Well a lawyer says this and a lawyer says that and you have to go through this process and that process and you have to...
requirements in military planning. Likewise, Congress directed the U.S. Department of Defense (DoD) to include OCS in its required training for all military personnel with contingency acquisition duties, including operational field commanders and their staff. It also required the inclusion of OCS in Joint Professional Military Education (JPME).

Commanders are responsible for OCS. However, this command requirement flows down to the judge advocate to provide an OCS advisory role. Accordingly, judge advocates need to understand both the opportunities and challenges across the three OCS functions and the overarching role of the Operational Contract Support Integration Cells (OCSICs), to help their command meet its requirements through contracted support. Therefore, this paper will provide a background of OCS and OCSICs, identify the judge advocate’s role in each step of the OCS process, and identify ways that the judge advocate can add additional value throughout the OCS process.

II. Operational Contract Support

The DoD defines OCS as a process, an ability, a joint activity, and a force multiplier. Primarily, OCS is a process “of planning for and obtaining supplies, services, and construction from commercial sources in support of joint operations.” As an ability, OCS “orchestrates the provision of integrated contract support and management of contractor personnel providing support to the joint force within a designated operational area.” In addition, OCS is “a multi-faceted joint activity executed by the GCC [Geographic Combatant Commander] and subordinate JFCs [Joint Force Commanders] through boards, centers, and working groups [B2C2WGs], and associated lead service or joint theater support contracting-related activities.”

Moreover, OCS is a “key force multiplier across the range of military operations, both foreign and domestic.” Taken together, these definitions can be summarized as OCS is the framework wherein an operational field commander and the staff plans for, acquires, and manages the procurement of supplies, services, and construction from commercial sources in support of military operations. Also, it is important to understand that OCS applies to all “organizational entities within the Department of Defense,” during all phases of military planning and operations. Moreover, its reach includes all DoD contingency operations, humanitarian

Recognizing the importance of OCS [Operational Contract Support], the DOD [Department of Defense] funds, and the Joint Staff Logistics sponsors, an annual OCS exercise -- Operational Contract Support Joint Exercise, or OCSJX. It implements the OCS planning and readiness tenets: contract support integration, contracting support and contractor management. OCSJX has evolved from U.S. Army Contracting Command's annual exercise, focused on preparing military contracting officers for deployment, into a joint, interagency and multinational exercise with non-acquisition and acquisition participants.

Id.

Id.
assistance, generally outside the United States.

Lastly, OCS is comprised of three intertwined functions: contract support integration, contracting support, and contractor management. Respectfully, these functions involve the planning, acquisition, and administration of contract support with the OCSIC as the hub for effective OCS coordination, execution, and assessment.

A. Contract Support Integration

The OCS-Contract Support Integration (OCS-CSI) function includes a planning and execution process. During the Contract Support Integration planning process, the J-4 (Logistics) staff at the GCC and JFC typically leads OCS working groups and ensures the OCS annex and OCS concerns are incorporated throughout operational and contingency plans. However, all GCC and JFC primary and special staff members are responsible for addressing OCS issues related to their staff function into plans. Consequently, the entire staff must incorporate OCS considerations into the base plan and its annexes during all phases of the operation.

The critical staff product initially produced and continually refined during this Contract Support Integration planning phase is the OCS annex – Annex – W, Operational

Contract Support – to the applicable base plan. The current Annex W template includes five paragraphs and three appendices in which the GCC and subordinate JFC analyze, describe, and provide direction and guidance for meeting the command's commercially resourced needs. In addition, the Annex W is used to synchronize the command’s contracting efforts with other DoD and U.S. elements in the area of operations “to avoid undue competition for the same locally available supplies, equipment, and subcontractor employees.”

During the Contract Support Integration execution process, the operational field command (requiring activity) is the lead effort for determining, prioritizing, and synchronizing its support requirements and the appropriate source of support, i.e. through organic support, multinational support, acquisition and cross-service agreement (ACSA) support, or contracted support. If the requiring activity (RA) decides to meet its requirements through contracted support, it first prepares an acquisition-ready contract support requirements packet in accordance with the relevant Annex W and any applicable GCC policy.

The requiring activity will then submit its requirements packet through the relevant portal, such as the Combined Information Data Network Exchange (CIDNE) or the Contingency Acquisition Support Module (CASM) database, to the Requirements Review Board (RRB) and the

requirements needed to support the contractor force. The Provost Marshall’s office investigates contractor criminal activity to include fraud and trafficking in persons. Joint Pub. 4-10, supra note 9, at III-5, see also The Joint OCS Essentials for Commanders and Staff (JOECS) course, Joint Knowledge Online, https://jkodirect.jten.mil/ (last visited Feb. 2, 2017).

See infra Appendix A for a sample Annex W template.


Otherwise, the command could inadvertently cause contract fratricide and drive “up the prices of local goods and services and could create shortages.” DEF. PROCUREMENT & ACQUISITION POLICY, DEFENSE CONTINGENCY CONTRACTING HANDBOOK V5 94 (Jul. 2015), http://www.acq.osd.mil/dpap/ccap/cc/jcchb/DCCH_V5_3_July2015.pdf [hereinafter DCC HANDBOOK].

Joint Pub. 4-10, supra note 9, at III-3. "Requirements determination is an operational command function, not a contracting activity function." Id. at I-4.

Joint Pub. 4-10, supra note 9, at F-5. Based on the estimated cost of the procurement, the command may have the delegated authority to approve the requirement; especially if the amount is under the micro-purchase or simplified acquisition threshold detailed in Part 13 of the Federal Acquisition Regulation (FAR) and Part 213 of the Defense FAR Supplement (DFAR).

The Contingency Acquisition Support Model (CASM) is a web-based tool used to plan, generate, staff for approval, and track acquisition-ready requirements packages. This tool enables users to get requirements on contract more efficiently. CASM’s output produces a complete, approved, and electronically signed requirements package (RP).” DCC HANDBOOK
applicable validation authority for a requirements validation decision. 31

“Requirements validation is the process to coordinate, review, prioritize, and approve contract support requests. Depending on the type and estimated cost of the requirement as well as local command policies, the contract support requirements package may be subject to numerous staff reviews.” 32

B. Contract Support

The OCS-Contract Support (OCS-CS) function includes the “execution of contracting authority and coordination of common contracting actions in support of combatant commander directed operations.” 33 Contract Support is largely managed by the professional contracting community staffed with U.S. government employees like warranted contracting officers (KOs). 34 During Contract Support, these contracting professionals plan and establish contracting support organizations, convert requirements into contract documents, develop contracts, award and administer contracts, and close out contracts. 35

Based on operational considerations, the GCC will choose one of the following three forms of contract support organizations to provide in-theater contracting support services to award the contract: a Joint Theater Support Contracting Command (JTSCC), a Lead Service for Contracting (LSC), or a Lead Service for Contracting Coordination (LSCC). 36 The JTSCC is most applicable for large-scale, complex operations. 37 The LSC is more applicable for small-scale, longer-term service-centric operations. 38 The LSCC is more applicable for small-scale, short-term operations and security cooperation and deterrence activities. 39

Another important Contract Support organization is the Joint Contracting Support Board (JCSB).

The JCSB is the forum for theater support, Service CAP [Civil Augmentation Programs], and other designated in-theater external contracting organizations to share information, coordinate acquisition strategies, and to minimize chances of competition and redundancies between individual contracts and/or task orders and look for opportunities to optimize filling of like requirements through common contracts. It is in this process, the LSC’s/LSCC’s contracting activity or JTSCC develops a contracting COP [Common Operating Picture] 40 which is then in

31 Id. at IV-3.

The JTSCC is a functionally focused JTF [joint task force] with C2 [command and control], normally tactical control, and contracting authority over contracting personnel assigned and/or organizations attached within a designated operational area, normally a JOA [joint operations area]. The JTSCC’s contracting authority is delegated by the [Senior Procurement Executive] SPE of the Service component designated by the GCC to form the nucleus to the JTSCC.

Id.

38 “In this organizational construct, the designated Service component contracting activity is responsible to provide theater support contracting for specified common commodities and services for a particular geographical region, normally a JOA or major expeditionary base.” Id. at IV-3.

