Contracting Action Report (\$25,000 or more) (see Figure 3-1), shall be prepared in accordance with the DFARS, as supplemented, to include all applicable SEC action

b. For classified contracts greater than \$25,000 and reportable on a DD Form 350, contact the Army Data Collection Point (see DFARS 204.670(C)(1)) in accordance with DFARS 204.670-7 for instructions.

3-8. Collection of Past Performance Information

Contracting Officers shall collect past performance information on all SEC contracts as required by AFARS 42.1502-90. If the information required by the Past Performance Information Management System (PPIMS) is classified, it shall not be reported to PPIMS, but maintained locally (see AFARS 42.1502-90(j)(3)).

3-9. Audit Follow-up

a. SEC contracting officers and offices must comply with the audit follow-up requirements of DOD Directive 7640.2, Policy for Follow-up on Contract Audit Reports. Guidance on implementation by SEC contracting offices for special access programs is contained in this regulation and AFARS 15.490. SEC contracting officers for SAP and other highly classified or sensitive contract actions are expected to use the full audit services of the Defense Contract Audit Agency (DCAA) and to fully comply with audit follow-up requirements for each SAP.

b. PARCs may accomplish Overage Audit Review Board review of SEC audits by using cleared personnel and procedures established for other types of SEC contract document reviews. PARCs are responsible for ensuring that an Overage Audit Review Board is established and operating for all SEC offices as well as their other contracting offices. All PARCs shall submit the names of the "single entity for requesting, receiving, and tracking all audit reports" specified in AFARS 15.490-4 to the address in 1-4j(1) for all affected SEC contracts. When cleared DCMA or DCAA personnel are supporting the program, they are also to be notified in accordance with AFARS 15.490-4.

c. The only variation from AFARS requirements permitted for SEC will be the cognizant office for submission of report requirements in 15.490. The submission point for SEC contracting officers will be the address cited at 1-4j(1). The cognizant DCAA POC for SAP audit follow-up matters is the SAP Procurement Liaison Auditor, Field Detachment, DCAA.

3-10. Freedom of Information Act (FOIA)

- a. All SEC FOIA requests shall be processed through the cleared FOIA officer designated to handle such requests. The FOIA officer must seek legal advice from a cleared attorney in the servicing legal office. There is an exemption in the FOIA for properly classified documents, but this does not necessarily mean all documents in support of a classified program may be denied.
- b. An appropriate security review must be completed for all classified documents and unclassified technical information prior to the rendering of a release determination.

3-11. Staffing Procedures for SEC Approvals (except SAPs)

Follow the normal chain of command up through the MACOM. All SEC documents requiring approval above the MACOM level will be submitted to the address cited in 1-4j(1). For SAP approvals see 3-13 below.)

Section II Special Access Programs (SAPs)

3-12. Requirements

- a. SAP documentation formats and procedures for requirements, registration, and approval are detailed in AR 380-381.
- b. Only a program registered and approved in accordance with AR 380-381 is recognized as a SAP.
- c. SAP Security Managers shall prepare and sign the DD Form 254 for each SAP related contract and the contracting officer shall review it prior to inclusion in any contract document.

3-13. Contracting Process

- a. During the SAP approval process, a specific contracting activity will be designated to execute the contracting requirements in accordance with AR 380-381.
- b. Contracting officers designated to conduct procurements in support of a SAP are responsible for ascertaining prior to execution that:
 - (1) The SAP is approved as validated by HQDA (DACS-DMP).
 - (2) The actionable contracting activity is the designated contracting activity for that SAP.
- c. SEC personnel, following the program security classification guide, are authorized to apply appropriate security classification and access markings to documents (such as "SECRET" and "SPECIAL ACCESS REQUIRED"). SEC personnel can restrict access to files consistent with the security classification of the program, as provided below.
 - (1) The purpose of such restriction is to minimize potential security compromise.
 - (2) The restriction does not preclude access by authorized Government managers, inspectors,

and auditors who have an essential need for information pertaining to these contracts and: (a) have the requisite security clearances, (b) are authorized access to the program, and have a need to know.

d. Army policy dictates that no SAP contract will "carve-out" the Defense Security Service (DSS) from the contract security inspection process unless such action is specifically reviewed by the Secretary of the Army, and approved by the Deputy Secretary of Defense (see AR 380-381 para. 1-4c).

e. The requirement contained in FAR 15.4, as supplemented by DFARS and AFARS, for DCAA cost and pricing support for negotiated contracts, applies to SEC contracts. Determinations not to use field pricing support will be in accordance with FAR Part 15, as supplemented, and will not be based solely on the secure nature of the requirement. The DCAA point of contact for handling such requirements is in Section VI, 3-21b. below.

f. Contracting officers for approved SAPs shall comply with paragraph 7-8 of AR 380-381, "Contract Security Requirements," prior to incorporation of DD Forms 254 or revisions thereof in contract documents; and shall comply with any other applicable portions of that regulation pertaining to responsibilities of contracting officers.

g. All contracts requiring SAP access for contractor personnel will contain the provision for such contractor personnel to be willing to submit to a random Counterintelligence-scope polygraph examination. This requirement shall be made applicable to contractors by including the following language on the DD Form 254, Contract Security Classification Specification, which shall be made a part of the contract. **(Failure to include this language may make the polygraph requirement unenforceable):**

Defense contractor personnel who require access to Army Special Access Program (SAP) information, as defined by AR 380-381, must agree to undergo random counterintelligence scope polygraph examinations, when requested by proper authority, to determine suitability for receiving and/or maintaining access to SAP information. Contractors will certify prior to contract award, or subsequent to award, but prior to the commencement of duties for new employees, that all personnel so identified have freely consented to such examination. Contractor personnel who withdraw their consent at any time during their period of access must be immediately removed from access to SAP information, and such action must be promptly reported to the contracting officer or such party as he may direct. Additional information about polygraphs, and DD Forms 254 for SAPs is contained in AR 380-381, including the requirement for distribution of a copy of all DD Forms 254 in support of SAP contracts to be forwarded to HQDA (DACS-DMP), Room D711, 200 Army Pentagon, Washington, DC 20310--0200. Additionally, any requirement that contractor personnel must undergo polygraph examinations needs to be clearly stated in the contract document.

