

Chapter 4 Contracting

“Contractor operations are under the control of contracting officers.”

FM 100-16

Contracting is one of several essential functions involved in the Army's acquisition process. The contracting officer's mission is to obtain the Army's equipment, supplies, or services with the proper quality and in sufficient quantity at a fair and reasonable price.

Army managers face the challenge of coping with a high volume of contracting actions. Contractors, auditors, the General Accounting Office (GAO), Congress, and the news media scrutinize the manager's acquisitions. Contracting, therefore, must be accomplished in a manner that is above reproach. Contracting governing policy and legal guidance are both detailed and voluminous and can be quite rigid to protect the integrity of the process. For these reasons every Army acquisition must be accomplished in accordance with the Federal Acquisition Regulation (FAR), the Defense FAR supplement (DFARS), the Army FAR (AFAR) supplement, and in some cases the Federal Information Resource Management Regulation (FIRMR).

CONTRACTING SUPPORT FOR LSE MISSION AND FUNCTIONS

USAMC deploys the LSEs on a contingency basis throughout the world in support of vital national interests. These contingency operations involve military and other public or allied elements. Contracting is one of the primary tools used by the LSE units/activities to obtain supplies or services in support of the mission.

Properly used, contracting is an effective CSS force multiplier for the LSE. It can increase existing LSE capability and provide a new source for critically required supplies and services. Contracting for supplies and services can improve response time during the critical early stage of a deployment, thereby freeing airlift and sealift for other priority needs. Also, it serves to bridge gaps that may occur before mobilizing military logistics resources and in many cases will be necessary for the duration of the contingency. It is valuable where no HNS agreements exist or where HNS agreements do not provide for the supplies required.

While contingency contracts are written with a crisis in mind, weapons system support contracts are written during the acquisition cycle. The LSE will be involved in both types of contracts, with emphasis on the weapons system support contracts.

Contracting can fulfill all of the following requirements that US forces would otherwise fill:

Supplies: Class I, II, III, IV, IX (limited), and water.

Services: Labor, mortuary (within specific parameters), laundry, shower, water purification, dining facility, sanitation, port operations, and movement of equipment and personnel by all modes of transportation.

Other: Billeting, copying, maintenance and repair, equipment leasing, and access to communication networks.

The operational situation determines when LSE contracting personnel will deploy. In most contingency scenarios, the advance element of the LSE (Jump TOC) includes contracting personnel along with supporting, resource management, and legal personnel who should precede the arrival of the main body of contracting elements. These elements are part of the LSE headquarters involved in the operation and will include warranted contracting officers, contracting support personnel, and legal advisors. The LSE should seek assistance from TOE finance elements of the ASCC. Finance organizations should deploy along with the Jump TOC to support contracting, unless TOE finance elements have already deployed and can support LSE contracting.

The LSE contracting office will coordinate with the theater head of contracting activity (HCA) and the principal assistant responsible for contracting (PARC). The PARC may be dual-hatted as the Theater Contracting Activity Commander. All contracting officers and ordering officers in-theater will receive their warrants from the PARC. The PARC will coordinate the deployment of contracting officers and all contracting offices will follow the PARC's direction. LSE contracting officers may work within an LSE or be attached to the TSC.

Contracting officers who manage weapons system contracts will continue to operate on their home-station warrants and appointment letters. Ordering officers, although not a part of the contracting element, can purchase specific supplies or services within limits specified by the ordering officer appointing authority or by regulatory guidance.

AUTHORITY AND RESPONSIBILITY

The authority to contract flows from the President and Congress through the Office of the Secretary of Defense (OSD) and Office

of the Secretary of the Army (OSA) to the Major Army Commands (MACOMs). Usually, the commander of each Army command is the HCA for that command. However, contracting authority is different from command authority as shown in Figure 4-1. The HCA is responsible for managing and conducting acquisitions to accomplish the assigned mission. The HCA has the authority to acquire supplies, equipment, and services by contract for the activity. The HCA appoints a PARC, and delegates to him those responsibilities of the HCA described in the AFARS or as DOD or HQDA directs. The PARC further delegates contracting authority to select and warrant contracting officers who have authority to enter into, administer, or terminate contracts. The PARC will be on the ASCC staff.