39 Id. at IV-2.

In this organizational option, the Services retain C2 and contracting authority over their deployed theater support contracting organizations, but a designated lead Service is responsible to coordinate common contracting actions through a JCSB [Joint Contracting Support Board] or JCSB-like process as directed in annex W. This organizational option is also applicable to operations where the bulk of the individual Service component units will be operating in distinctly different areas of the JOA, thus limiting potential competition for the same vendor base.

Id.

40 Lieutenant Colonel Jose A. Cora, Operational Contract Support (OCS) Overview – CENTCOM AOR at slide 21 (17 Nov. 2016) (unpublished PowerPoint presentation) (on file with author) [hereinafter LTC Cora OCS
turn shared with the subordinate joint force command OCSIC.41

Coordination with the OCSIC and decisions at the Joint Contracting Support Board can lead to strategic sourcing decisions and economies of scale whereby the GCC can effectuate smarter buys for the commands at a cost-saving to the U.S. taxpayer.42 After the RRB validates a requirement, it may be “sent over the fence to contracting” so they can put the requirement on a contract, solicit bids, and evaluate and award the contract.43 If, however, the “JCSB identifies a currently existing contract with capacity, it can direct the requirement to be purchased from that vehicle” rather than entering into a new contract.44

There are primarily three types of available contract support within OCS: theater support contracts, systems support contracts, and external support contracts. Theater support contracts are awarded in the area of operations through deployed U.S. government contracting officers, and the requested support is commonly staffed by local national contractors.45 Systems support contracts provide contractor logistics support, maintenance, and repair through deployed U.S. field service representatives.46 External support contracts normally procure a mix of U.S. citizens, local national contractor employees, and third country national contractors to provide various logistical and service support functions.47

Another major activity within the Contract Support function requires the contracting officer coordinating with the requiring activity in formulating theater business clearance (TBC) policies and procedures.48 Moreover, they will determine which contractors qualify for Contractor Authorized to Accompany the Force (CAAF) status49 and which, if any, will be designated as non-CAAF.50 “CAAF

A contract COP is a single display source of existing contracts and contract-solution requirements in the generation, validation, and execution processes. There are two groups of information required to establish the COP: contracts that the unit currently has in place, and requirements that require a contract solution. Once established, there are two key components in maintaining the COP: [contract and COR [m]onitoring and [m]anagement, and [a]pplying the current COP into the OCS [p]lanning [c]ycle.

[Strategic sourcing] and FSSI solutions provide easy access to common procurement vehicles that offer greater discounts as collective volume increases, business intelligence and best practice solutions. Additional benefits include: Meets OMB’s [Office of Management and Budget] goal for cross-government participation; Assists with socioeconomic goals; Collect and analyze data; Identify trends; Re-engineer high cost business processes; Replica cost-saving business processes; Share lessons learned and best practices; Realize cost efficiencies; Streamlines procurement process; and Drives additional discounts.

TBC is the process which provides Joint Force Commanders and the [ ] Contracting Commander visibility over all contracts and contractors performing work in their area of responsibility. It facilitates a common operating picture of contracted support in a Joint Operations Area, ensures that solicitations and contracts contain provisions to meet Commanders’ requirements, and assures that contractor personnel life support requirements are addressed and coordinated prior to arrival in theater.

CAAF generally include all U.S. citizen and third-country national employees not normally residing within the operational area whose area of performance is in the direct vicinity of U.S. Armed Forces and who routinely are collocated with the U.S. Armed Forces (especially in non-permissive environments). Personnel collocated with U.S. Armed Forces shall be afforded CAAF status through a letter of authorization. In some cases, Combatant Commander subordinate commanders may designate mission-essential host nation or local national contractor employees (e.g., interpreters) as CAAF.

During contingency operations, these contracts are normally executed under expedited contracting authority and provide supplies, services, and minor construction from commercial sources generally within the operational area. Theater support contracts can range from small local contracts for a single unit or operational area-wide contracts in support of the entire force.
status should be pre-determined and publicized as part of the solicitation in order to ensure accurate contract pricing.”51

Outside of the U.S. logistical and medical support implications for contractors affected by this designation, CAAF status also offers the contractor protections under international law.52

C. Contract Management

The OCS-Contract Management (OCS-CM) function integrates contractor personnel and associated equipment into military operations. During Contract Management, the requiring activity prepares for contractor deployment, deploys and redeploys contractors, and manages and sustains contractors. Contractor personnel are largely managed through contracting authority and contractor company management personnel rather than military command authority.53 However, the requiring activity also has contractor management responsibilities to include personnel and equipment accountability.54

Contract Management also requires the command to monitor and coordinate matters relating to government furnished property (GFP) and contractor acquired government owned (CAGO) property,55 transportation and personal security,56 and coordinating and synchronizing non-DoD contractor requirements.57

Contractor personnel accountability in Contract Management is important. As the Secretary of Defense stated in his testimony before Congress in 2009, “I think that the use of contractors in many respects grew willy-nilly after 2003, and all of the sudden, we had a very large number of people and it became clear we had inadequate capacity to monitor them.”58 Consequently, the DoD created the Synchronized Predeployment and Operational Tracker Enterprise Suite (SPOT-ES) to manage contractor personnel accountability and mandated its use by defense contractors.59

Non-CAAF means personnel who are not designated as CAAF, such as local national (LN) employees and non-LN employees who are permanent residents in the operational area or third-country nationals not routinely residing with U.S. Armed Forces (and third-country national expatriates who are permanent residents in the operational area) who perform support functions away from the close proximity of, and do not reside with, U.S. Armed Forces. Government-furnished support to non-CAAF is typically limited to force protection, emergency medical care, and basic human needs (e.g., bottled water, latrine facilities, security, and food when necessary) when performing their jobs in the direct vicinity of U.S. Armed Forces.”

Id.

LTC Cora Interview, supra note 23.

U.S. Dep’t of Army, Reg. 715–9, Operational Contract Support Planning and Management (20 June 2011) [hereinafter AR 715-9):

Under applicable law, contractors may support military contingency operations in a noncombat role if they have been designated as CAAF by the force they accompany, and are provided with an appropriate identification card under the provisions of The Geneva Conventions of 1949, International Committee of the Red Cross, Convention (III) relative to the Treatment of Prisoners of War and DODD 4500.54E.

Id.

JOINT PUB. 4-10, supra note 9, at V-24. See also, U.S. Dep’t of Def., Instr. 4161.02, Accountability and Management of Government Contract Property (27 Apr. 2012) (establishing DoD policy for the accountability and management of government contract property in the custody of contractors).

Id. at V-26.

Id. at V-28. “For example, in Operation Iraqi Freedom, contractors in support of USG departments and agencies, IGOs, and NGOs could be found throughout the operational area to include significant use of contracted security forces.” Id.


DFARS 252.225-7040(g) (Sep. 2016).

(1) The Contractor shall use the Synchronized Predeployment and Operational Tracker (SPOT) web-based system, to enter and maintain the data for all CAAF and, as designated by USD(AT&L) or the Combatant Commander, non-CAAF supporting U.S. Armed Forces deployed outside the United States as specified in paragraph (b)(1) of this clause.

(2) The Contractor shall enter the required information about their contractor personnel prior to deployment and shall continue to use the SPOT web-based system at https://spot.altess.army.mil/privacy.aspx to maintain accurate, up-to-date information throughout the deployment for all Contractor personnel. Changes to status of individual Contractor personnel relating to their in-theater arrival date and their duty location, to include closing out the deployment with their proper status (e.g., mission complete, killed, wounded) shall be annotated within the SPOT database in accordance
SPOT-ES includes SPOT, the Joint Asset Movement Management System (JAMMS), and the Total Operational Picture Support System (TOPSS). “SPOT is web-based [and] shows the contracts and contractors, costs, the type of contractor (third-country national, local national, and U.S. citizen), kind of work they do, and availability of government-furnished services.” 60 “JAMMS captures movement and location information about operating forces, government, and contractors [by scanning personnel identity credentials, such as the Common Access Card (CAC), Defense Biometric Identification System (DBIDS) cards, and passports] through data collection points established in specified operational theaters [and uploads to SPOT daily].” 61 TOPSS is the reporting and analysis component of SPOT-ES and provides tailor able graphs, reports, and analysis of the contractor footprint in an operational area for the OCSIC and commands. 62