h. Upon completion of a SAP contract, the closeout procedures set forth in AR 380-381, shall be followed, in addition to the applicable portions of FAR/DFARS/AFARS.

i. Each contracting officer supporting SAP(s) shall assure that the proper coordination with and delegation of authority to DCMA for contract administration services has been made. .

j. Staffing procedures for SAP contract document approvals are as follows:

(1) Staffing shall follow normal command chain of review for SEC up through the MACOM, and shall be forwarded to DACS-DMP, ATTN: Security Officer, Hold for ODASA(P), ATTN: SAAL-PP, if HQDA action is required.

(2) Cognizant contracting and technical personnel shall be prepared to brief, upon request, the DASA(P) and/or the Army Acquisition Executive (AAE) on documents requiring DASA (P) or AAE coordination or approval.

Section III

Sensitive Compartmented Information (SCI) Contracts

3-14. Requirements

a. Army contractual efforts containing SCI, will be managed in accordance with AR 380-28, DA Special Security System, dated 1 April 1997 and/or its successor regulation. AR 380-28 is used in conjunction with the following manuals:

(1) DoD C-5105.21-M-1, Sensitive Compartmented Information (SCI) Security Manual, Administrative Security, dated March 1995.

(2) DoD TS-5105.21-M-2, Communications Intelligence (COMINT) Policy, dated July 1985.

(3) DoD TS-5105.21-M-3, Sensitive Compartmented Information (SCI) Security Manual, TK Policy, dated November 1985.

(4) Defense Intelligence Agency Manual (DIAM) 50--5 Volume I, Sensitive Compartmented Information (SCI) Contractor Administrative Security, dated 22 October 1979.

(5) Defense Intelligence Agency Manual (DIAM), 50-4, Security of Compartmented Computer Operations.

b. The release of SCI information to an Army contractor or contract consultant requires specific security safeguards in addition to those specified in DoD 5220.22-M, National Industrial Security Program Operating Manual. Commander, Intelligence and Security Command, G2, through the Contractor Support Detachment (CSD) or its successor organization, acting on behalf of the DCSINT, as the Cognizant Security Authority (CSA) for the US Army, has exclusive administrative security oversight responsibility for all SCI released to the contractor or developed under the Army contract.

3-15. Contracting Process

a. Pursuant to AR 380-28, Army personnel involved with SCI contracts will coordinate with the CSD for guidance to meet the unique security requirements for the protection of SCI material and documents.

b. Specific responsibilities for the CSD, Contracting Officer's Representative (COR), Contract Monitor (CM), the Contractor Special Security Officer (CSSO) and the SAP Security Manager are contained in AR 380-28.

c. When a contractor requires access to SCI, the cognizant CM is responsible for the development, execution, and any required revisions of the DD Form 254 (see Figure 3-1) in coordination with the CSD prior to any solicitation or award, and during the entire life of the SCI contract to include all modifications. Any revisions to the DD Form 254 shall be incorporated into the contract.

d. The Army SCI Supplement shown at figure 3-2 is to be executed and attached to all DD Forms 254 when an SCI requirement has been identified.

e. The Defense Security Service (DSS) has security inspection responsibility for DoD SCI contractors and retains responsibility for all collateral information released or developed under the contract and held within the DOD contractor's Sensitive Compartmented Information Facility (SCIF).

f. A DSS TOP SECRET facility clearance is a prerequisite for award of an SCI contract to a specific contractor.

g. DIAM 50-5 contains information on completion or termination of contracts, visitor control, information security, administrative handling, and accountability of SCI. DIAM 50-4, contains information regarding compartmented computer operations.

Section IV

Secure Contracting Requirements Using Other than Simplified Acquisition Procedures

3-16. Requirements

a. Prior approval is required to use SEC. Approval for other than SAP, SCI or FMA requirements may be obtained *on a program/project basis* as follows:

Commanders or heads of HQDA activities will forward, through their cleared command and/or contracting channels to SAAL-PP, their request for approval to use SEC procedures, prior to initiating any contract action. The request must contain the following:

- (i) Justification for request.
- (ii) Description of the item or non-personal service to be acquired.
- (iii) Estimated cost.
- (iv) Date supply or service is required.
- (v) Proposed contracting organization.
- (vi) Any other special considerations.

b. The project sponsor or other requiring activity will submit complete and proper documentation to the designated contracting organization for execution of the procurement action (see appendix B).

3-17. Contracting Process

During the approval process, a specific contracting office or activity will be designated by the ODASA(P), SAAL-PP, to award and manage the SEC contract(s). Contracting officers will not process a requirement in this category without ascertaining that the use of SEC procedures has been approved by HQDA and that their activity is the designated SEC contracting office.

Section V Secure Environment Simplified Purchases (SESP)

3-18. General

Simplified purchases may be made to satisfy secure environment operational requirements using simplified acquisition procedures as set forth in FAR Part 13 and herein.. Secure environment simplified purchasing may also be used by contracting officers in satisfying purchase requirements under the simplified acquisition threshold when cover is required. (See AR 381-102). SESP contracting officers or properly appointed secure environment ordering officers may perform required SESP as authorized by the HCA or PARC.

3-19. Procedures

a. SESP procedures provide guidance for Army support of sensitive operations, pre-approved for SEC, and not addressed by FAR Part 13. To the extent that Contingency Contracting Officers are involved in SEC contracting actions they shall comply with this regulation.

b. SESP contracting officers and Secure environment ordering officers will ensure that all SEC actions are justified and supported by appropriate documentation, such as required justifications, statement of work/schedule or performance period and appropriate funding, as evidenced in the official file.

c. These procedures apply to all Army activities supporting operations whose requirements are such that security considerations are of critical importance. Their functions must also be performed in ways that will not compromise or preclude accomplishment of sensitive operations, yet comply with applicable laws and regulations.

