



DEPARTMENT OF THE ARMY
U.S. ARMY CORPS OF ENGINEERS
WASHINGTON, D.C. 20314-1000

CECT-ZA

20 October 2008

MEMORANDUM FOR ALL USACE COMMANDS (DIRECTORS/CHIEFS OF CONTRACTING)

SUBJECT: PARC Instruction Letter (PIL) 2009-01, Follow-on USACE Defense Base Act (DBA) Insurance Mandatory Requirements Contract with CNA Insurance

1. DBA Insurance is necessary to ensure contractor employees have workmen's compensation insurance in the event of an injury or fatality. This is particularly critical considering some of the high risks our contractors take to support the effort in Iraq and Afghanistan. Every effort must be taken to ensure contractor employees are covered by DBA insurance to avoid any situations where there is an injury or fatality and a contractor employee isn't covered.
2. USACE has entered into its 3rd Single-Source centrally-managed DBA Insurance contract. This contract covers all USACE and Joint Contracting Command Iraq/Afghanistan (JCC-I/A) contracts with performance overseas. This follow-on USACE and JCC-IA-wide mandatory requirements contract was awarded to Continental Insurance Company, dba CNA Insurance, effective 1 October, 2008 to provide the statutorily mandated DBA Insurance coverage for all USACE and JCC-I/A contractor employees working overseas, with the exception of Hawaii and Alaska. Rutherford International is the administrative Broker for CNA Insurance. The contract is effective from 1 October 2008 through 30 September 2009 with one 12 month Option Period and is posted on the HQUSACE Directorate of Contracting website.
3. The new fixed rates for this mandatory requirements contract are as follows:

Service	\$4.00	per \$100 of employee remuneration
Construction	\$7.50	per \$100 of employee remuneration
Aviation	\$20.00	per \$100 of employee remuneration
Security	\$12.50	per \$100 of employee remuneration
4. DBA insurance is required for employees of contractors and their subcontractors at every tier unless the U.S. Department of Labor (DOL) has granted a written country waiver (see FAR 28.305) AND the waiver is included in the contract, List of Country Waivers (see Enclosure 3). No waiver applies to any employee who is: hired in the U.S; a resident of the U.S.; or, a citizen of the U.S.
5. All USACE and JCC-I/A contractors and subcontractors procuring DBA insurance (i.e. **renewing coverage or obtaining new coverage**), for a USACE or JCC-I/A contract, shall purchase such DBA insurance under this requirements contract unless one or more of the following exceptions apply:

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- a. The contractor or subcontractor has a DBA self-insurance program approved by DOL; or
- b. The overseas place of performance is covered by a DOL country waiver listed on the Technical Exhibit #2, List of Country Waivers; or
- c. The USACE or JCC-I/A contractor is a personal services contractor whose employees are covered by the Federal Employees Compensation Act.

6. Pre-Award and Post-Award Responsibilities:

a. Mandatory DBA Requirements.

1) Solicitation: Enclosure 1 contains the Special Solicitation Requirements which shall be utilized in all solicitations for USACE and JCC-I/A, with contractor and subcontractor employees working overseas, with the exception of Hawaii and Alaska. It is the Contracting Officer's responsibility to place the applicable Special Solicitation Requirement (Fixed Price or Cost Reimbursable) into the appropriate section of the solicitation and to ensure that Offerors/Bidders are aware of the statutorily mandated DBA.

2) Contract: Enclosure 2 contains the Special Contract Requirements which shall be utilized in all contracts for USACE and JCC-I/A, with contractor and subcontractor employees working overseas, with the exception of Hawaii and Alaska. It is the Contracting Officer's responsibility to place the applicable Special Contract Requirements into the appropriate section of the contract and to ensure that Offerors/Bidders correctly priced DBA insurance and the successfully awarded Contractor's maintain a valid DBA Insurance policy with CNA Insurance.