D. OCS Integration Cell

The OCS Integration Cell (OCSIC) is a multi-disciplinary team whose primary purpose is to provide the full spectrum of effective and efficient planning, coordination, and integration of the three OCS functions across all joint, personal, and special staffs, service components, combat support agencies, and the designated lead theater support contracting activity in the operational area. 63 “[A]ll geographic CCMDs [Combatant Commands] and USSOCOM [U.S. Special Operations Command] have permanent OCSICs of various sizes and configurations . . . subordinate joint force command OCSICs fluctuate in size and skill sets based on the phase of the operation . . . ” 64 According to the Director of Logistics for the Joint Chiefs of Staff, “this [embedding OCS planners into the Combatant Command staff] initiative has probably had the greatest impact on improving COCOMs’ ability to plan for OCS.” 65

The OCSIC is responsible for the requirements review board validation process but operates across all three OCS functions. 66 The most important benefit that the OCSIC brings to the GCC and JFC is that it assists the command staff in developing its requirements 67 during the Contract Support Integration function. It also identifies strategic sourcing opportunities for emerging requirements through their coordination with the JCSB during the Contract Support function, 68 with the ultimate goal of common-user logistics (CUL) for appropriate services and supplies. 69

63 “[T]he OCSIC is the link between the command staff, requiring activities, finance, contracting, and in some instances, Host Nation Support to successfully meet the Commander’s intent for contracted support.” LTC Cora, OCS Overview, supra note 40, at slide 7. The OCSIC integrates, it does not lead, all OCS planning and management actions. The OCSIC should be made up of 5-10 personnel at the GCC, JFC, or component level with a mixture of specially trained personnel with operational-level logistics and contingency contracting experience. In practice, the OCSIC falls within the J-4 (Logistics) staff and include an O-6 Chief, an O-5 Deputy, and three O-4s with an Engineering Officer, a Logistical Officer, and a Contracting Officer (without a warrant so he will not be tasked outside of the OCSIC). Id. at 8.
64 JOINT PUB. 4-10, supra note 9, at I-2, D-2.
65 Total Force Policy, the QDR, and other Defense and Operational Planning: Why Does Planning for Contractors Continue to Lag?, Hearing Before the H. Comm. on Wartime Contracting, 111th Cong. 8 (2010). (statement of LTG Kathleen M. Gainey, Director of Logistics, Joint Chiefs of Staff) (stating “We will increase our focus on planning procedures that not only deliver supplies and services to the war fighters in a responsible and cost-effective manner, but leverage the economic benefit of DoD spending to achieve national strategic and counter-insurgency objectives.”). Id. at 10.
66 The OCSIC conducts the following common tasks across the three OCS functions: leading the OCS planning and integration effort across primary and special staffs; providing OCS-related advice to commander and staff; collecting, analyzing, and sharing analysis of OCS aspects of the operational environment information; establishing and maintaining the OCS common operating picture (COP); establishing and running OCS-related boards working groups; developing and maintaining OCS policy and other operational guidance documents, like theater business clearance implementing guidance (TBC); reviewing all orders, policies, etc., for OCS equities and impact, ensuring JFC-directed, OCS-related policies and guidance are properly executed; and tracking and working any major contract management issues. JOINT PUB. 4-10 supra note 9, Figure D-2, D-4 and LTC Cora, OCS Overview, supra note 40, at 11.
67 The OCSIC helps the command and staff “identify and develop their operational requirements timely and accurately as part of the staff’s operational mission planning.” Id. at 9.
68 The OCSIC helps the command and staff “identify common requirements that can be consolidated across the area of operations and then assigns a single service contracting activity to contract for those requirements;” decreasing lead-times for sourcing requirements, lessening administrative overhead support and costs, expediates requirements fulfillment, lowers costs through economies of scale, and eliminates contract duplication, i.e. “contracting fratricide.” Id.
69 Joint Chiefs of Staff, Joint Pub. 4-0, Joint Logistics III-13 (16 Oct. 2013).
III. Role of the Judge Advocate within Operational Contract Support

Judge advocates are not permanently assigned to OCSICs. Consequently, the requiring authority’s servicing legal office is responsible for supporting OCSICs on a non-dedicated basis, like all other staff sections. If an OCSIC receives a dedicated legal advisor, however, that legal advisor will be under the technical oversight of the servicing legal office of the command where the OCSIC resides.

There is limited published information specifically detailing how judge advocates support all three OCS functions. According to the current doctrine, that legal support includes:

“...review[ing] contract support requirements for legal sufficiency. These legal reviews encompass funding sources and constraints, contracting methods, and associated issues. They also include operational and jurisdictional issues concerning HN [host nation] agreements, security agreements, and other contractor personnel-related issues. Legal reviews should also address any statutory and regulatory issues as well as any other pertinent issues (e.g., appropriateness of armed PSC [private security contractor] support) that may not have a statutory or regulatory basis but do reflect appropriate judgment and analysis for the best decision.”

Given this doctrinal explanation, it would appear that requiring activity legal support to OCS begins and ends at requirements validation. However, the following roles of the judge advocate are inferred from the available joint and service doctrine and unpublished guidance.

A. Role of the Judge Advocate in Contract Support Integration

During the OCS-CSI planning process, the supporting judge advocate helps the staff and the OCSIC prepare Annex W, Operational Contract Support, and reviews the entire operations order to ensure it is consistent with applicable host nation, international, and U.S. law, regulation, and policy. Additionally, the judge advocate helps the command evaluate the fiscal law implications to include those potentially unique to contingency operations. For example, one OCS legal practitioner has considered whether the lead time exception to the bona fide needs (BFN) rule applies to services, whether the Title 10 United States Code section 2410a severable services exception applies to ACSAs as it does to interagency support agreements, and when a unit has a BFN when planning for future operations.

---

70 LTC Cora Interview, supra note 23.
75 For additional service specific OCS guidance see AR 715-9, supra note 52.; U.S. Dep’t of Air Force, Instr. 64-102, Contracting: Operational Contracting Program (9 Oct 2014).
76 LTC Cora, OCSIC Introduction, supra note 70, at 15.
77 U.S. Gov’t Accountability Off., B-309530, National Labor Relations Board - Funding of Subscription Contracts 1 (2007).
78 U.S. GOV’T ACCOUNTABILITY OFF., B-324781, DEPARTMENT OF THE ARMY, ABERDEEN PROVING GROUND - USE OF APPROPRIATED FUNDS FOR BOTTLED WATER 4 (2013) (finding an agency can use appropriated funds
During the Contract Support Integration execution process, the supporting judge advocate helps the requiring activity and OCSIC identify, develop, and articulate their contract requirements. As part of this support, the judge advocate conducts a fiscal law review of all pertinent documents and ensures that any requested contract support does not constitute an inherently governmental function or a personal service contract.

In addition, the judge advocate receives the requirements packet from the OCSIC before the requirements review board through CSAM, generates requests for information if needed, provides legal advice on issues such as arming contractors or private security contract support, serves as a non-voting member of the requirements review board, and actively engages and asks questions during the requirements review board on the validity of the requested requirement. If the command has streamlined the RRB validation process, then the requirements should only require one legal review by the serving judge advocate at the level of the approval/validation authority.

B. Role of the Judge Advocate in Contract Support

As part of the Contract Support function, there is a judge advocate advising the operational command and the OCSIC contract support, serves as a non-voting member of the ITEF board and a contract attorney advising the contracting command and its contracting officers. The judge advocate servicing the OCSIC advises on funding sources and restrictions, procurement fraud oversight, and acquisition and cross-service agreements. The contract attorney servicing the contracting officers advises on the interpretation of the Federal Acquisition Regulation (FAR) and Defense FAR Supplement (DFARS) contract provisions, battlefield acquisition, commercial activities, bid protests and contract dispute litigation, and provides opinions on the exercise of sound business practices on how to fulfill the RA’s requirement through one of the various procurement processes.

The judge advocate can also be helpful by advising the OCSIC and J-2 (Intelligence) staff on foreign vendor vetting. Foreign vendor vetting is the process of investigating proposed foreign vendors for their association with terrorist groups or other enemies of the United States, and against other requirements dictated by U.S. legal or policy requirements.

If, however, we spend large quantities of international contracting funds quickly and with insufficient oversight, it is likely that some of

“to provide a work site that satisfies such basic fundamental needs as potable drinking water, clean air, and sufficient light” ... “in response to legitimately anticipated dangers and exigencies.” 1d.