3-20. Methods of Operation

a. Authorized SESP contracting/ordering officers will exercise contracting/ordering officer authority only when necessary for mission performance.

b. HCAs (through the PARC) will perform functional reviews of SESP contracting officers and SE Ordering Officers for control purposes.

3-21. Special Methods of Operation

For the simplified acquisition procedures described in FAR 13, the SESP contracting officer or a properly appointed SE ordering officer may use an SF 44 Purchase Order Invoice Voucher when contracting in a secure environment (regardless of location). The SF 44 may be used by the SESP contracting officer to acquire goods or services that do not exceed the simplified acquisition threshold at FAR 2.101, and when use of the IMPAC card is impracticable. A maximum \$2,500 limitation applies for ordering officers (see AFARS 1.603-1-90). When SF 44s are used in a secure environment to protect the buyer's identity, a signature from the seller is not obtained. Therefore, receipt from the vendor will be attached to the SF 44 when submitted for processing. When circumstances do not permit the SESP contracting officer or SE ordering officer to obtain a receipt, the SESP contracting officer or SE ordering officer will execute a certification of the expenditure. The certification of expenditure should include:

- (a) The date and location of the purchase.
- (b) A description of the goods or services.
- (c) The cost of the goods or services.
- (d) The name of the vendor (seller).
- (e) The signature of the SESP contracting officer or ordering officer.

Section VI

Contract Administration Support, Criminal Investigative Support and Security Support

3-22. Contract Administration Support (CAS)

The Defense Contract Management Agency (DCMA) has the responsibility for (CAS) for SEC contracts. DCMA and DCAA have appropriately cleared personnel to provide requisite support. SAP managers and SEC contracting officers are expected to delegate SAP contract administration authority and responsibility to DCMA and to fully use DCAA audit assets and services. Such support can be arranged as follows:

- a. *DCMA.* All secure environment contracting officers shall ensure that proper coordination with and delegation of authority to DCMA of CAS has been made, or MOUs established with DCMA, to define the detailed support DCMA will provide for the SEC contracts for which they are responsible.
- b. *DCAA.* The DCAA Field Detachment (FD) will receive and perform all SAP audit work. The FD will coordinate any plans necessary to transition any ongoing or completed SAP work handled by DCAA regional offices. The Procurement Liaison Auditor (PLA) for SAPs will do the following:
 - (1) Notify the FD of all impending awards of newly designated SAPs.
 - (2) Notify the FD of all requests for DCAA audit services on existing or completed SAPs for which no DCAA auditor has been briefed.
 - (3) Ensure that individual SAP acquisition offices and requesters are fully aware of the FD's audit cognizance. (Any questions should be directed to the SAP Procurement Liaison Auditor at 703-227-9063).

3-23. Security Support

- a. Contracting officers will use the DSS to conduct contract industrial security inspections (but see 3-15 for special requirements related to SCI)
- b. Prior to any contact with industry, the contracting officer will ensure all potential contractors have the proper personnel and facility clearances and that they need to know the data presented.
- c. The clearance of contractor's personnel as well as facility security clearance and storage capacity can be verified by the local security manager, who will check with the DSS.

3-24. Investigative Support

- a. Contracting Officers will report all instances of known or suspected criminal activity within SEC to the Field Investigative Unit, U.S. Army Criminal Investigation Command.

b. Contracting Officers will support the Field Investigative Unit in its periodic update of the SEC Economic Crime Threat Assessment Survey.

US ARMY SCI ADDENDUM TO DD FORM 254, 1 December 1998

XXX (1) This contract requires access to Sensitive Compartmented Information (SCI). The Commander, US Army Intelligence and Security Command (INSCOM), acting on behalf of the DA Deputy Chief of Staff for Intelligence (DCSINT), as the Cognizant Security Authority (CSA) for the US Army, has exclusive security responsibility for all SCI released to the contractor or developed under the contract and held within the Contractor's SCI Facility (SCIF) or Co-utilization Agreement (CUA) SCIF. The Defense Intelligence Agency (DIA) has security inspection responsibility for SCI and the Defense Security Service (DSS) retains responsibility for all collateral information released or developed under the contract and held within the DoD Contractor's SCIF. The manuals, regulations and directives checked below provide the necessary guidance for physical, personnel, and information security for safeguarding SCI, and are part of the security classification specification for this contract:

XXX DoD 5105.21-M-1, SCI Security Manual, Administrative Security

XXX DoD TS-5105.21-M-2, SCI Manual, COMINT Policy

 DoD TS-5105.21-M-3, TK policy

 DCID 1/21, Physical Security Standards for Construction of SCIFs

 DIAM 50-4, DoD Intelligence Information System.

 DIAM 50-24, Security for Using Communications Equipment in a SCIF.

 AR 380-19, Information System Security

XXX AR 380-28, DA Special Security System

 AR 380-381, Special Access Programs (SAPS).

XXX Army Handbook for SCI Contracts.

 Other

XXX (2) Contract estimated completion date: _____ (NOTE: Section "F" of the contract normally provides the Period of Performance. Option years are not to be included as an option is not valid until exercised by the government.)

XXX (3) The name, telephone number and address of the Contract Monitor (CM) for the SCI portion of this contract is: _____ Additionally, identify the Security POC & phone number at the contractor's/subcontractor's location.

XXX (4) All DD Forms 254 prepared for subcontracts involving access to SCI under this contract must be forwarded to the CM for approval and then to HQ INSCOM, ACofS Security, G2, Contractor Support Element (CSE) for review and concurrence prior to award of the subcontract.

XXX (5) The contractor will submit the written request for SCI visit certifications through the CM for approval of the visit. The certification request must arrive at the appropriate Contractor Support Detachment (CSD) at least ten (10) working days prior to the visit.

