Contractor Accreditation Process--Germany

Articles 72 & 73 of the NATO SOFA SA

DoD Contractor Personnel Office (DOCPER)

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http://www.eur.army.mil/g1/content/CPD/docper.html

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Agenda

- Status accreditation background and overview
- COR duties and responsibilities
- Specific Issues
  - Contract Notification/Information and Application packages
  - DCOPS –DOCPER Contractor Online Processing System
  - DD 1172-2s
  - “New” contracts
  - Military Exigency
  - Temporary duty in Germany
  - Subcontractors
  - Ordinarily Resident
  - Yellow-Card Approvals
  - Integrity
- Questions??
Contractor SOFA Status

- Status Accreditation Benefits the Contracted Employee
  - Provides status to qualifying DoD contractors as part of the civilian component
  - Income is generally exempt from German taxes
  - Provides for individual logistics support (e.g., PX/Commissary, driver’s license, fuel card, MWR)

- Status Accreditation Benefits the Government
  - Saves the US gov’t money on contracts
  - Increases US gov’t contractors’ ability to acquire and retain high quality employees
History of SOFA Status

- Prior to 1998, US gov’t had unilateral right to grant SOFA status
- US gov’t “liberally interpreted” the SOFA provisions, granting status to those in positions and/or to individuals that did not qualify
- March 1998, US and Germany signed an agreement on the bilateral implementation of the Supplementary Agreement (Art 72 & 73) to the SOFA. The result was a 2-phase process:
  - Phase 1: contract packages reviewed and approved or denied
  - Phase 2: individual applicant packages reviewed and approved or denied
DOCPER Background

- The DoD Contractor Personnel Office (DOCPER) was authorized by the Director of Defense Procurement to implement bilateral agreements for all US DoD agencies operating in Germany
  - DOCPER is located at Clay Kaserne in Wiesbaden, GE
- DOCPER is the one-stop-shop for all contractor status accreditation issues
  - Under 2004 EUCOM CofS memo, DOCPER assists the US Sending State Office (USSSO) in contractor accreditation in Italy
- Web site:
  http://www.eur.army.mil/g1/content/CPD/docper.html
- AE Reg 715-9 contains most information needed regarding status accreditation under Articles 72 and 73
Types of Status

- Technical Expert (TE): accomplishes complex tasks of a technical-military or technical-scientific nature
- Analytical Support (AS): military planning and intelligence analysis
- Troop Care (TC): provides care to members of the force (doctors, nurses, physical therapists, social workers, and military career counselors)
- Troop Care Information Technology (TC-IT): IT support to TC missions
Exchange of Notes: Article 72 & 73

- Article 72 (AS, TC, TC-IT)
  - Phase 1 approval comes from the Ministry of Foreign Affairs (MFA)
    - Phase 1 approval focuses on the company in regard to a specific contract and establishes approval via a Note Verbale (NV)
    - NV process is very formal and structured
    - Jobs must be mapped to pre-approved position descriptions (AS or TC-IT) or job titles (TC)

- Article 73 (TE)
  - Phase 1 approval comes from respective Laender authorities
    - Phase 1 approval focuses on the contract and the job positions
    - Positions must be of a highly technical or scientific nature dealing with equipment and require a combination of higher education and/or specialized experience

- For both Article 72 and 73, Phase II Approval (individuals) runs through the Laender authorities
Time Frames for Decisions

- **Contract Notification (Article 73) - 8 weeks**
  - Review by DOCPER may take up to 3 weeks (5 day objective)
  - German authorities expected to concur/non-concur in writing within 5 weeks. If no response by then, concurrence is assumed

- **Enterprise Approval (Article 72) - ~4-8 weeks, but no set timelines for MFA**

- **Individual Applications - 10 weeks**
  - Review by DOCPER may take up to 4 weeks (5 day objective)
  - German authorities are expected to concur/non-concur in writing within 4 weeks. If no response by then, DOCPER (not the COR or contractor) can assume concurrence

- **Total process may take up to 18 wks for new applications**
  - If DOCPER or the German authorities need further information to process the request, it could take longer than 18 weeks
COR Duties And Responsibilities

- AE Reg 715-9(4)(d). The COR will
  - Ensure that contract and individual application packages are completed and submitted (through DCOPS)
  - Ensure that applicants meet approved job requirements
  - Prevent fraud
  - Notify DOCPER of employee terminations (Template available in DCOPS and on the DOCPER Forms Page)
  - Collect and turn-in credentials after terminations:
    - Common Access Cards (CACs) and dependant identification (ID) cards are turned in to local ID card facilities
    - NATO SOFA certificates are turned into local passport offices
  - Instruct approved contractors to accompany family members to ID card section. (Do not prepare DD Form 1172 authorizing ID cards for family members.)
COR Duties And Responsibilities (Cont.)