See USCENTCOM, OCSIC SOP, supra note 54, Appendix B and infra Appendix C for an example of a well-defined requirements template established by the USCENTCOM, OCSIC SOP. This template can serve as an example for other OCSICs to streamline the requirements development and validation process while addressing many of the fiscal law issues that judge advocates evaluate as part of the legal review process.

See FAR subpart 7.5, Inherently Governmental Functions, for a list of examples of functions considered to be inherently governmental functions. See also U.S. DEP’T OF DEF., INSTR. 1100.22, POLICY AND PROCEDURES FOR DETERMINING WORKFORCE MIX (12 Apr. 2010) [hereinafter DoD 1100.22] (establishing DoD policy for determining the appropriate mix of military, DoD civilian, and private sector support.).

“A personal services contract is characterized by the employer-employee relationship it creates between the Government and the contractor’s personnel... Obtaining personal services by contract, rather than by direct hire, circumvents those laws unless Congress has specifically authorized acquisition of the services by contract.” FAR 37.104(a), Personal services contract.

See U.S. DEP’T OF DEF., INSTR. 3025.21, PRIVATE SECURITY CONTRACTORS (PSCS) OPERATING IN CONTINGENCY OPERATIONS, HUMANITARIAN OR PEACE OPERATIONS, OR OTHER MILITARY OPERATIONS OR EXERCISES (22 July 1999) (C1, 1 Aug. 2009) (establishing DoD policy for the selection, accountability, training, and arming private security contractors during contingency operations, humanitarian, or peace operations, or other military operations or exercises).

USCENTCOM, OCSIC SOP, supra note 54, at 27.

Be prepared to hear and appropriately and professionally respond to, “The Top 10 Responses to Legal Objections” from frustrated clients (that do not actually overcome legal objections): (1) We’ve always done it this way; (2) You don’t understand how important this is; (3) This is one of the boss’s priorities; (4) You didn’t have an issue with this last time; (5) Nobody else [no previous audits] had an issue with this; (6) It’s too (late/hard) to make any changes now; (7) I talked to (3rd party) and (he/she) agrees with me; (8) I (non-lawyer) disagree with your legal interpretation; (9) We have an approved exception (but it isn’t documented); and (10) What do I have to wordsmith to get this past you?

Courtesy of the U.S. Army TRADOC Off. of the Staff Judge Advocate.

USCENTCOM, OCSIC SOP, supra note 54, at 13. See also COMBINED JOINT TASK FORCE-OPERATION INHERENT RESOLVE (CJTF-OIR) IRAQ TRAIN AND EQUIP FUND (ITEF) STANDARD OPERATING PROCEDURE (SOP) (20 June 2016) [hereinafter CJTF-OIR ITEF SOP] (identifying the role for the judge advocate as serving as a non-voting member of the ITEF requirements validation board and providing a legal review mostly limited to scribbling the phrase: “No Legal Objection (NLO)” or “Legally Unobjectionable”). Id. at 10.

LTC Cora, OCS Overview, supra note 40, at 14.

JOINT PUB. 1-04, supra note 72, at 1-14.

Id. at II-5.

FAR 1.603-2, 15.303(b)(1) (2016).

“All partner forces, prior to receiving training or equipment, must be vetted to ensure the units have not committed gross violations of human rights (GVHR) IAW Department of Defense Leahy Law [10 U.S.C § 2249e] and meet additional vetting requirements mandated by section 1236 of the NDAA for FY15, as amended by section 1223 of the NDAA for FY16.” CJTF-OIR ITEF SOP, supra note 86, at 2.
those funds will unintentionally fuel corruption, finance insurgent organizations, strengthen criminal patronage networks, and undermine our efforts in Afghanistan.\(^{92}\)

This concern led to enactment of the statutory prohibition against contracting with individual groups “actively opposing United States or coalition forces involved in contingency operations.”\(^{93}\) In addition to advising on the prohibition against contracting with the enemy, the judge advocate can be helpful by advising the staff on the prohibitions against contracting with individuals subject to financial sanctions\(^{94}\) and individuals or entities subject to export control restrictions.\(^{95}\)

C. Role of the Judge Advocate in Contract Management

During the Contract Management process, the supporting judge advocate will advise the OCSIC and command on the implications of host nation laws,\(^9\) the applicability of the Uniform Code of Military Justice\(^7\) and the Military Extraterritorial Jurisdiction Act,\(^8\) to contractors, and the commander’s adverse administrative authority over contractors.\(^9\) Additionally, judge advocates can play a critical role in advising the staff on procurement fraud.\(^10\) In addition, there is value with having the judge advocate assist the command Contracting Officer Representative (COR) with the administration and oversight of the contract on issues like unauthorized commitments, inspection and acceptance, and claims.\(^10\)

Contractors authorized to accompany the force are subject to all host nation laws while deployed, unless otherwise excluded from host nation jurisdiction by the SOFAs or other security agreements. The host nation may retain jurisdiction for violation of their laws or relinquish jurisdiction to the United States. Commanders will notify the Department of State (through the designated ARFOR or Joint Forces Command point of contact) of any alleged CAAF-related host nation law violations or apprehensions by host nation authorities.


\(^{94}\) JOINT PUB. 4-10, supra note 9, at III-22.

The Office of Foreign Assets Control (OFAC) of the US Department of the Treasury acts under Presidential national emergency powers, as well as authority granted by specific legislation, to impose controls on transactions and freeze assets under US jurisdiction. OFAC maintains the Specially Designated Nationals (SDN) List and Blocked Persons List (BPL) which should be consulted prior to the execution of contract support in order to limit the risk of conducting business with individuals and entities subject to US Government sanctions.\(^{94}\) List checking alone is insufficient to meet the due diligence requirements due to the fact that OFAC traditionally only designates umbrella organizations.

\(^{95}\) JOINT PUB. 4-10, supra note 9, at III-22.

The Bureau of Industry and Security in the Department of Commerce issues specific guidance to mitigate the risk of conducting business with individuals and entities subject to export regulations. Specifically, the Bureau of Industry and Security recommends that in the event a company, entity, or person on one of the maintained lists (Denied Persons List, Entity List, Unverified List, and Consolidated Screening List) appears to match a potential party in an export transaction, additional due diligence is required before proceeding.

\(^{96}\) AR 715-9, supra note 74, para. 4-2.b.


\(^{101}\) Contracting Officer Representatives (COR), also referred to as a Contracting Officer’s Technical Representative (COTR) or Quality Assurance Representative (QAR), are authorized by Contracting Officers by a letter of appointment to perform specific technical or administrative...
D. Role of the Judge Advocate Supporting the OCS Integration Cell

In addition to providing the OCSIC with the above legal advice and counsel, the judge advocate also advises the OCSIC by providing ethics advice on issues such as interacting with contractors and identifying and addressing financial conflicts of interest. Moreover, the judge advocate can provide advice on staffing decisions for the OCSIC. For example, as mentioned above, the OCSIC’s contracting officer should not have an active contracting warrant to ensure that the contracting officer is not tasked with contract support missions outside the OCSIC. In addition, the GCC or JFC may consider contracting for OCSIC service support as long as the OCSIC Chief is staffed by a U.S. government employee.

One of the ongoing challenges in OCS is that the current validation process is notoriously onerous. Consequently, OCSICs are spending their time and energy on the redundant validation process but are not properly “focusing on requirements development within the B2C2WGs or planning for strategic sourcing solutions.” Not only does this redundancy affect the OCSIC but it also has an impact on the amount of legal reviews the legal office produces for each procurement. One possible solution is for the judge advocates among the subordinate commands and OCSICs to arrive at a consensus that the legal review of record comes from the servicing legal office for the final validation authority. Issues like this, though not legal, can benefit from proactive steps by judge advocates to ensure the effective and efficient functioning of the OCSIC.

IV. Conclusion

As discussed above, there is little published doctrine establishing how judge advocates specifically support their command and its OCSIC throughout the OCS process. This may lead some to depict the role of the judge advocate as either serving as a No Legal Objection rubber stamp or a Legally Objectionable brick wall in OCS. However, in between these two extremes, the judge advocate has a meaningful role.

Using the frame of reference and compilation of resources provided by this paper, judge advocates add additional value throughout the OCS process. For example, judge advocates can ensure that requiring activities have well-defined requirements, serve as a business counselor to the command, can help identify and report procurement fraud. Moreover, they can advocate that economies of scale are considered through strategic resourcing. In doing so, judge advocates assist their command in meeting its operational requirements while ensuring that the U.S. military is a good steward of U.S. taxpayer money. While helping facilitate timely acquisitions of necessary goods and services.