XXX (6) The contractor will not reproduce any SCI related material without prior written permission of the CM.

 (7) Security Classification Guides or extracts (are attached) (will be provided under separate cover) by the User Agency.

 (8) Electronic processing of SCI requires accreditation of the equipment in accordance with DCID 1/16, Dir., Central Intelligence Directive, DIAM 50-4, and AR 380-19 (Note: Check only if item 111 indicates that a requirement exists for SCI AIS processing.)

 (9) This contract requires a contractor SCIF.

XXX (10) This contract requires (SI) (SI/TK) (SI/TK/G) Accesses

XXX (11) The contractor will perform SCI work under this contract at the following locations: _____

APPENDIX A

References

Section I.

Required Publications.

AR 11-2, Management Control.

AR 25-1, Army Information Resources Management Program.

AR 210-20, Master Planning for Army Installations.

AR 380-5, Department of the Army Information Security Program.

AR 380-28, Department of the Army Special Security System.

AR 380-381, Special Access Programs (SAP.)

(C) AR 381-141, Intelligence Contingency Funds.

AR 405-10, Acquisition of Real Property and Interest Therein.

AR 415-15, Army Military Construction Program Development and Execution.

Army FAR Supplement (AFARS.)

Federal Acquisition Regulations (FAR.)

DoD FAR Supplement (DFARS.)

National Industrial Security Program Operating Manual.

DoD Directive 7640.2, Policy for Follow-up on Contract Audit Reports (Cited in Para. 3-5.)

Section II.

Related Publications.

A related publication is merely a source of additional information. The user does not have to read it to understand this regulation.

AR 70-1, Acquisition Policy.

AR 195-2, Criminal Investigation Activities.

AR 11-7, Internal Review and Audit Compliance Programs.

AR 37-64, Finance and Accounting for Sensitive Mission.

AR 380-49, Industrial Security Program.

AR 380-19, Information Systems Security.

AR 381-10, U.S. Army Intelligence Activities.

(S) AR 381-26, Army Foreign Materiel Exploitation Program, Secret.

(S) AR 381-102, U.S. Army Cover Support Program, Secret.

(C) AR 381-143, Logistics Policies and Procedures.

AR 530-1, Operations Security (OPSEC).

AR 710-2, Inventory Management Supply Policy Below the Wholesale Level.

DCAA Instruction 5205.11, Procedures for Implementing Audit Effort of Special Access Programs (SAPs).

DoD 5105-M-1, Sensitive Compartmented Information Administrative Security Manual.

DoD Directive 5205.7, Special Access Program Policy, FOUO.

DoD Directive 5210.48-R, DoD Polygraph Program.

DoD 5500.7-R, DoD Joint Ethics Regulation.

DoD Instruction 5505.2, Criminal Investigation of Fraud Offenses.

DoD Instruction 5505.3, Initiation of Investigations by Military Criminal Investigative Organizations.

MIL-HDBK-245B, Preparation of Statement of Work (SOW).

Section III.

Prescribed Forms.

This section contains no entries.

Section IV.

Referenced Forms.

DA 11-2-R, Management Control Evaluation Certification Statement.

DA Form 3953, Purchase Request and Commitment

DD Form 254, Department of Defense Contract Security Classification Specification

DD Form 350, Individual Contracting Action Report

DD Form 1057, Monthly Contracting Summary of Actions \$25,000 or Less

APPENDIX B

Requiring Activity Contract Support Guide

B-1. Introduction

The following information is provided to give general guidance to requiring personnel. It is intended as a starting point for those who are not familiar with the procedures of Federal contracting. It is not intended as a substitute for a review of the pertinent statutes and procurement and finance regulations or for obtaining an appropriate legal review of proposed contract actions.

B-2. Ethics and Acquisition

a. Standards of ethical conduct for employees of the Executive Branch.

(1) In all contract-related functions, emphasis is placed upon the importance of protecting the interests of the Government and avoiding acts that may compromise the Department of the Army. Public confidence in the integrity of the relationships between the Government and industry is essential.

(2) To avoid a conflict of interest, or even the appearance of a conflict, the following guidance is provided:

(a) The DOD Joint Ethics Regulation is contained in DOD 5500.7-R. Procurement integrity requirements are implemented in FAR 3.104 and its supplements.

(b) An individual should never be in a position to influence or participate in dealings on behalf of the Government with any firm in which the individual has a financial or personal interest. Whenever such a situation is likely to develop, the individual should disclose the matter to his/her immediate supervisor and to the cognizant contracting officer. The individual will be removed from activities where a conflict or an apparent conflict of interest may be present.

(c) Government personnel should (in accordance with the DoD Joint Ethics Regulation) refuse any offer of favors, gratuities, considerations, assistance, meals, or entertainment offered to themselves or members of their family by any contractor with whom they are conducting business or expect to conduct business. Contracts may be terminated and penalties applied against a contractor who has been found to have offered gratuities, particularly those which may be defined as bribes. If offered a bribe, the individual should refuse and should report the incident to his/her supervisor.

b. Market Research

(1) Technical and contracting personnel shall jointly conduct market research to identify the availability of commercial or modified commercial items to meet the need, identify potential sources for solicitation and relevant industry terms, conditions and practices. Market research may be accomplished by one or all of the following means:

(a) Review of literature.

(b) Contact with trade or professional associations.

(c) Contact with organizations having similar missions.

(d) Synopsis of the requirement in the *Commerce Business Daily* by the contracting officer.

(e) Internet .

(2) While conducting market research, technical personnel must be careful not to disclose specific information that would give a contractor a "competitive advantage." Information made available to one competing contractor must be made available to all. A contracting officer is the proper individual to disseminate such information. The intent of this rule is to preserve the integrity of the Federal procurement system by ensuring that all potential contractors are treated equally to the greatest practical extent. To give a contractor advance procurement details may discriminate against competing contractors. This could result in a sustainable protest, which would block the contract award.

c. Communications with industry.