The PARC is the office that controls asset allocation. Without this centralized coordination, the first contracting officer in-theater might place options on all of the available hotel space, tie up a HN vendor's full capacity, or procure a service that would be better performed elsewhere. Prices may rise unintentionally if contracting is performed without the PARC as the central coordinator.

The contracting officer's authority to bind the United States has limits. Instruments which impose limits include appointment warrants, department directives, the FAR and its supplements, federal statutes, and interpretative decisions of the Comptroller General and courts or boards.

JOINT OPERATIONS

LSE contracting personnel must prepare to function in a joint environment. Previous LSE deployments as part of joint operations supporting contingencies in immature theaters reinforce this requirement. The trend of world events suggests such operations will reoccur, requiring the creation of joint contracting elements staffed by personnel from more than one Service operating in the theater. The CINC will

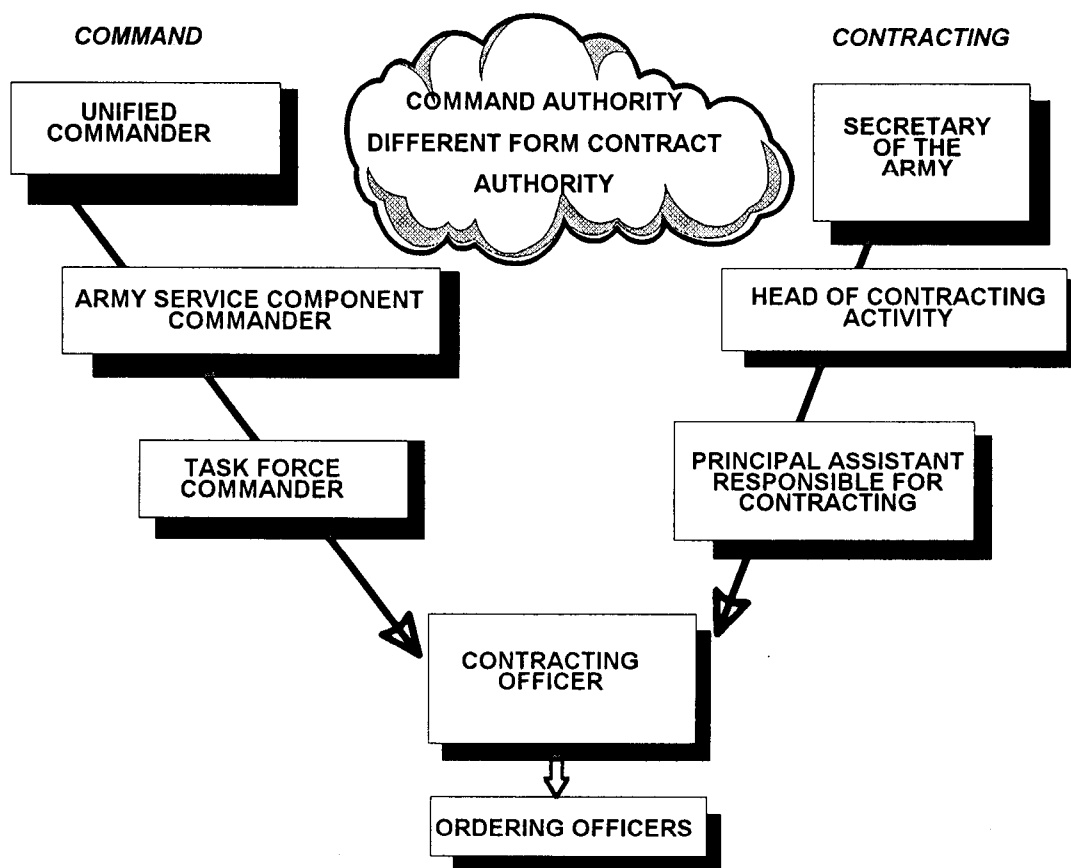


Figure 4-1
Command Versus Contracting Activity

normally establish a joint contracting office. The Army portion of the joint office may include all warranted Army contracting officers in the theater.