104 “Also of importance, contracting officers with duty in the OCSIC will not have active contracting warrants. These contracting officers will serve as staff officers focusing on contracting support-related matters, and are not awarding or administering contracts.” JOINT PUB. 4-10, supra note 9, Appendix D-2.

105 “If contractor augmentation [to the OCSIC] is contemplated, ensure the contract support requirements package clearly states the need for non-disclosure and non-competition agreements as part of the terms and conditions of the contract. In no case should the OCSIC chief position itself be occupied by a non-government employee.” JOINT PUB. 4-10, supra note 9, Appendix D-2. See also DoDI 1100.22, supra note 81.

106 Dorman, supra note 15, at 57.

[COMMANDERS should not blindly accept lengthy and bureaucratic staffing procedures that interfere with effective decisions regarding OCS. Parallel planning, running estimates, staff assistance visits, and web-based information sharing will improve knowledge management across the force while enabling subordinate commanders to acquire the necessary decisions, funding, and contract support to accomplish their missions.

Id.

107 LTC Cora, OCS Overview, supra note 40, at 10.

108 “... Although legal reviews have a valuable part of the requirements validation process, they may be a time intensive staff product. A high volume of legal review requests may slow down a command seeking to forward requirements to the higher approval authority as expeditiously as possible.” CJTF-OIR, ADMIN / CONTRACT & FISCAL LAW, AFTER ACTION REPORT (2016) (unpublished document) (on file with author).
Appendix A. Annex W - Operational Contract Support (Template)

ANNEX W – Operational Contract Support

HEADQUARTERS, XX COMMAND

ADDRESS

XX XXX 20XX

ANNEX W TO XX COMMAND OPLAN/OPORD XXXX-XX

OPERATIONAL CONTRACT SUPPORT

(U) References: List all applicable references essential to this annex. [List all key OCS related regulations, policies, instructions, messages to include higher level Annex Ws when applicable. JFC specific OCS references can be found via the Defense Procurement and Acquisition Policy Area of Responsibility portal available via the following link http://www.acq.osd.mil/dpap/pacc/cc/areas_of_responsibility.html. Service components should include applicable Service and/or command specific references.]

1. (U) Situation:

   a. (U) Enemy. Provide threat level assessment as it relates to OCS. Also, see Annex B (Intelligence). [This section should include a short assessment of the estimated impact of the potential threats to utilizing contract support in the operation to include such information as threats from the use of local national employees to provide on-base services, threats that would require armed security to protect contracted services, etc.]

   b. (U) Friendly. List major contract support related commands and agencies involved in this operation, but not under the C2 this command; include their key OCS related tasks. [Include organizations such as USTRANSCOM, DLA, DCMA, DCAA and other governmental agencies impacting or influencing OCS actions such as American Embassies and USAID operating in the projected operational area. Include basic information on the OCS related authorities, capabilities of each organization]

   c. (U) Commercial Business Environment. Provide a brief description of the general business environment and estimated impact on the ability to utilize commercial support in the designated operational area. [Based on a coordinated GCC, Service component, construction agent and CSA OCS preparation of the operational environment efforts, this paragraph should include information on such things as existing DOD contracts, estimated local and in-transit commercial capabilities, local electronic banking capabilities, etc.]

   d. (U) Assumptions. State valid and necessary assumptions. [Briefly describe key OCS related planning assumptions based on threat assessment, commercial business environment, host nation/international and multinational considerations and any established OCS related facts.]

   e. (U) Limiting Factors. State all key limited factors to include specific constraints and restraints. [Based on threat assessment, commercial business environment research and any established OCS related facts and assumptions, list specific OCS related limiting factors such as status of forces agreements (SOFAs) restrictions (e.g. a SOFA that limits the number of US or third country national contractors allowed in country), general business environment (e.g. lack of established electronic banking systems), etc.]

2. (U) Mission. See base plan.

3. (U) Execution
a. (U) Concept of Contract Support Operations. Provide a broad concept of OCS integration and oversight for this operation. [This sub-paragraph includes a general overview of how contracting supports the operation and articulates the commander’s priorities, intent and specific OCS command guidance by phase of operation (e.g. ensure maximum use of local national commercial sources and employees in phase IV) by type of contract support or other logical manner. This section should also address the overall contract support arrangements (e.g., support to own Services, lead Service or Joint Theater Support Contracting Command (JTSCC), contract support related restrictions (by phase, location, function, guidance on use of/transition from Service CAP support, etc. Include description how OCS achieves or helps to achieve desired operational effects.)]

(1) (U) Guidance on Utilization of Types of Contracted Support.

(a) (U) Systems Support Contracts. Provide any specific guidance on use of system support contracts in this operation. [This sub-paragraph addresses any command guidance/restrictions on the use of Service weapon systems support contracts. Use caution in placing any restrictions on the use of system support contracts since most of these contracts are critically important in maintaining weapon and support system readiness.]

(b) (U) External Support Contracts. Provide any specific guidance on use of external support contracts in this operation. [This sub-paragraph addresses general guidance on the use of major external support contracts (e.g. DLA, USTRANSCOM, etc.) and Service Civil Augmentation Programs (e.g. Army Logistics Civil Augmentation Program; Air Force Capabilities Program [AFCAP]; and Navy’s Global Contingency Construction Contract [GCCC] and Global Contingency Services Contract [GSCC]). This section will also include commander’s guidance on the transition of Civil Augmentation Program support to theater support contracting by phase of operation where appropriate. The GCC and/or sub-JFC Annex W may refer to the appropriate Service component Annex Ws for a more detailed description of planned Civil Augmentation Program support (e.g., Army Annex W may have LOGCAP plan).]

(c) (U) Theater Support Contracts. Provide any specific guidance on use of theater support contracts in this operation. [This sub-paragraph addresses the concept of theater support contracting in the joint operational area by phase of the operation. The GCC and/or sub-JFC Annex W should refer to related sections of the Annex W to include theater support contracting command tasks and Appendix 1 Operational Contract Support Capabilities.]

(2) (U) Contingency Contracting Administrative Services (CCAS). State how CCAS will be performed. (Provides direction on CCAS at the GCC level. Normal options include Services providing their own CCAS capability or CCAS being provided by DCMA per theater business clearance guidance. If CCAS is going to be performed by DCMA, this paragraph should refer to tasks to subordinate units and other related guidance (i.e. theater business clearance rules).

b. (U) Tasks To Major Subordinate Units. List major OCS related tasks for each Service component, JTSCC (if formed), Joint Contingency Acquisition Office (JCASO) mobile support team (MST)(if deployed) and CSAs to include identification of the lead OCS manager/integrator staff or unit and participation in boards, bureaus, centers, cells (B2C2W) working groups. [This sub-paragraph should include OCS related guidance to major subordinate commands, JTSCC (if formed) and CSAs not contained in other sections of the Annex W. The GCC plan should include the requirement for Service components and CSAs to follow GCC OCS related guidance as found in the DPAP AOR portal (web linked in reference section above) and other OCS guidance (e.g. theater business clearance rules) as applicable. Service components and CSAs will be required to conduct OCS planning in support of the GCC and may be required to submit draft CSIPs to include appropriate Tabs and Appendices. The GCC level plan must include OCS integration responsibilities such as BC2W responsibilities not already captured in GCC standard procedures and/or policies as well as lead OCS advisory responsibilities. Service component and CSA plans should reflect similar OCS integration and advisory responsibilities applicable to their subordinate organizations. Finally, instructions to the lead Service responsible for theater support contracting (if appointed) or JTSCC (if formed) must include direction to publish mission specific theater acquisition instruction (e.g. standard clauses, contract negotiation policy, pricing procedures, etc.) and responsibility to coordinate theater business clearance guidance with OSD (if and when published).]

c. (U) Initial Guidance by Support Function. Identify major support function planned for commercial support sourcing. [This sub-paragraph along with the Annex W Tab A, Summary of Contractor Support Estimate, outlines anticipated commercial support sourcing by joint capability area and/or commodity. The information in the GCC and/or sub-JFC Annex W should be linked to the appropriate Service component or CSA plan as well as to Tab A to Appendix 3 Summary of Contractor Support Estimate which will contain more detailed planning guidance. Specific guidance found in each section below is based on GCC directed lead Service directives/CSA responsibilities, JFC ANNEX W Concept of the Operations guidance, applicable functional supportability analysis data, commercial business environment analysis factors, risk assessment analysis and other operational factors. Each individual section below should contain Service component command guidance on suitability for
contracted support to include specific restrictions and contract venue guidance (e.g. external support vice theater support contract type decision) by location and phase of operations as applicable and as directed by the GCC. The requiring activities (e.g., the Service components) will be responsible to develop contract statement of requirements (CSOR) that includes a description, location, timing, and estimated amount) for the designated supply or service. The CSOR template and instructions can be found at TAB C to APPENDIX F to ENCLOSURE F. The outline below provides specific guidance on the types of services that should be addressed in this paragraph.