(1) Often it is essential that a dialogue between Government and industry be opened long before the final preparation of the requirements package. Although the Government's need for preliminary information is sometimes critical, the methods used to obtain information are limited by rules based upon criminal statutes, administrative regulations, and procurement policy. These rules cannot be taken lightly since they are designed to safeguard the integrity of the procurement system, the confidentiality of proprietary information, and the expenditure of appropriated funds.

(2) Technical personnel must guard against revealing specific procurement information on the assumption that there are no competitors to be harmed by the disclosure. There have been instances when detailed advance information was leaked to an apparent "sole-source" when competition was actually available. The Government's negotiation position may be significantly undermined by untimely disclosure of procurement information. The rules surrounding communications with industry should not be relaxed in apparently noncompetitive situations.

(3) When specific advance information must be disclosed, the disclosure will be made to all potential competitors at the same time. The contracting officer shall make all disclosures to potential contractors. This ensures that no single firm will receive a competitive advantage as a result of disclosure. Restricting information flow to only those potential sources known to be properly cleared, is authorized.

(4) Proprietary or restricted information (e.g., trade secrets or confidential commercial information), as marked by the contractor, must be protected. In communicating with industry, Government personnel must be extremely careful not to reveal such information. Federal officers and employees are prohibited from disclosing trade secrets or confidential commercial information without the owner's consent. An unauthorized disclosure of such proprietary information by a Government employee can result in a successful claim against the United States.

(5) An unauthorized commitment may be created when a Government employee requests or unduly influences a contractor to incur costs or perform work without the authority to do so. To the extent that the contractor is operating in good faith, this creates an "obligation" of the Government to pay for the effort performed, *Only duly appointed or specifically authorized personnel acting within the scope of their warrant or other written authority, can financially obligate the Government.* This is particularly sensitive during the preliminary phase of the procurement cycle when communicating with industry about our needs and their capabilities. The best practice is to preface each communication with words to the effect that nothing stated should be interpreted as constituting an obligation of the Government to award a contract or to otherwise pay for information. A Government employee may be subjected to personal liability for the cost of an unauthorized commitment.

(6) Voluntary services normally cannot be accepted. Section 1342, title 31 of the United States Code states that no Federal officer or employee shall accept voluntary or personal services for the United States except in certain emergencies. This law states that any voluntary services rendered to the Government in violation of the law will not legally obligate the Government to make payment, and can result in adverse consequences to the Government employee who accepted them. The Comptroller General has ruled that this prohibition does not prevent the acceptance of gratuitous services, if otherwise legal, where the private entity agrees in writing and in advance that it waives any and all claims against the United States for such services. There is a companion legal principle that says that the Government cannot be unjustly enriched (we generally cannot refuse to pay a contractor on a legal technicality (unauthorized commitment) if we have benefited from work of value already performed).

B-3. Preparation of a Requirements Package

a. *General*

(1) The quality of any product of a contract action is dependent upon the quality of the specification or statement of work included in the requirements package and ultimately the contract. The description of what is to be purchased must be clear to the procurement personnel or buyers, the prospective contractors, and to the individuals responsible for managing the resulting contract.

(2) Plans, drawings, specifications, purchase descriptions, and statements of work for procurements will state in performance terms the essential valid needs of the Government. They will describe the supplies and/or services in a manner that will encourage optimum competition (e.g., performance/results based specifications) and that will eliminate, to the extent practicable, restrictive features that might unduly limit acceptable offers. Much of the information on what is feasible and acceptable to meet the need will be obtained through the market research process described in B-2 above. Commercial products/services and industry related commercial practices shall be identified and employed to the maximum extent practicable given mission and security requirements.

b. *Fiscal Matters*. Title 31, United States Code, provides statutory restrictions on the obligation and expenditure of appropriated funds. The following provisions apply to contracting:

(1) Section 1341, Title 31, United States Code (The Anti-Deficiency Act), makes it a serious criminal offense for a Federal officer or employee to willfully--

(a) Make an obligation or expenditure in excess of the funds available.

(b) Authorize an obligation or expenditure in excess of funds available.

(c) Involve the United States in an obligation in advance of appropriation.

(2) Sections 1517(a)(2) and 1519, Title 31, United States Code make it a criminal offense for a Federal officer or employee to willfully violate certain administrative funding limitations.

(3) The Bona Fide Needs Rule requires that appropriated funds be used to meet the bona fide needs of the period for which the funds were appropriated.

(4) Section 1301, Title 31, United States Code, requires that appropriated funds be used for the specific purposes for which they are appropriated or for those objectives which are reasonably necessary for such purposes.

(5) Normally, a commitment document, DA Form 3953 Purchase Request and Commitment or its electronic equivalent, is prepared and provided as a part of the procurement package. The commitment document furnishes a fund citation with full accounting and appropriation data for the total estimated cost of the procurement.

(6) *Advice and assistance should be requested from a budget/financial analyst or resource manager in the chain of command if there are questions in this area.*

c. *Sources of supply*. Each requirements package will contain a suggested list of sources, and a justification for any proposed limitation of sources. The FAR requires that every proposed procurement in excess of the simplified acquisition threshold be publicly advertised in the *Commerce Business Daily*, unless covered by the limited exceptions found in FAR 5.202 (your contracting support office can advise you on this).

d. *Justification to use other than full and open competition*.

(1) With limited statutory exceptions, contracting officers must promote and provide for full and open competition in soliciting offers and awarding Government contracts. A justification for use of other than full and open competition must contain specific facts and rationale to justify soliciting from only one or a limited number of sources. The contents and format for this justification are described in FAR 6.303.2, as supplemented.

(2) It is improper to base a justification for other than full and open competition on the following factors:

(a) "Goldplating". The Government is only permitted to purchase supplies or services that meet its actual needs (this does not mean that we cannot demand quality in the context of critical applications and life cycle considerations).