- For contractors, NATO SOFA status is always associated with an approved position under an approved contract
  - When the contractor leaves either the contract or the position under which they were approved, they have no more basis for NATO SOFA status. Their status is no longer valid and must be terminated

- The COR is responsible for informing DOCPER when a contractor’s status must be terminated for any reason:
  - End of a contract
  - Early contract termination
  - Contractor is terminated
  - Job offer is declined

- The COR is given significant trust and latitude with respect to status termination, but must expect to be held accountable
**COR Step 1: Initiate process**

COR transmits KO-signed designation letter to DOCPER.  

**DOCPER generates COR login & initial password Email**

**COR Step 2: “Complete”/Submit DCOPS Contract**

COR completes online AE 715-9A, uploads docs  

COR submits completed contract to DOCPER  

DOCPER reviews contract docs:  
- Approves (DOCPER approval) *  
- Denies contract  

Or DOCPER returns for modification/correction  

Or DOCPER notifies COR if contract rejected

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**5 COR Steps to TESA/ASSA Approval Process Overview (Steps 1&2: Phase 1)**

**Phase I: Contract Approval**

1. **COR Step 1: Initiate process**
   - COR transmits KO-signed designation letter to DOCPER.

2. **COR Step 2: “Complete”/Submit DCOPS Contract**
   - COR completes online AE 715-9A, uploads docs.
   - COR submits completed contract to DOCPER.
   - DOCPER reviews contract docs:
     - Approves (DOCPER approval) *
     - Denies contract
   - Or DOCPER returns for modification/correction.
   - Or DOCPER notifies COR if contract rejected.

**Phase II: Individual Application Approval**

**Bilateral Approval Process**

MFA (Art.72) or Land (Art.73) reviews contract docs:
- Approves (Land approval) or
- Denies contract

DOCPER notifies COR of approval to proceed

* Applications accepted upon “DOCPER Approved”
5 COR Steps to TESA/ASSA Approval Process Overview (Steps 3, 4, & 5: Phase 2)

COR Step 3: Generate the Applicant
COR “generates” applicant’s DCOPS login ID

COR Step 4: “Complete” application
- COR notifies Applicant to complete application
- Applicant submits completed application to COR
- COR submits completed application to DOCPER
- Applicant completes online AE FORM 715-9C & uploads documents

COR Step 5: Submit DCOPS Application
- DOCPER returns for modification/correction
- Or DOCPER notifies COR if status denied
- Phase II done: Individual Application Status accreditation approved
- DOCPER issues 1172-2 and AE 600-77A

Bilateral Approval Process
- Land reviews application:
  - Approves (Land approval) or
  - Denies applicant accreditation
- DOCPER reviews application:
  - Approves (DOCPER approval)
  - Denies applicant accreditation

Status Approved
Contract Notification

- Request DCOPS access with your COR designation memo
- Upload COR designation memo, as signed by the contracting officer
  - Provide contract information through DCOPS
  - Upload the executed (signed) contract document
  - Upload subcontract documentation if subs are involved and require approval under Article 73 (Technical Experts)
  - Upload PWS or SOW
  - Upload job description(s) which articulate duties and minimum education/experience requirements.
  - Upload the Detainee Memo for any contract requiring approval under Article 72 (Analytical Support only, not Troop Care or Troop Care IT)
Application Packages

- Generate Applicant Login and have applicant complete all required data entry
- Applicant must print and sign the AE Form 715-9C, then scan and upload the signed application
- Applicant should upload their resume (month/year and duty location for each previous position, active duty and/or civil service clearly articulated). The resume does not need to be signed
- Applicant should upload their offer letter (signed by employee and company rep) or a letter of employment verification
- COR uploads the approved job description

Any changes to information in the application package that might impact accreditation or taxation require a fresh applicant signature
DD 1172-2s

- Only DD 1172-2s authorized / verified by DOCPER are valid for use in Germany and Italy by contractors receiving ILS
  - TASS does not eliminate the requirement for a valid 1172-2
- DOCPER generates and provides DD 1172-2s thru the DCOPS system
  - Expiration dates on 1172-2’s are:
    - 3 years from the date of issue
    - Expiration of the contract
    - Expiration of the passport
- CIV-GC only when the SOW indicates that the specific position is emergency essential/mission critical
- A DD 1172-2 not required for a contracted employee to get a non-privileged CAC, but verification in TASS is always required
AE Forms 600-77A

- A valid AE Form 600-77A is required in order for an approved contractor and their dependents to receive NATO SOFA certificates

- NATO SOFA certificates are the *only true credential* for NATO SOFA status for individuals not in possession of an official passport
  - The NATO SOFA certificate is *not* an optional document
  - Only DOCPER can authorize the issuance of NATO SOFA certificates for contractors approved under Articles 72 and 73

- DOCPER generates and provides AE Forms 600-77A thru the DCOPS system
  - Expiration dates on AE Forms 600-77A will match the expiration date of the 1172-2’s provided by DOCPER
  - Approved contractors should receive their privileged CACs first, prior to seeking to obtain their NATO SOFA certificates

- **AND AGAIN:** *The NATO SOFA certificate is not an optional document*
“New” Contracts

How do I determine if a contract providing the same services as previously approved is “New” vs. an “Extension?”