1. Non-Logistic Support
   (a) Interpreters/Linguists
   (b) Intel
   (c) Communications
   (d) Security
   (e) Other

2. Logistics
   (a) Commodities
      (1) Bottled Water
      (2) Class I
      (3) Class II
      (4) Class III (B/P)
      (5) Class IV
      (6) Class VIII
      (7) Class IX
   (b) Base Life Support (non-facility related)
      (1) Tactical Water Purification
      (2) Dining Facility (DFAC) Support
      (3) Class I, II, III(P), IX Supply Support Services
      (4) Morale, Welfare and Recreation
   (c) Common Equipment Maintenance
   (d) Construction/General Engineering/Facility Maintenance Support
   (e) Distribution/Transportation
   (f) Health Readiness
   (g) Materiel Disposition Services
   (h) Other.
d. (U) Coordinating Instructions. Provide any mission specific board, bureau, center, cell, working group guidance or other coordinating instructions or reports as necessary.

4. (U) Administration and Logistics

a. (U) Funding-Fund Disbursement. Address OCS related funding and fund disbursement arrangements. Also, see Base Plan, Annex E Personnel, Appendix 3 Finance and Disbursing. [This sub-paragraph should specify who will provide/perform financial management responsibilities (including resource management, comptroller) along with information on who will provide funding for administrative support and operations. Designate who and how deploying funds certification and funds disbursement capabilities will support deploying contracting capabilities.]

b. (U) Contract/Fiscal Law Support. Specify who is responsible for providing contract law support to facilitate OCS. Also, see Base Plan, Annex E Personnel, Appendix 4 Legal. [This sub-paragraph should describe specific contract and fiscal law support arrangements.]

5. (U) Command, Control, and Contracting Authority

a. (U) Command and Control. Address the OCS C2 organizational construct. [The GCC level plan or order must designate specific OCS C2 relationships and how they fit into the overall JFC C2 arrangements. The GCC level plan must specifically address any lead Service or JTSCC C2 relationships over attached subordinate contracting organizations and if planned, how the OCS C2 organizational construct may change or evolve.]

b. (U) Contracting Authority. Address theater support head of contracting activity (HCA) authority to include linkages to in-theater contracting organization(s) and, if applicable, theater business clearance authorities. [This information should be addressed in the GCC level plan and be coordinated closely with the Service components and when necessary, DPAP. If determined necessary, coordinate with DPAP to initiate executive agent authority directives.

Annex W Appendixes and Associated Tabs:

Appendix 1 Operational Contract Support Capabilities Summary. Identifies key contracting, separate CCAS organization (if applicable) and contract integration organizations by phase and location. [This appendix should capture the deployment sequence and primary location of key OCS related elements include such organizations. For example, GCC and/or sub-JFC Annex W should capture organizations such as the JCASO-MST, Army Contracting Support Brigades, USAF contingency Contracting unit HQs, etc. Service component Annex Ws should provide additional detail such as location and support relationships of contingency contracting teams, LOGCAP support officers, etc.]

Appendix 2 Contractor Management Plan (CMP). Identifies theater specific contractor management requirements to include key staff and subordinate command responsibilities. [The CMP should cover contractors authorized to Accompany the Force (CAAF) related deployment preparation, in-theater management (to include legal jurisdiction and discipline matters) and government furnished support coordination and support requirements. The CMP also must address certain contractor management requirements for non-CAAF contracted employees who have an area of performance on a US military facility or within the vicinity of US forces. It also can be used (when applicable) to address unique contractor management aspects of both CAAF and non-CAAF private security personnel. This CMP planning information must be closely coordinated with the applicable primary and special staff members. More details can be found in TAB H to APPENDIX F to ENCLOSURE F.

Appendix 3 Summary of Contractor Support Estimate. Identifies the estimated contracted support requirements by function, location, phase of operation and includes estimated contractors accompanying the force footprint. [This tab provides data base like presentation of major contracted function guidance found in paragraph 3 c. This information is depicted by JCA, phase of the operation, and location to include estimated CAAF footprint information. The CAAF personnel numbers estimates will be determined using historical data and/or the Contractor Estimate Tool. In the future, these estimates will be tied to standard and non-standard contracted unit type code information.]

John A. Doe
General (or Admiral), U.S. xxxxx
Commander
OFFICIAL////////
# Appendix B. Sample Requirements Document

## CENTRAL COMMAND

### LETTER OF JUSTIFICATION (LOJ) FORM

### PART 1 - BASIC INFORMATION ABOUT THE REQUIREMENT

1. **Validation Authority Control #:**

2. **Requiring Activity or Unit:**

3. **Name of Requirement:**

4. **Bottom Line Up Front (Brief Description of Requirement and Unit Operational Need):**

5. **Is this a new unit requirement or is this requirement currently being performed?**
   - [ ] New
   - [ ] Currently Being Performed

6. **If supply/equipment purchase, what is the requested delivery date?**
   - [ ] N/A
   - [ ] Delivery Date

7. **For construction, or for sustainment, repair and maintenance (SRM) of a facility, what is the requested ground-breaking start date and delivery date?**
   - [ ] N/A
   - [ ] Requested Ground-breaking Date: _______________
   - [ ] Requested Completion Date: _______________

9. **Identify the requested delivery location(s):**

### PART 2 - ROUGH ORDER OF MAGNITUDE (ROM) COST ESTIMATE

10. **Supply, Commodity and Equipment Costs:**
    - [ ] N/A
    - [ ] Costs: _______________

11. **Facility Construction, Additions, and Improvements, or Repair and Maintenance Costs:**
    - [ ] N/A
    - [ ] Costs: _______________

12. **Relocatable Building (RLB) Costs:**
    - [ ] N/A
    - [ ] Costs: _______________

13. **Shipping Costs:**
    - [ ] N/A
    - [ ] Costs: _______________

14. **Installation and Preparation Costs:**
    - [ ] N/A
    - [ ] Costs: _______________

15. **Total ROM Estimated Cost:**
    - [ ] N/A
    - [ ] Cost: _______________

### PART 3 - WHO IS THIS REQUIREMENT FOR?

16. **Identify the single primary end user or receiver of this requirement:**
    - [ ] DOD Service-Members and Gov’t Civilians
    - [ ] Non-DOD USG Agency
    - [ ] DOD Contractor
    - [ ] Foreign Gov’t
    - [ ] Foreign ML Forces
    - [ ] Foreign Civilians/Pop.
    - [ ] Other

17. **Identify any/all secondary end user or receiver of this requirement:**
    - [ ] DOD Service-Members and Gov’t Civilians
    - [ ] Non-DOD USG Agency
    - [ ] DOD Contractor
    - [ ] Foreign Gov’t
    - [ ] Foreign ML Forces
    - [ ] Foreign Civilians/Pop.
    - [ ] Other

18. **If you identified requirement users or receivers other than the primary user, estimate the percentage of use by the primary user and each secondary user (Total 100%):**
    - [ ] N/A
    - [ ] Percentage: _______________

### PART 4 - WHAT IS YOUR REQUIREMENT?

21. **How would you best describe your primary requirement?**
    - [ ] Services
    - [ ] Supplies, Commodities, or Equipment
    - [ ] Facility Construction, Improve, or Additions
    - [ ] Facility Sustain, Repair or Maintenance (SRM)
    - [ ] Relocatable Buildings (RLB)

