

## **PGI 225.370 Contracts requiring performance or delivery in a foreign country.**

(a) If the acquisition requires the performance of services or delivery of supplies in an area outside the United States, the contracting officer shall—

(i) Ensure that the solicitation and contract include any applicable host country and designated operational area performance considerations. Failure to provide such information—

(A) May result in a contract that does not reflect the respective support relationships between the contractor and the Government, ultimately affecting the ability of the contractor to fulfill the contract terms and conditions;

(B) May result in unplanned support burdens being placed on the Government in a theater of operations;

(C) May result in contractor personnel conflicting with theater operations or performing in violation of a theater commander's directives or host country laws; or

(D) May cause contractor personnel to be wrongly subjected to host country laws;

(ii) Comply with any theater business clearance and contract administration delegation requirements set forth in the memorandum

(<https://www.acq.osd.mil/dpap/policy/policyvault/USA004346-12-DPAP.pdf>) entitled Theater Business Clearance/Contract Administration Delegation Update—Integration of TBC with the Joint Contingency Contracting System Platform, which must be consistent with the combat support agency's established functions and responsibilities, and set forth by the geographic combatant commander during declared contingency operations for all solicitations and contracts that relate to the delivery of supplies and services to the designated area(s) of operation. The memorandum is available at <https://www.acq.osd.mil/dpap/policy/policyvault/USA004346-12-DPAP.pdf>

(A) Theater business clearance ensures—

(1) Contracted effort to be accomplished in designated area(s) of operations, along with any associated contractor personnel, is visible to the combatant commander;

(2) Contracted effort is in consonance with in-country commanders' plans;

(3) Solicitations and contracts contain appropriate terms and conditions;

(4) Contracted effort will be properly overseen in designated area(s) of operation;

(5) Any Government-furnished support requirements associated with contractor personnel are properly addressed in the contract terms and conditions.

(B) Contract administration delegation—

(1) Allows the combatant commander to exercise control over the assignment of contract

administration (which must be consistent with the combat support agency's established functions and responsibilities) for that portion of contracted effort that relates to performance in, or delivery to, designated area(s) of operation.

(2) Allows the combatant commander to exercise oversight to ensure the contractor's compliance with combatant commander and subordinate task force commander policies, directives, and terms and conditions;

(iii) Refer to the website at <https://www.acq.osd.mil/asda/dpc/cp/cc/index.html> , which contains required procedures and applicable guidance and information;

(iv) Follow specific guidance for the combatant command in whose area the contractor will be performing services or delivering supplies. This guidance is contained on the respective combatant commander's operational contract support webpage, which is linked to the procedures at <https://www.acq.osd.mil/asda/dpc/cp/cc/aor.html> , at the web-link for the combatant command for the area in which the contractor will be performing services or delivering items. These pages list prevailing regulations, policies, requirements, host nation laws, orders/fragmentary orders, combatant commander's directives, unique clauses, and other considerations necessary for soliciting and awarding a contract for performance in, or delivery of items to, that combatant commander's area of responsibility;

(v) To determine the appropriate point(s) of contact for contracting matters within the combatant commander's area of responsibility, contact the overseas contracting office by accessing the link for the combatant command in whose area of responsibility the contractor will be performing services or delivering items. From the combatant command website, link to the contracting office supporting the combatant command to identify the appropriate point of contact; and

(vi) Use the following checklist as a guide to document consideration of each listed issue, as applicable, and retain a copy of the completed checklist in the contract file.

#### CHECKLIST

The contracting officer shall verify that the requiring activity has considered the following when building its requirements package, as applicable:

\_\_\_ (1) Whether the contemplated acquisition will duplicate or otherwise conflict with existing work being performed or items already provided in the area, and whether economies of scope/schedule can be leveraged if there are already existing contracts in place for similar work or items.

\_\_\_ (2) The availability of technically qualified and properly trained Government civilian and/or military personnel to oversee the performance of the contract in the combatant commander's area of responsibility (e.g., contracting officer's representatives, quality assurance representatives, and property administrators).

\_\_\_ (3) The applicability of any international agreements to the acquisition. (Some agreements may be classified and must be handled appropriately.)

\_\_\_ (4) Compliance with area-specific, anti-terrorism security guidance set forth by the command anti-terrorism officer, to include soliciting anti-terrorism officer guidance on the particular requirement and the location of delivery and/or execution of services, and incorporating recommended security measures into the requirements package.

\_\_\_ (5) Whether there are any requirements for use of foreign currencies, including applicability of

U.S. holdings of excess foreign currencies.

\_\_\_ (6) Information on taxes and duties from which the Government may be exempt.

\_\_\_ (7) If the acquisition requires performance of work in the foreign country, whether there are standards of conduct for the prospective contractor and, if so, the consequences for violation of such standards of conduct.

\_\_\_ (8) The availability of logistical and other Government-furnished support and equipment for contractor personnel. This includes, but is not limited to: berthing and messing; intra-theater transportation; medical support; morale, welfare, and recreation support; postal support; force protection support; organizational clothing and personal protective gear (e.g., body armor and gas masks.)