If separate Services maintain parallel contracting organizations, cooperation and coordination among the Service elements are essential. Cooperation and coordination precludes inter-Service competition for local supplies or services, obtains more advantageous prices through consolidation of requirements, and uses scarce personnel resources more effectively.

Army Service Component Commander

The ASCC, upon designation as the HCA by the Assistant Secretary of the Army for Research, Development, and Acquisition, may establish a theater contracting activity. The HCA appoints a PARC. The PARC controls all Army contracting within the theater to ensure continuity and consistency of operations to include deconfliction among contracting officers, if necessary. The PARC will usually be on the ASCC staff.

The PARC is the senior acquisition advisor responsible for oversight and

administration of the contracting function as planned and executed within the contracting activity. The PARC is responsible for all contracting functions except those specifically reserved for the HCA. The PARC grants theater warrants to contracting officers in the TSC, LSE, and other Army organizations in-theater and monitors their efforts. Support planners work with the PARC to plan for the sourcing of needed support.

Logistics Support Element

The LSE, to execute its mission, will normally require contracting office authority from the HCA. If the HCA designates the LSE as a contracting office, the PARC can delegate the authority to appoint ordering officers to perform ratification approvals and post-award approvals up to a specified dollar threshold.

The contracting office at LSE headquarters is the LSE operator for contracting. The LSE contracting office provides contracting support to LSE units and LSE headquarters while offering oversight and back-up contracting support to other contracting elements in its operational area.

Other Personnel and Offices Supporting Contracting in the LSE

Resource Management. The resource management office will verify, through signature certification, the availability of appropriated funds. Regulations prohibit contracting officers from purchasing or contracting without sufficient funds prior to initiating the procurement. The funds certification officer and contracting officer must work closely during any type of contingency to ensure that funds are appropriate, valid, and sufficient.

Finance Officers. Finance officers provide the checks and currencies to support contracting (and any other local procurement). They ensure that administrative and accounting procedures governing the

disbursement of public funds are adequate and assure responsive field finance support to the contracting efforts. Further, they ensure compliance with all statutes concerning the expenditure of public funds. Finance support comes from early deployed elements of the ASCC finance organizations.

Staff Judge Advocate (SJA). AFARS 1.697 requires legal counsel to participate in all phases of the acquisition process and to review for legal sufficiency all actions of \$100,000 or more. The SJA should review actions less than \$100,000 to the maximum extent possible consistent with the availability of legal counsel.

Ordering Officers (OOs). Supporting activities nominate ordering officers to support their organizations. Persons authorized in AFARS 1.698 then appoint nominated OOs. OOs receive instructions and guidance from the contracting officers but are not assigned or attached to the contracting element.

Contracting Officer's Representative. CORs are subject matter experts (SME) or specialists in some specific area. They advise contracting officers on details about the items or services purchased. CORs monitor contractor compliance and help administer particular contracts, CORs play a key role in the Government's quality assurance program. CORs typically monitor the progress of, inspect, and accept the supplies or services delivered to ensure timeliness, quality, and conformance to specifications. CORs receive nominations from the requiring activity and appointments from the contracting officer. Letters of appointment limit COR authority, as specified. Designation as a COR is normally an additional duty.

PREDEPLOYMENT PLANNING

Prior to deployment, the LSE contracting personnel should establish a contracting support plan (CSP) in coordination with HCA, PARC, ASCC, TSC, and USAMC's

MSCs and maintain contracting support kits. Unplanned deployments do not preclude planning for their support. Planning helps perfect the mechanisms and organization required to accomplish support with a minimum of time or effort.

Contracting Support Plan

The CSP is the mechanism for planning. It begins at the senior Army logistics command. Each successive lower level of command includes it in their planning. Through the CSP, the LSE assures that contracting plans and procedures are implemented, reviewed, and carried out. The LSE-Rear approves the plan, which assures that HNS and LOGCAP resources are fully utilized and that contracting solutions are considered in planning for contingency deployments.