- When possible, it is preferred to have a contract extended, rather than to process a contract as new
  - “Extensions” do not require new contract notification/approval
  - “Extensions” do not require applicants to reapply
- An “Extension” must meet ALL of the following criteria:
  - Same contract number (order numbers may change)
  - Level and scope of work must remain unchanged
    - Same PWS, same services
    - Number, type and location of positions do not change
  - Old and new POP should be basically sequential – no gaps and no overlap
- A Bridge Contract may be treated as an extension if the POP is less than a year and there is no change in scope
Military Exigency (ME)

- The bilateral agreements allow the US forces to grant immediate, temporary, unilateral status under “military exigency.”
  - Previous policy attempted to minimize the use of ME requests. This is no longer the case

- ME requests must come from the COR
  - Only DOCPER has the authority to approve an ME request
  - DOCPER approve MEs for previously bilaterally-approved applicants
  - DOCPER may deny an ME request when deemed prudent

- MEs can be approved for:
  - TE applicants anytime following unilateral (DOCPER) contract approval
  - AS applicants anytime following bilateral (Embassy and MFA) approval

- TC and TC-IT applicants are not eligible for ME
Temporary Duty in Germany

- **“FAX Back”** *
  - Required by German law
  - Does NOT provide status or any Individual Logistical Support (ILS)
  - <= 90 days (3 months) per 12 month period
  - Between contractor and German government
  - DOCPER provides information, but does not process
    *NOTE: “Fax-back” is now done via e-mail

- **TESA TDY**
  - Does provide full ILS while on TDY
  - <= 90 days per calendar year
  - Must apply to DOCPER and qualify for an approved position on an approved contract and not be “Ordinarily Resident”
  - TESA TDY contractors must receive a privileged CAC specifically associated with their TESA TDY approval.

DON’T USE A “FAX-BACK” IF YOU CAN GET A “MILITARY EXIGENCY (ME a lot easier now)
Ordinarily Resident (OR)

- General criteria for OR determinations under Art. 72 or Art. 73
  - Applicants determined to be OR are ineligible for status
  - Duration in FRG w/o status
  - Work in FRG w/o status
  - Real property ownership
  - Receipt of social benefits
  - Children in Germany/school
  - Other sources of income
  - Main focus of societal relations
  - Spouse employment
  - German spouse

- Test: weigh the *totality of the circumstances*, determine the main focus of vital interests, whether in Federal Republic of Germany or elsewhere

- 20 Year Rule: a contractor for 20 uninterrupted years in Germany will be considered OR by German Authorities

- 6 Year Re-Applications: a person who’s application was more than 6 years ago will be asked to submit an abbreviated application for review
“Yellow-Card” Approval

- “Yellow-Card” or “Last Chance” approval means that the individual receives status this last time
  - This generally happens when a person is essentially ordinarily resident now, but has been previously approved
  - If the person re-applies, he is extremely likely to be denied
- “Yellow-Card” approval is a decision made by the German authorities, not by DOCPER
- “Yellow-Card” approval allows a person time to either make a graceful exit or transition to full German residency
- A “Yellow-Card” approval does not change the status of the applicant
  - Not subject to challenge by DOCPER
  - Applicants re-applying after a “Yellow-Card” approval must prove their “main focus of vital interests” is no longer Germany
- “Yellow-Card” = your local Finanzamt is looking to tax you!

“on the radar” for German taxation!
Subcontractors

- Technical Expert positions
  - Information regarding the sub-vendor must be included on Contract Notification Form (para 1.c) by entry in DCOPS
  - Applicants apply and are treated as if employees of the prime-vendor

- Analytical Support positions
  - Each sub-vendor requires *individual enterprise approval* as if they were a separate prime-vendor
  - The prime-vendor must provide a Prime-Sub Agreement
  - The COR must submit a separate “Detainee Memo”
  - Applicants can only apply for AS positions specifically approved for their company
  - Sub-vendors must only provide a “small” number of total employees supporting the contract effort

- TC and TC-IT positions not approvable if subcontracted
Integrity

- Integrity of CORs and PMs are key to integrity of overall implementation of bilateral agreements
- Contract notifications and applications require full disclosure of all information requested
- Falsification or non-disclosure not only casts a very negative picture of the United States, but can also lead to CID involvement…
- Current system relies largely on trust, and we want to keep it that way