22. **Identify any/all secondary or additional needs with this requirement:**
    - [ ] Services
    - [ ] Supplies, Commodities, or Equipment
    - [ ] Facility Construction, Improve, or Additions
    - [ ] Facility Sustain, Repair or Maintenance (SRM)
    - [ ] Relocatable Buildings (RLB)
**CENTRAL COMMAND\nLETTER OF JUSTIFICATION (LOJ) FORM\n1. VALIDATION AUTHORITY CONTROL #:**

**PART 4 – WHAT IS YOUR REQUIREMENT? (CONT.)**

23. IF YOU IDENTIFIED SECONDARY OR ADDITIONAL REQUIREMENTS OTHER THAN THE PRIMARY REQUIREMENT, DESCRIBE AND ESTIMATE THE PERCENTAGE OF COST OF EACH TYPE OF REQUIREMENT (TOTAL 100%): □ N/A

**PART 4A – SUPPLY, COMMODITY AND EQUIPMENT PURCHASES (INCLUDE IT EQUIPMENT)**

24. IS ANY OF YOUR REQUIREMENT FOR SUPPLIES, COMMODITIES AND/OR EQUIPMENT? □ YES (FILL OUT PART 4A) □ NO (SKIP TO PART 4B)

25. HOW LONG ARE THESE SUPPLIES, COMMODITIES AND EQUIPMENT INTENDED/DESIGNED TO LAST? □ ONE (1) YEAR OR LESS □ MORE THAN ONE (1) YEAR

26. HOW ARE THESE SUPPLIES OR EQUIPMENT DESIGNED AND INTENDED TO BE USED? □ INDIVIDUAL USE (E.G., PAPER, REPAIR PART, ETC.) □ USED/INSTALLED TOGETHER (E.G., IT SYSTEM)

27. DO THESE SUPPLIES REQUIRE SERVICES SUCH AS INSTALLATION, SHIPPING OR MAINTAIN COSTS? □ N/A □ YES, INSTALLATION COSTS: □ YES, SHIPPING COSTS: □ YES, MAINTENANCE COSTS:

**PART 4B – SERVICES (INCLUDING SERVICES INCIDENTAL TO EQUIPMENT PURCHASES)**

28. IS ANY OF YOUR REQUIREMENT FOR SERVICES? □ YES (FILL OUT PART 4B) □ NO (SKIP TO PART 4C)

29. ARE THESE SERVICES RECURRING IN NATURE OR DO THEY BUILD TO A SINGLE END PRODUCT/RESULT? □ RECURRING (E.G., FACILITY CLEANING) □ END RESULT (E.G., STUDY; REGULATION RE-WRITE)

30. DOES THE SERVICE REQUIRE THE DOD PURCHASE OR LEASE OF SUPPLIES OR EQUIPMENT? □ N/A □ YES, PURCHASE COST IS: □ YES, LEASE COST IS:

31. DOES THE SERVICE REQUIRE THE PURCHASE OF LICENSES? HOW MANY, LICENSE DURATION? □ N/A □ YES, LICENSES (<1 YEAR), COST: □ YES, LICENSES (>1 YEAR), COST:

**PART 4C – FACILITY CONSTRUCTION; OR SUSTAIN, REPAIR AND MAINTENANCE (SRM)**

32. IS ANY OF YOUR REQUIREMENT FOR NEW FACILITY CONSTRUCTION, ADDITIONS, OR IMPROVEMENTS; OR, FOR SUSTAINMENT, REPAIR OR MAINTENANCE (SRM)? □ YES (FILL OUT PART 4C) □ NO (SKIP TO PART 4D)

33. REQUESTED GROUND-BREAKING (FOR NEW FACILITIES) OR REQUESTED START DATE (FOR SRM): DATE:

34. IDENTIFY PROJECT LOCATION(S) BELOW:

35. WHAT TYPE OF PROJECT(S) DO YOU REQUIRE? □ NEW FACILITY CONSTRUCTION □ ADDITION OR IMPROVE EXISTING FACILITY □ SUSTAIN, REPAIR, MAINT. OF EXISTING FACILITY □ LEASE OF FACILITIES □ LAND PURCHASE/LEASE □ OTHER:

36. ESTIMATED COST FOR BLOCK 35 PROJECT TYPES:

37. IF THIS IS NEW CONSTRUCTION(S), DO YOU HAVE A LAND USE AGREEMENT (LUA) OR OPERATIONAL CONTROL MEMO FOR THE LOCATION(S)? □ N/A □ YES – INCLUDED IN THIS JUSTIFICATION PACKET □ NO – THE PROJECT IS ON A PERMANENT U.S. BASE □ NO – NEED ASSISTANCE WITH THOSE DOCUMENTS

38. IF THIS IS NEW CONSTRUCTION, IDENTIFY THE ELECTRICAL SOURCING (E.G., LOCAL POWER GRID, GENERATORS, ETC.) AND OTHER UTILITIES: □ N/A

39. WILL THIS FACILITY BE “COMPLETE AND USEABLE” BY YOUR UNIT UPON COMPLETION OF THE PROJECT? □ YES □ NO (EXPLAIN WHY NOT IN BLOCK 41)

40. ARE THERE ANY OTHER CONSTRUCTION PROJECTS CURRENTLY ONGOING OR PLANNED THAT ARE RELATED TO THIS PROJECT? □ YES (DESCRIBE THE OTHER PROJECTS IN BLOCK 41) □ NO
## CENTRAL COMMAND LETTER OF JUSTIFICATION (LOJ) FORM

### PART 4C - FACILITY CONSTRUCTION; OR SUSTAIN, REPAIR AND MAINTENANCE (CONT.)

41. IF “NO” ON BLOCK 39, EXPLAIN WHY THIS FACILITY WILL NOT BE “COMPLETE AND USEABLE” UPON COMPLETION; IF “YES” ON BLOCK 40 IDENTIFY AND DESCRIBE ANY OTHER CONSTRUCTION PROJECTS CURRENTLY ONGOING OR PLANNED THAT ARE RELATED TO THIS PROJECT: [ ] N/A

42. IF THIS CONSTRUCTION PROJECT IS NOT APPROVED, WILL IT NEGATIVELY AFFECT THE “LIFE, HEALTH, AND SAFETY” OF YOUR UNIT PERSONNEL? IF SO PLEASE EXPLAIN BELOW, IN DETAIL: [ ] N/A

### PART 4D - RELOCATABLE BUILDINGS (RLBs)

43. DOES YOUR REQUIREMENT INCLUDE PURCHASE OR INSTALLATION OF RELOCATABLE BUILDINGS (RLBs)?
   - [ ] YES (FILL OUT PART 4D)
   - [ ] NO (SKIP TO PART 5)

44. ARE THESE RLBs BEING USED FOR, OR IN CONJUNCTION WITH, A CONSTRUCTION PROJECT?
   - [ ] YES (FILL OUT PART 4C IN ADDITION TO PART 4D)
   - [ ] NO

45. PLEASE IDENTIFY AND ESTIMATE ALL OF THE RLB COSTS THAT WILL BE REQUIRED FOR THIS RLB PROJECT:
   - [ ] ACTUAL RLB
   - [ ] RLB SHIPPING
   - [ ] FOUNDATION
   - [ ] ASSEMBLY/DISASSEMBLY
   - [ ] POST-ASSEMBLY WORK LIKE UTILITY/DRY WALL OR FIRE-SUPPRESSION INSTALLATION
   - [ ] OTHER-DESCRIBE:

   [ ] COST:

   TOTAL RLB PROJECT COST:

### PART 5 - OPERATIONAL NEED JUSTIFICATION

46. PROVIDE A COMPLETE JUSTIFICATION FOR WHY YOUR UNIT NEEDS THIS REQUIREMENT, AND HOW THE REQUIREMENT WILL SATISFY THE NEED.

47. EXPLAIN THE OPERATIONAL IMPACT TO YOUR UNIT IF THIS REQUIREMENT IS NOT APPROVED:
CENTRAL COMMAND
LETTER OF JUSTIFICATION (LOJ) FORM

1. VALIDATION AUTHORITY CONTROL #: 

48. ADDITIONAL INFORMATION REQUIRED BY THE VALIDATION AUTHORITY:

PART 6 – SIGNATURES

49. NAME/TITLE OF RA/UNIT PREPARER: 

50. DATE: 

51. SIGNATURE OF PREPARER: 

52. NAME/TITLE OF RA/UNIT APPROVER: 

53. DATE: 

54. SIGNATURE OF RA/UNIT APPROVER: 

GENERAL INSTRUCTIONS

Follow these guidelines and guidance listed in the MAAWS-A to complete this form.