Contingency Contracting

CSPs must consider the coordination of organic support, and contingency contracting throughout the entire operation. Contingency contracting ensures that contracting officers conduct advance planning, preparation, and coordination to support the deployed forces. It will guard against inter-Service and intra-Service competition for the same resources. Competing for resources would result in higher prices as well as possibly reducing availability. The PARC will centrally coordinate contingency contracting activities throughout the AO. All LSE contracting personnel must have a thorough knowledge of contingency contracting. Further information on the policies and procedures of contingency contracting may be found in Army Federal Regulation Supplement Manual Number 2. The principles of contingency contracting are outlined at Appendix E.

Contracting Support Kits

The LSE contracting office sets up and maintains contracting support kits containing enough required forms, general supplies, and equipment to support a contracting officer for a pre-determined time at a remote deployment location. See Appendix F, Army Federal Acquisition Regulation Supplement Manual Number 2 for example kit. In addition, the LSE contracting office also may develop separate databases for potential deployment locations. Both the basic kit and the database for the specific deployment area must accompany the contracting team. Databases may include area studies, locally developed logistics support data, and recommendations from State Department Foreign Service personnel. Information also comes from US civilians or others familiar with the area. A thorough knowledge of existing LOGCAP and HNS agreements available in the area of operation is also necessary. LSE contracting office personnel must continually update this information.

Training

LSE contracting officers listed on the PDR work in the contracting office at their MSCs/SRAs to maintain qualifications as contracting officers and proficiency in contracting laws and procedures. In order to remain responsive, they should participate in field training exercises (FTX) and training with the LSE, including operational and logistics planning and execution. They also will cooperate with LSE and other staff elements to ensure coordinated preparedness for deployment. Additional information on contracting for the Army in the field is in the Army Federal Acquisition Regulation Supplement Manual Number 2.

TRANSITION TO CONTRACTORS

Contractors are a critical source of support for the CONUS based, force projection Army. Use of contractors releases

military and civilian personnel for other missions or to fill shortfalls. They provide the Army with an additional means to adequately support the current and programmed force. As previously stated, the LSE participates in both contingency contracts and weapons system support contracts, with emphasis on the weapons system support contracts. The weapons system support contracts that exist must be monitored during conflicts. The weapons system contracting officer, in conjunction with LSE personnel, must carefully review weapons system contracts when planning support to an operation because the contracts as written may not cover all METT-T elements of importance to the theater commander. Weapons systems support contracts are the responsibility of the MSCs, which will send representatives as required.

The LSE contracting element will write contingency contracts in support of the mission assigned by the TSC. Among other functions, they can provide support during reception, staging, and onward movement, or they may fill shortfalls in the logistics structure for such functions as transportation, maintenance, and field services.

Support of Contractors

Generally, it is not desirable for the Army to provide support to contractors as contractors are responsible for providing all the support functions for their personnel. However, on a case-by-case basis, the Army may negotiate with contractors to provide support. In all situations, it is important that all contracts clearly state who is responsible for supporting contractor personnel. If the Army is responsible, planners must enter the requirements into the system so that adequate resources are available. The initial objective is to require contractors to be as self-sufficient as possible. When this is not possible, each contract will specify what support, property, and training the Army will provide. Depending on services provided, the Army may need to provide contractors with

selected items of property to be stored in locations close to the intended areas of use or stored in locations that provide for rapid movement to the storage areas. Some materiel examples are protective masks and clothing, communications equipment, firefighting equipment, and medical and chemical detection equipment. Contracts must specify contractor responsibility for storage, maintenance, accountability, and testing of Government furnished property and procedures. Contracts must also specify contractor responsibility for training and developing procedures for accounting for Government furnished property.

Another critical consideration for support to contractors is personal security. Commanders may not place civilians in imminent danger of bodily harm. Also, planners must consider the effect of having significant numbers of contractors performing logistics functions in the rear since it reduces the number of personnel available for security tasks.