3) Failure to Comply: The Special Contract Requirements have been revised to include the 'failure to comply' language. This emphasizes the Government's ability to enforce compliance with the statutorily mandated DBA, and informs contractors that their contract can be terminated for default/cause if Primes or Subcontractors fail to comply.

b. When to Allow Performance or issue the Notice to Proceed (NTP). It is the Contracting Officer's responsibility to ensure that the successfully awarded Contractor obtains and maintains valid DBA Insurance with CNA Insurance, before allowing performance.

c. Separately Price DBA Insurance Contract Line Item Number (CLIN). A separate CLIN will be established for DBA Insurance, so Offerors/Bidders are aware of the mandatory requirement and the rates and payments are easier to track and audit.

7. Oversight and Accountability: NCO leadership is responsible and accountable to ensure oversight and compliance with the DBA insurance requirement. Oversight and accountability can be performed through HQ Program and Evaluation reviews, PARC Reviews, and other internal reviews and assessments to ensure compliance with the statutorily mandated DBA Insurance Program. Each Regional PARC will coordinate a point of contact with the RCC or

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CCC for Contracting Officer's Representative (COR) nominations. There may be one or more COR(s) per Region, depending on the volume of DBA Insurance requirements within that Region. The appropriate RCC/CCC will submit a nomination to the HECSA Contracting Officer for appointment of a COR for their Division/Center. The COR will monitor the Contractor's performance and serve as the focal point for technical issues for their Division/Center as designated.

8. If you have any questions or need additional information, please contact the USACE DBA Subject Matter Expert (SME), Ms. Lynn M. Harper at (540) 665-3998 or the HECSA Contracting Officer, Ms. Susan M Burchell, at (703) 428-7406.

FOR THE COMMANDER:



KIM D. DENVER
Director, National Contracting Organization
U.S. Army Corps of Engineers

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INSTRUCTIONS TO CONTRACTING OFFICERS: The Special Solicitation Requirement “**Defense Base Act Insurance Rates – Limitation – Fixed-Price (OCT 2008)**” shall be included in all solicitations for fixed-price contracts wherever DBA Insurance is required.

DEFENSE BASE ACT INSURANCE RATES – LIMITATION – FIXED-PRICE (OCT 2008)

(a) The U. S. Army Corps of Engineers (USACE) has entered into a contract with **CNA Insurance** to provide all Defense Base Act (DBA) insurance to USACE and JCC-I/A contractors and subcontractors at a contracted fixed rate. The fixed rates for this insurance are as follows:

Service	\$4.00	per \$100 of employee remuneration
Construction	\$7.50	per \$100 of employee remuneration
Aviation	\$20.00	per \$100 of employee remuneration
Security	\$12.50	per \$100 of employee remuneration

(b) Bidders/Offerors should compute the total compensation or total payroll, (salary, plus overseas recruitment incentive and post differential, but excludes per diem, housing allowance, travel expenses, temporary quarters allowance, education allowance and other miscellaneous post allowances) to be paid to employees who will be covered by DBA insurance. Compute the cost of DBA Insurance by utilizing the spaces provided below for the base period and whatever extension there may be thereafter, if applicable.

(1) Compensation of Covered Employees: _____
(Total Payroll Not Total Contract Value) Ex: If total Payroll is \$100,000.00

(2) Applicable DBA Rate: _____
(Use appropriate Rate) Ex: If a Service, the rate is \$4.00/\$100 or 4%

(3) Total DBA Cost: _____
(Amount of DBA Premium) Ex: \$100 K multiplied by 4% is \$4,000.00

(c) Bidders/Offerors shall include a statement as to whether or not local nationals or third country nationals will be employed on the resultant contract.

(d) CNA Insurance is utilizing Rutherford International as their managing Broker. The primary POC is the USACE DBA Program Administrator is Ramoan Jones, (703) 813-6571 ramoan.jones@rutherford.com. The alternate POC is Sara Payne, Senior Vice President, (703) 813-6503 sara.payne@rutherford.com.