Block 1: To be assigned by JERB Staff.
Blocks 2-3: Self explanatory.
Block 4: Be as concise yet descriptive as possible to provide a short summary of the requirement.
Blocks 5-9: Self explanatory.
Blocks 10-15: An exact cost is not required as that is determined during the contracting process. However, the Rough Order of Magnitude should be as close as possible to allow for sufficient validation and processing.
Block 16: If the warranty/license covers multiple years, check to see if the warranty cost is severable and can be paid in one year blocks.
Block 17: The total sum of the costs in blocks 10-16.
Blocks 18-19: If “Other,” please use the space in block 55 to explain your answer, preceded by the continued block number. (i.e. 18.)
Block 20: Self explanatory.
Blocks 21-22: Force Protection items, like T-walls and HESCO barriers, may be considered supplies IAW MAAWS-A, para 3.69. For RLBs, consider the 20% rule (aka 80/20 Analysis) when indicating the type of project. For more information on the 20% rule, see MAAWS-A, para. 4.36 and http://portal.xfer.augment.centcom.smil.mil/sites/JERB/ZAP/Shared%20Documents/Forms/AllItems.aspx.
Blocks 23-25: Self explanatory.
Block 26: If you are unsure, the space in block 55 to explain your answer, preceded by the continued block number. (i.e. 26.)
Block 31: If the license covers multiple years, check to see if the license cost is severable and can be paid in one year increments.
Blocks 32-34: Self explanatory.
Blocks 35-36: Divide the total Rough Order of Magnitude between each type of project on the lines in block 36 directly in line with the project type from block 35. If “Other,” please use the space in block 55 to explain your answer, preceded by the block number (i.e. 18.)
Blocks 37-40: Self explanatory.
Block 41: “Related projects” include repair, maintenance, and construction on the same utility system, infrastructure, or building.
Block 42: A true Life, Health, or Safety issue is likely to cause immediate injury, death or catastrophic equipment failure if not mitigated. Lack of time remaining to complete the approval process is generally NOT a Life, Health, or Safety threat.
Blocks 43-44: Self explanatory.
Block 45: A detailed breakdown of RLB expenses is required to complete the 20% rule (aka 80/20) analysis. For more details see MAAWS-A, para. 4.36 and http://portal.xfer.augment.centcom.smil.mil/sites/JERB/ZAP/Shared%20Documents/Forms/AllItems.aspx.
Block 46: This section is very important. A detailed description of the need for the requirement and how the current plan will meet the need can expedite the approval process. If you do not have enough space, please use the space in block 55 to continue your answer, preceded by the continued block number. (i.e. 46.)
Block 47: Be specific regarding mission impact. If you do not have enough space, please use the space in block 55 to continue your answer, preceded by the continued block number. (i.e. 47.)
Block 48: Use this space as required for any additional information requested by the Validation Authority.
Blocks 49-54: Self explanatory.
Blocks 55-56: Use this space as required for any additional information that does not fit within Blocks 2-48.
Appendix C. Top 10 Rules for Engaging with Government Contractors

____________________________________
Courtesy of the U.S. Army TRADOC Office of the Staff Judge Advocate

Rule 1

**Recognize that Contractors Are Competitors - Maintain a Level Playing Field.** Be sensitive to whether a meeting, action, or release of information would give a competitive advantage to a contractor. All similarly situated contractors should receive equal treatment. Because of the significant demands on their schedules, Senior Army Leaders may restrict contact with contractors—generally deferring such meetings to their action officers and/or program managers.

Rule 2

**Decline to Meet with Contractors Regarding Ongoing Competitions.** Decline meetings with competing contractors once a solicitation has been released; instead, refer contractors to the designated contracting officer. Avoid discussing or responding to questions on matters that are being litigated. When in doubt, contact your judge advocate.

Rule 3

**Avoid Preferential Treatment or the Appearance of Endorsement.** Do not give preferential treatment to any private party. Again, if you elect to meet with one contractor, you should be available to meet with other similarly situated contractors. Also, do not provide VIP visitor treatment to contractor representatives, to include those who may be retired DoD personnel - e.g., no Government vehicle rides from the airport, no all-day escort, no officially-hosted free dining.

Rule 4

**Avoid Private Discussions with Contractors.** You should avoid private meetings or discussions with contractors regarding its business and relationship with the Army. Make it your practice to have a staff member attend sessions with contractors.

Rule 5

**Should You Meet with a Contractor, Set an Agenda.** After agreeing to meet with a contractor, have the contractor identify the topic(s) for discussion and whether there are any current contracts, competitions, or active proposals that it has pending with the Army. You may want to have the contracting officer's representative (COR) attend if a particular contract action is involved.

Rule 6

**Primary Purpose of a Meeting is to Receive.** While it is alright to ask informational and clarifying questions during a meeting, avoid asking contractors to send follow-up information. The meeting should not be the basis for further action, and should not unintentionally solicit formal proposals. Leverage your staff or designated program manager for any follow-up. Use public forums such as Industry Days to "push" information out to contractors on Army needs and requirements. If you are uncertain, contact your judge advocate.
Rule 7

Keep "Inside Information" Inside. Do not release "Inside Information" that is not otherwise available to the public (or relevant community of DoD contractors). Inside Information includes:

- Selective release of advance procurement information, Army requirements, or premature release of contract award decisions;
- Acquisition information, to include: unopened bids, ranking of bids, proposed costs, the Army's estimate of costs, source selection plans, proprietary information (e.g., labor rates), reports by source selection boards, and information marked as source selection sensitive;
- Information not available to the public under the Freedom of Information Act; and,
- Information protected under the Privacy Act, trade secrets, and classified material.

Rule 8

Gifts Limits. Small gifts are occasionally offered in meetings with contractors. Food and refreshments that are not a meal (e.g., coffee and doughnuts) may be accepted. Anything more should be avoided and/or declined. That said, ethics rules allow acceptance of nominal presentation items or items worth less than $20 (but not more than $50 in total from any one source in a year). Consult your JAG when something other than a nominal gift is offered.

Rule 9

Restricted Contacts with Former DoD Officials & Retired Military Officers.

- The One-Year "Cooling Off" Restriction. Former senior DoD civilian employees and retired General Officers are prohibited from attempting to influence official actions in their former department or agency for one year after their departure. (18 USC § 207).

- For two years after leaving Government service, former Government officials may not represent someone else to the Government regarding "particular matters" (e.g., contract actions) that were pending under their responsibility during their last year of Government service. (18 USC § 207).

- Former officers and employees are forever prohibited from representing someone in a particular matter that involved non-Federal parties, in which they were personally and substantially involved while working for the Government. (18 USC § 207).

- Federal officials who had authority to award contracts, make payments, set overhead rates, and settle claims of more than $10 million are prohibited for a period of one year after the official action from working for the contractor who received the payment. (41 USC § 2104).

Rule 10

Letters, Star Notes, Awards. DoD officials are prohibited from using their official position, title, or authority to endorse any person, product, service, or enterprise. This includes the use of official stationery and Star Notes. (Personal letters of recommendation are an exception and should be coordinated with your JAG.) It is DOD policy not to recognize contractors with honorary awards unless the contribution is unrelated and completely outside any contractual relationship with DoD and the recognition is clearly in the public interest - a very high standard.

If conduct by contractor personnel is deemed to meet the DOD standard, then recognition is limited to a letter or an informal certificate of appreciation signed at the lowest organizational level. Recognition of contractors must be coordinated with the cognizant contracting officer. Prior coordination is required because the contracting officer may be taking action related to contractor performance.
Obtain legal counsel regarding the propriety of any recognition action involving a contractor.

- "Commander's coins" purchased with appropriated funds may not be presented to contractors.

- Before providing a contractor employee a personal letter of recommendation, contact your judge advocate for fact-specific advice.

- DoD Components must not permit any person, organization, or company having a commercial or profit-making relationship with DoD to participate in DoD award programs and must not create awards or awards programs to recognize such persons, organizations, or companies. (See DoDI 1400.25 - V451.)

END NOTE

Communication between the Government and industry must be fair, even, and transparent. The above guidance offers an overview for properly engaging contractors. Do not hesitate to request the assistance of your servicing legal advisor.