(b) *Cost of Competition.* The cost reductions achieved through competition generally offset or overshadow any additional costs that may be associated with the competition. Often competition can also save time due to easier methods to ensure reasonable price (e.g., cost or pricing data is not required when adequate competition is achieved).

(c) *Opinion or preferences:* Requests for limitation of sources should always be accompanied by supporting factual evidence.

(d) *Duplication of work.* The sole fact that some minor duplication of earlier efforts would be required is inadequate. The request for limited competition must show specifically the expected cost of such duplication in terms of time and dollars.

(3) The documentary basis for a justification for restricting competition must be prepared by the requesting activity and be a part of the requirements package.

e. *Additional requirements.*

(1) *Delivery schedules.* Delivery schedules must be realistic and responsiveness to the Government's needs. A compressed schedule may increase both the cost and risk.

(2) *Place of delivery or performance.* The shipping address as well as marking instructions must be provided for supply items. For services, the places of performance must be specified.

(3) *Packaging and packing.* When the requirement is for supply items, the level of packaging and packing must be specified.

(4) *Quality Control.* The contractor is responsible for establishing manufacturing quality and inspection controls to ensure that supplies and services delivered to the Government conform to contract requirements. The quality level expected must be specified.

(5) *Inspection and acceptance.* The place of inspection and acceptance (whether at origin or destination) must be specified.

(6) *Service contracts.* Personal services may generally not be contracted for (see FAR, Part 37.104).

(7) *Government furnished property (GFP).* It is Federal policy that contractors will provide all property and supplies required to perform Government contracts. When the requiror and the contracting officer determine that GFP must be provided (usually based on factors such as relative cost of acquisition, tracking and final disposition, including environmental issues), items/information to be provided to the successful contractor as Government furnished property (GFP), must be specifically identified. Dates when the property or information are required and available to be furnished to the contractor should also be specified.

(8) *Property administrator.* When the procurement office retains contract administration for GFP, a qualified individual shall be nominated to perform the duties of property administrator.

(9) *Contracting officer's representative (COR).* When required to ensure that the Government's interests are protected after award of a contract, a qualified individual is nominated to the contracting officer to be appointed as the COR. Such appointment is made formally (in writing) and delineates specifically the COR's authority and limitations. CORs exceed their authority at risk of personal pecuniary liability.

(10) *Hazardous material identification and material safety data.* Refer to FAR, Part 23.3, as supplemented, if there is any question as to whether the requirement will involve contractor delivery of hazardous materials.

(11) *Options.* It may be appropriate to include in a contract the unilateral right of the Government to purchase additional supplies or services called for by the contract if the conditions set forth in FAR, Part 17.2, as supplemented, are met. The J&A for a contract to be awarded using other than full and open competition, and which contains an option clause, will be approved at the level required for the total estimated contract value, including the option(s).

f *Technical data and computer software requirements.* The Government only acquires rights in technical data or computer software that are required for use of the material or data/software

to be delivered under the contract. If data will be needed, it should be requested, and a DD Form 1423 (Contract Data Requirements List) prepared as required by DFARS 215.470.

g. *Contract security classification specification.* Requirements may involve the release of classified information to the contractor and/or the generation of classified information or material by the contractor. If so, a DD Form 254 must be a part of the procurement package. The DOD Industrial Security Manual (DOD 5220.22-M) should be followed in completing this document. The DD Form 254 will be signed by the appropriate security official(s).

h. *Independent Government Estimate (IGE).* An IGE provides an estimate of what the requirement would cost if provided by a contractor (including overhead and profit). An IGE must be provided with every procurement request package as one of the means by which the contracting officer can determine reasonableness of bids or proposals (see FAR Subparts 13.1 and 15.4). The complexity of the estimating technique will be commensurate with the complexity of the acquisition.

i. *Test, measurement, and diagnostic equipment (TMDE).* Prior to submitting a requirement for TMDE, approval must be obtained from the Central USA TMDE Activity, ATTN: AMXTM-MP Redstone Arsenal, AL 35898-5400. The approval document must be a part of the requirements package.

j. *Commodity assigned items.* Prior to submitting a procurement request package for the local purchase of a commodity assigned item the requiring activity shall comply with the requirements of DFARS 208.7003-1. The supporting contracting office or local Director of Logistics or equivalent office can provide assistance as needed.

k. *Leases.* Leasing may be appropriate under certain circumstances. However, the criteria in FAR 7.402, as supplemented, must be met, and an analysis must be done to determine if the cumulative leasing costs will be less than the purchase cost. This analysis should be forwarded to the contracting officer with the requirements package.

l. *SAP studies.* Prior to awarding a contract (or placing an order to an existing contract) for a study which involves contractor access to one or more SAPs, the requiring activity will ensure that a revised DD Form 254 for each of the SAPs affected is provided to the contracting officer.. This revised DD Form 254 will cover specifically the degree of access to be granted the study contractor for each program.

m. *Use of Government Purchase Card:* The Government purchase card shall be used by contracting and requirements personnel as a simplified purchasing method for commercial supplies and services that do not exceed the micropurchase threshold (\$2,500). Purchase cards will only be issued to personnel who have completed mandatory training. Chiefs of contracting offices will provide training, guidance and oversight to purchase card holders (see AFARS 13.90 or your supporting contracting officer for more details).

Appendix C

Management Control Evaluation Checklist (Secure Environment Contracting, AR 715-30)

C-1. Function:

This checklist addresses the management of secure environment contracting as required by AR 11-2. It complements the contracting Management Control Evaluation Checklist found at AFARS Appendix DD.

C-2. Purpose:

The purpose of this checklist is to assist assessable unit managers and Management Control Administrators (MCAs) in evaluating key secure environment contracting management controls outlined below. It is not intended to cover all controls.

C-3. Instructions:

Answers must be based on the actual testing (that is, document analysis, direct observation, sampling, or interview) of key secure environment contracting management controls. Answers that indicate deficiencies must be explained and corrective action indicated in supporting documentation. These key controls must be formally evaluated at least once every five years. Certification that this evaluation has been conducted must be accomplished on DA Form 11-2-R (Management Control Evaluation Certification Statement).