Continuation of Essential Contractor Services

All of the contracting officers are responsible for ensuring the continuation of essential contractor services during a crisis. Usually, the statement of work (SOW) requires contractors to develop a contingency plan. For example, the plan may identify a pool of replacement personnel. The issues are how to identify the essential contracts, how to pay contractors for contingency planning, how to integrate contractor contingency plans into operational plans, and how to monitor compliance.

The TSC recommends which services are essential. The contracting officer documents essential services in the SOW. Examples of essential services are weapons system maintenance, equipment upgrades, and support of command, control, communications, computers, and intelligence (C4I) systems. The NSMM office will maintain a database on an executive

management information system of existing sustainment maintenance related contracts.

The SOW should include a description of the essential service and require the contractor to prepare contingency plans to reasonably ensure continuation. At minimum the contractor contingency plan should include--

- Name, address, and telephone number of the contractor.
- The number of contractor employees and equivalent work years required to perform the essential service.
- Plan for retaining or replacing employees, including those with mobilization recall commitments.
- Plans for contracting employees when responding to crisis conditions, including the contractor's concept of operations.
- If overseas, the name, address, and telephone number of in-country points of contact.
- If overseas, the number of dependents of essential employees to be included in non-combatant evacuation planning.

Information on essential contractor employees overseas is sensitive data. People maintaining this data will appropriately mark, safeguard, and release this information only to authorized personnel.

USAMC expects contractors to use all means at their disposal to continue to provide essential services, in accordance with the terms and conditions of contracts, until the military releases or evacuates them. The combatant commander determines when to execute contingency plans for essential services and when to release contractors for

non-combatant evacuation.

Contractors will furnish contingency plans through the contracting office to the TSC. The TSC determines which services are essential. That activity should in turn furnish a copy to the Foundation LSE commander. The supported commander should conduct a yearly assessment to determine the impact of unanticipated or premature loss of contractor services. If the impact is significant, the supported commander and the Foundation LSE commander should plan for alternative sources of support such as military, DOD civilians, HNS, or alternative contractors.

Risk Using Contractors

The use of civilian contractors versus US military personnel involves a higher degree of risk. Contractor employees traditionally support the Army in overseas locations during crises and can provide continued support in the future. However, no one can accurately predict their future performance. For example, contractors may refuse to deliver goods or services to potentially hazardous locations or may desert an AO in the face of danger. Advanced acquisition planning can reduce the risk by providing redundancy and multiplicity of sources of support.

LSE commanders must evaluate the most effective use of contractors. In some critical situations and locations, contractor support may not be suitable. LSE commanders must assess risk to both mission accomplishment and to the safety of contractor personnel. Additionally, they should evaluate both peacetime and wartime contract costs to determine the appropriate support for each region and function.

The nature or degree of wartime situations may vary greatly. Contingency contracts and contingency clauses must be carefully drafted to specify the services required and the conditions under which they will be required. Required contract support

services will be acquired under the authority of the FAR, DFARS, and the AFARS.

LOGISTICS CIVIL AUGMENTATION PROGRAM

AR 700-137 promulgates LOGCAP. The Department of the Army, Deputy Chief of Staff for Logistics, is the proponent, and USAMC is the program manager. The Foundation LSEs are the focal points for LOGCAP in-theater.

The US military traditionally employs civilian contractors in noncombatant roles to augment military resources. LOGCAP leverages civilian corporate resources as facility and logistics services support multipliers in support of US forces. LOGCAP provides a rapid and responsive contract capability which augments US forces by meeting CS/CSS requirements.

The LOGCAP is a special contingency contracting concept. The concept is to maintain, based on multi-regional needs, a worldwide umbrella contract. The program includes the contracting equivalent of contingency plans for various regions. It allows for the swift acquisition of contracted logistics support required in crisis. The CINC may choose to execute the plan for his theater to increase his flexibility and fill shortfalls in the force as he evaluates the TPFDD. The commander decides where to use force structure or contract support to accomplish the mission.

The LOGCAP contract design allows for support to Army forces in contingency operations worldwide. It provides for augmentation to CS/CSS troops in war and across the full range of military operations. (See Appendix E for detail discussion on LOGCAP.)