INSTRUCTIONS TO CONTRACTING OFFICERS: The Special Solicitation Requirement “**Defense Base Act Insurance Rates – Limitation – Cost-Reimbursement, Labor Hour, and Time-and-Materials (OCT 2008)**” shall be included in all solicitations for cost-reimbursement, labor-hour, or time-and-materials contracts wherever DBA Insurance is required.

DEFENSE BASE ACT INSURANCE RATES – LIMITATION – COST-REIMBURSEMENT, LABOR-HOUR, AND TIME-AND-MATERIALS (OCT 2008)

(a) The U. S. Army Corps of Engineers (USACE) has entered into a contract with **CNA Insurance** to provide all Defense Base Act (DBA) insurance to USACE and JCC-I/A contractors and subcontractors at a contracted fixed rate. Compute total compensation or total payroll, (salary, plus overseas recruitment incentive and post differential, but excludes per diem, housing allowance, travel expenses, temporary quarters allowance, education allowance and other miscellaneous post allowances) to be paid to employees who will be covered by DBA insurance. In preparing the cost proposal, the offeror shall use the following fixed rates in computing the cost for DBA insurance:

Service	\$4.00	per \$100 of employee remuneration
Construction	\$7.50	per \$100 of employee remuneration
Aviation	\$20.00	per \$100 of employee remuneration
Security	\$12.50	per \$100 of employee remuneration

(b) These rates apply to all job classifications in those particular categories.

(c) Should an offeror compute or include higher DBA insurance rates, the rate shall be disallowed.

(d) Offerors shall include in their proposals a statement as to whether or not local nationals or third country nationals will be employed on the resultant contract.

(e) CNA Insurance is utilizing Rutherford International as their managing Broker. The primary POC is the USACE DBA Program Administrator is Ramoan Jones, (703) 813-6571 ramoan.jones@rutherford.com. The alternate POC is Sara Payne, Senior Vice President, (703) 813-6503 sara.payne@rutherford.com.

INSTRUCTIONS TO CONTRACTING OFFICERS: The Special Contract Requirement **“Workers Compensation Insurance (Defense Base Act) – Services (OCT 2008)”** **shall be included in the contract as applicable.** Whenever Defense Base Act (DBA) insurance is required under the **contract** for services, the following Special Contract Requirement shall be incorporated into the applicable section of the contract.

WORKERS COMPENSATION INSURANCE (DEFENSE BASE ACT) – SERVICES (OCT 2008)

- (a) This Special Contract Requirement supplements FAR Clause 52.228-3 Workers' Compensation Insurance (Defense Base Act).
- (b) The contractor agrees to procure Defense Base Act (DBA) insurance pursuant to the terms of the contract between the U.S. Army Corps of Engineers (USACE) and **CNA Insurance** unless the contractor has a DBA self-insurance program approved by the Department of Labor. Proof of this self-insurance shall be provided to the Contracting Officer. The contractor shall submit proof of a valid DBA Insurance policy with CNA Insurance for the Prime and their Subcontractor's at every tier prior to performance of the contract. The current rate under the USACE and JCC-I/A contract is **\$4.00 per \$100 of compensation for services.**
- (c) The contractor agrees to insert a Special Contract Requirement substantially the same as this one in all subcontracts (at every tier) to which DBA is applicable.
- (d) Should the rates for DBA insurance coverage increase or decrease during the performance of this contract, USACE shall modify the contract accordingly. However, the revised rates will not be applicable until the Contractor's or Subcontractor's DBA Insurance policy is due to be renewed.
- (e) Premiums will be reimbursed only if coverage is purchased through the USACE mandatory requirements DBA contract administered by CNA Insurance and their Managing Broker, Rutherford International.
- (f) Failure to comply and purchase Defense Base Act (DBA) Insurance in accordance with FAR Clauses 52.228-3 Workers' Compensation Insurance (Defense Base Act), from the U.S. Army Corps of Engineers mandatory Insurance Carrier/Broker (CNA Insurance/Rutherford International) for the Prime and all of the Subcontractors at every tier, shall be considered a material breach and could cause your contract to be terminated for default/cause.