C-4. Test Questions:

a. SUBJECT: Contract Security Considerations

(1) Is the contracting officer cleared and read-on? Are there cleared subject matter or functional experts (such as lawyers, cost and pricing experts, applicable technical personnel and/or other required personnel), available to provide appropriate support for the procurement and the contracting officer?

(2) If not, are steps being taken in coordination with cognizant security managers to clear required personnel as necessary to meet procurement lead-times?

(3) Do contracting officers have security classification guides for supported programs, and other applicable program security guidance?

(4) Does the contracting office have facilities to process and maintain the level of classified material which will need to be handled in support of its procurement(s)?

(5) Does the contracting office have required supporting equipment for classified procurements such as STU III phones, secure fax machines, and appropriate storage containers?

(6) Can the contracting officer identify the appropriate points of contact for review, staffing, and approval, at each level, through and including HQDA, who are cleared to review documentation in support of their programs?

(7) Are contracting officers properly verifying security clearance levels and program read-ons through security channels for the review and approval POCs?

(8) Are contracting officers insuring that contract specialists are knowledgeable about appropriate POCs for their programs?

(9) Has the contracting officer and staff had some form of training on proper completion of the Contract Security classification specification, DD Form 254?

(10) Are contracting officers insuring that DD Forms 254 are signed by the cognizant security specialist (such as, Security Manager for SAP or designated Contract Monitor for SCI)?

(11) Are contracting officers returning improperly completed DD Forms 254 to the requiring activity for correction?

(12) Are copies of DD Form 254 for SAP Contracts being provided to the TMO as specified in AR 715-30?

(13) Do the security classification guides address contracting elements adequately to enable contracting/contractor personnel to make proper classification decisions?

(14) Are contracting officers and specialists cleared to the level of the DD254?

(15) Do contracting officers and contract specialists understand how to properly handle and mark classified documents?

b. SUBJECT: Planning and Presolicitation

(1) Are requiring activities providing evidence that the requirement is properly approved as an SEC requirement per AR 715-30, paragraph 3-1, 3-11, or 3-14?

(2) Does the procurement request package contain or reference a Security Classification Guide and include a properly completed DD Form 254?

(3) Do contracting officers review all purchase requests to ensure that their SEC contracting office is designated or otherwise appropriate to support the request?

(4) If the requirement is proposed to go outside the Department of Defense, has a

determination been made in advance that proper authority exists (such as the Economy Act , Clinger-Cohen, or assigned agency responsibility) and that all relevant acquisition regulations have been complied with (e.g., FAR 17.5---Inter-agency Acquisitions Under the Economy Act)?

(5) Are contracting officers and requiring activities cooperating to ensure appropriate advance acquisition planning to allow adequate procurement lead time?

(6) If there are significant numbers of requirements treated as urgent, is it because of true mission contingency or emergency?

c. *SUBJECT: Audit and Administration*

(1) Are all SEC procurements properly receiving pre-award audits or including a properly justified waiver?

(2) Is Audit Follow-up being properly conducted for SEC in accordance with AFARS 15.490 and AR 715-30?

(3) Is contract administration delegated to the appropriate DCMA office?

(4) If contract administration is not delegated to DCMA, is it justified (e.g., does it fall under a DFARS Part 242 exception or an element of an executed MOU)?

d. *SUBJECT: Secure Environment Simplified Purchases (SESP)*

(1) Are SESP files periodically reviewed by higher headquarters in accordance with AR 715-30?

(2) Is corrective action taken when SESP contracting/ordering officers do not comply with laws/regulations?

(3) Are ordering/contracting officers receiving training as required by AR 715-30 before being appointed?

e. *SUBJECT: Use of Government Purchase Card for SEC: Are Chiefs of Contracting Offices providing training, guidance and oversight to SEC Government Purchase Card holders in accordance with AFARS 13.9002*

C-5. Comments:

In order to make this Checklist a more useful tool for managing SEC processes and organizations, assessable unit managers and above that identify additional SEC checklist subjects or issues shall submit these to Deputy Assistant Secretary of the Army (Procurement), ATTN: SAAL-PP.

Glossary Section I

GLOSSARY/ABBREVIATIONS/ACRONYMS

AAA
Army Audit Agency

AFARS
Army Federal Acquisition Regulation Supplement

ALMC
Army Logistics Management College

AMC
Army Materiel Command

ASA(ALT)
Assistant Secretary of the Army for Acquisition, Logistics and Technology

ASA(FM&C)
Assistant Secretary of the Army for Financial Management & Comptroller

CG
Commanding General

CI
Counterintelligence

CICA
Competition in Contracting Act

COR
Contracting Officer's Representative

CSA
Cognizant Security Authority

CSSO
Contractor Special Security Officer

DA
Department of the Army

DASA(P)
Deputy Assistant Secretary of the Army for Procurement

DCAA
Defense Contract Audit Agency

DCADS
Defense Contract Action Data System

DCMA
Defense Contract Management Agency

DCSINT
Deputy Chief of Staff for Intelligence

DCSLOG
Deputy Chief of Staff for Logistics

DCSOPS
Deputy Chief of Staff for Operations

DFARS
Defense Federal Acquisition Regulation Supplement

DIA
Defense Intelligence Agency

DIOR
Director for Information, Operations and Reports

DISC4
Director Information Systems for Command, Control, Communications and Computers

DOD
Department of Defense

EAD
Expenditure Authorization Document

FAR
Federal Acquisition Regulation

FMA
Foreign Materiel Acquisition

FOIA
Freedom of Information Act

FORSCOM
U.S. Army Forces Command

GFP
Government Furnished Property

HCA
Head of Contracting Activity

HQDA
Headquarters Department of the Army

ICF
Intelligence Contingency Funds

IGE
Independent Government Estimate

INSCOM
U.S. Army Intelligence and Security Command

IPE
Industrial Plant Equipment

MACOM
Major Army Command

MOU

Memorandum of Understanding

OGC
Office of the Army General Counsel

OASA(ALT)
Office of the Assistant Secretary of the Army for Acquisition, Logistics and Technology