\_\_\_ (9) If the contractor will employ foreign workers, whether a waiver of the Defense Base Act will be required (see FAR 28.305).

\_\_\_ (10) Whether contractor personnel will need authorization to carry weapons for the performance of the contract.

\_\_\_ (11) If the contract will include the clause at DFARS [252.225-7040](#), Contractor Personnel Supporting U.S. Armed Forces Deployed Outside the United States, the Government official authorized to receive DD Form 93, Record of Emergency Data Card, to enable the contracting officer to provide that information to the contractor, as required by paragraph (g) of the clause.

\_\_\_ (12) Ascertain the existence of and detail any Geographic Combatant Commander's (GCC's)/Subordinate Joint Force Commander Combating Trafficking in Persons Directives or Notices applying to Combating Trafficking in Persons (as required by FAR 22.1705 for contracts performed outside the United States) that would require the contracting officer to use Alternate I of the clause at FAR 52.222-50 detailing these requirements. This information can be ascertained from review of content on the cognizant Geographic Combatant Command Operational Contract Support webpage referred to in (a)(iv) of this PGI section.

\_\_\_ (13) Other requirements associated with contractor personnel to include deployment -related training, accountability (registration in Synchronized Pre-deployment and Operational Tracker), medical and dental qualifications, theater entrance and country clearance requirements.

\_\_\_ (14) Any other requirements of the website for the country in which the contract will be performed or the designated operational area to which deliveries will be made.

The contracting officer shall provide the following information to the applicable overseas contracting office (see PGI [225.370](#) (a)(v)):

\_\_\_ (1) The solicitation number, the estimated dollar value of the acquisition, and a brief description of the work to be performed or the items to be delivered.

\_\_\_ (2) Notice of contract award, including contract number, dollar value, and a brief description of the work to be performed or the items to be delivered.

\_\_\_ (3) Any additional information requested by the applicable contracting office to ensure full compliance with policies, procedures, and objectives of the applicable country or designated operational area.

(c) For work performed in Japan or Korea, U.S.-Japan or U.S.-Korea bilateral agreements govern the status of contractors and employees, criminal jurisdiction, and taxation. U.S. Forces Japan (USFJ) and U.S. Forces Korea (USFK) are sub-unified commands of Pacific Command (PACOM). The PACOM Staff Judge Advocate contact information is available at [http://www.pacom.mil/web/Site\\_Pages/Staff%20Directory/J0/J0.shtml](http://www.pacom.mil/web/Site_Pages/Staff%20Directory/J0/J0.shtml) or by clicking on Staff Directory/Special Staff on the PACOM website. Links to USFJ and USFK websites can be found at the PACOM website at <http://www.pacom.mil> by clicking on "Regional Resources - Links".

(i) For work performed in Japan—

(A) U.S.-Japan bilateral agreements govern the status of contractors and employees, criminal jurisdiction, and taxation;

(B) USFJ and component policy, as well as U.S.-Japan bilateral agreements, govern logistic support and base privileges of contractor employees;

(C) The Commander, USFJ, is primarily responsible for interpreting the Status of Forces Agreement (SOFA) and local laws applicable to U.S. Forces in Japan and for requirements in support of USFJ; and

(D)(1) To ensure that the solicitation and resultant contract reflect an accurate description of available logistics support and application of the U.S.-Japan SOFA, review the information on Contract Performance in Japan at the USFJ website, <http://www.usfj.mil>; or

(2) Contact the Staff Judge Advocate at (commercial) 011-81-3117-55-7717, or DSN 315-225-7717.

(ii) For work performed in Korea—

(A) U.S.-Korea bilateral agreements govern the status of contractors and employees, criminal jurisdiction, and taxation;

(B) USFK and component policy, as well as U.S.-Korea bilateral agreements, govern logistics support and base privileges of contractor employees;

(C) The Commander, USFK, is primarily responsible for interpreting the SOFA and local laws applicable to U.S. Forces in Korea and for requirements in support of USFK; and

(D) To ensure that the solicitation and resultant contract reflect an accurate description of available logistics support and application of the U.S.-Korea SOFA, review the SOFA information found at the USFK website at <http://www.usfk.mil/usfk/> under "Publications", or at <http://www.usfk.mil/usfk/sofadocuments.aspx>. Contact information for the Commander is also available at <http://www.usfk.mil/usfk/leadership.aspx>; and

(E) Additional applicable directives and regulations are available at <http://www.usfk.mil/usfk/>, click on the drop down menu for "Publications".

(d) For work performed in specified countries in the USCENTCOM area of responsibility, follow theater business clearance/ contract administration delegation policy as set forth in OSD policy letters linked to this PGI, and specific theater business clearance/contract administration delegation instructions as implemented by USCENTCOM's Joint Theater Support Contracting Command and found under contracting guidance at <https://www.acq.osd.mil/asda/dpc/cp/cc/aor.html> (click on CENTCOM area of responsibility).

**Parent topic:** PGI 225.3 -CONTRACTSPERFORMED OUTSIDE THE UNITED STATES