OMA
Operation and Maintenance, Army

OPSEC
Operations Security

PARC
Principal Assistant Responsible for Contracting

R&D
Research and Development

RDTE
Research, Development, Test and Evaluation

SAP
Special Access Program

SCI
Sensitive Compartmented Information

SEC
Secure Environment Contracting

SMF
Special Mission Funds

SOF
Special Operations Forces

SOIC
Senior Official of the Intelligence Community

SOW
Statement of Work

SPE
Senior Procurement Executive

SSO
Special Security Officer

TJAG

The Judge Advocate General

TMDE

Test, Measurement and Diagnostic Equipment

TMO

Technology Management Office – DACS-DMP

TRADOC

U.S. Army Training and Doctrine Command

TSG

The Surgeon General

USACE

U.S. Army Corps of Engineers

USAISC

U.S. Army Information Systems Command

USASMDC

U.S. Army Space and Missile Defense Command

Section II

Terms

Carve-out Contract.

A classified contract in which the Defense Security Service has been relieved of contractor security inspection responsibility in whole or in part under the Defense Industrial Security Program. Contracts specifying carve-out will specifically identify by name the U.S. Army organization responsible for providing contractor security inspection and clearance.

Classified Contract.

Any contract that requires or will require access to classified information by the contractor or his or her employees in the performance of the contract. A contract may be classified even though the contract document is unclassified.

Collateral Program

A program requiring normal security management and safeguard procedures per AR 380-5. A collateral program requires no compartmented or special access protection.

Compartmented activity.

A subset of sensitive activities that is either a SAP or SCI, or both.

Full and open competition.

All responsible sources are permitted to compete.

Intelligence activity.

An activity that an agency within the intelligence community is authorized to conduct under

Executive Order 12333.

Intelligence Contingency Funds

Funds expended for worldwide intelligence activities of such confidential, extraordinary, or emergency nature that they cannot, or should not be accounted for in detail outside of the intelligence community.

Other secure contracting requirements

Any other secure mission requirement that necessitates procedures outlined in this regulation. Requirements may be classified or unclassified. The actual supplier may not know who is actually going to use the supply or service, or the supplier may not even know that the supply or service is being acquired by the U.S. Army. The use of an intermediary contractor is authorized to mask Army involvement. Program or contract requirements must be approved and registered at HQDA using the procedures described in this regulation, prior to contract execution.

Secure Environment Contract

(1) Contracts involving Special Access Program (SAP) requirements

- (2) contracts involving Sensitive Compartmented Information (SCI) requirements (other than for purely personnel clearance purposes),
- (3) contracts funded with Intelligence Contingency Funds (ICF),
- (4) Foreign Material Acquisition (FMA) program requirements,(5)collaterally classified TOP SECRET contracts, (6)contracts where the true identity of either or both parties must be concealed (see AR 381-102 (S,NF), Cover Support Program).

Secure Environment Contracting

Contracting conducted under conditions of extraordinary security by properly cleared personnel as follows:

- a. When especially sensitive types of information comprise part of the statement of work or are part of deliverables;
- b. When contracting personnel may require access to this especially sensitive classified information to properly discharge their independent professional judgment and responsibilities;
- c. When this type of classified information may be provided to the contractor to enable performance.

Foreign materiel acquisition

Contracting for materiel normally denied the U.S. Government by the country of origin Foreign Materiel Program (FMP) Activities that include gaining physical possession of, or access to, an item of foreign materiel or technology registered at HQDA using the procedures described in this regulation, prior to contract execution.

Secure Environment Contracting Simplified Purchase

An acquisition of goods or services that does not exceed the simplified acquisition threshold in the FAR and that requires the use of SEC procedures.

Secure environment simplified purchase contracting officer

A military or civilian Federal employee warranted as a contracting officer by the supporting HCA; with contracting authority limited as indicated on the certificate of appointment.

Secure environment simplified purchase ordering officer

A military or civilian Federal employee appointed in accordance with AFARS 1.603-1-90. They may make over-the-counter purchases not exceeding \$2,500 per purchase using the SF 44.

Security Classification Guide

A document issued by an original classification authority that prescribes the level of classification and the appropriate declassification instructions for specified information.

Sensitive activities

Sensitive activities include special access or codeword programs, clandestine operational or intelligence activities, cover, special plans, special activities, and sensitive support to non-Army agencies and/or activities excluded from normal staff review and oversight.

Sensitive compartmented information

Information and material that require special controls for restricted handling within compartmented intelligence systems and for which compartmentation is established. SCI rules are established by the Director of Central Intelligence and are covered in DOD 5105.21-M-1.

Sensitive Compartmented Information Facility

An area that has been accredited by the cognizant security agency for the receipt, storage, discussion, and use of SCI.

Special access program

A security program established under the provisions of Executive Order 12356 and authorized by the Secretary of Defense to administer extraordinary security measures necessary to control access, distribution, and protection for particularly sensitive information.

Special Activity

An activity, or function in support of such activity, conducted in support of national foreign policy objectives abroad, that is planned and executed so that the role of the U.S. Government is neither apparent nor acknowledged publicly.

Special operations

Operations conducted by specially trained, equipped, and organized DOD forces against strategic, economic, or psychological objectives. These operations may be conducted during periods of peace or hostilities. They may support conventional operations, or they may be prosecuted independently when the use of conventional forces is either inappropriate or infeasible.

Special Security Officer

The individual through whom the CSA accomplishes responsibility for the security, use and dissemination of SCI.

Witting intermediary

A contractor used by the Army to mask Army involvement from a third party who is the actual supplier of the goods or service.

Section III

Special Abbreviations and Terms

There are no entries in this section.

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