INSTRUCTIONS TO CONTRACTING OFFICERS: The Special Contract Requirement “**Workers Compensation Insurance (Defense Base Act) – Construction (OCT 2008)**” **shall be included in the contract as applicable.** Whenever Defense Base Act (DBA) insurance is required under the contract for construction, the following Special Contract Requirement shall be incorporated into the applicable section of the contract.

**WORKERS COMPENSATION INSURANCE (DEFENSE BASE ACT) –
CONSTRUCTION (OCT 2008)**

- (a) This Special Contract Requirement supplements FAR Clause 52.228-3 Workers’ Compensation Insurance (Defense Base Act).
- (b) The contractor agrees to procure Defense Base Act (DBA) insurance pursuant to the terms of the contract between the U.S. Army Corps of Engineers (USACE) and **CNA Insurance** unless the contractor has a DBA self-insurance program approved by the Department of Labor. Proof of this self-insurance shall be provided to the Contracting Officer. The contractor shall submit proof of a valid DBA Insurance policy with CNA Insurance for the Prime and their Subcontractor’s at every tier prior to performance of the contract. The current rate under the USACE and JCC-I/A contract is **\$7.50 per \$100 of compensation for construction.**
- (c) The contractor agrees to insert a Special Contract Requirement substantially the same as this one in all subcontracts (at every tier) to which DBA is applicable.
- (d) Should the rates for DBA insurance coverage increase or decrease during the performance of this contract, USACE shall modify the contract accordingly. However, the revised rates will not be applicable until the Contractor’s or Subcontractor’s DBA Insurance policy is due to be renewed.
- (e) Premiums will be reimbursed only if coverage is purchased through the USACE mandatory requirements DBA contract administered by CNA Insurance and their Managing Broker, Rutherford International.
- (f) Failure to comply and purchase Defense Base Act (DBA) Insurance in accordance with FAR Clauses 52.228-3 Workers’ Compensation Insurance (Defense Base Act), from the U.S. Army Corps of Engineers mandatory Insurance Carrier/Broker (CNA Insurance/Rutherford International) for the Prime and all of the Subcontractors at every tier, shall be considered a material breach and could cause your contract to be terminated for default/cause.

INSTRUCTIONS TO CONTRACTING OFFICERS: The Special Contract Requirement “**Workers Compensation Insurance (Defense Base Act) – Aviation (OCT 2008)**” **shall be included in the contract as applicable.** Whenever Defense Base Act (DBA) insurance is required under the contract for aviation, the following Special Contract Requirement shall be incorporated into the applicable section of the contract.

WORKERS COMPENSATION INSURANCE (DEFENSE BASE ACT) – AVIATION (OCT 2008)

- (a) This Special Contract Requirement supplements FAR Clause 52.228-3 Workers' Compensation Insurance (Defense Base Act).
- (b) The contractor agrees to procure Defense Base Act (DBA) insurance pursuant to the terms of the contract between the U.S. Army Corps of Engineers (USACE) and **CNA Insurance** unless the contractor has a DBA self-insurance program approved by the Department of Labor. Proof of this self-insurance shall be provided to the Contracting Officer. The contractor shall submit proof of a valid DBA Insurance policy with CNA Insurance for the Prime and their Subcontractor's at every tier prior to performance of the contract. The current rate under the USACE and JCC-I/A contract is **\$20.00 per \$100 of compensation for aviation.**
- (c) The contractor agrees to insert a Special Contract Requirement substantially the same as this one in all subcontracts (at every tier) to which DBA is applicable.
- (d) Should the rates for DBA insurance coverage increase or decrease during the performance of this contract, USACE shall modify the contract accordingly. However, the revised rates will not be applicable until the Contractor's or Subcontractor's DBA Insurance policy is due to be renewed.
- (e) Premiums will be reimbursed only if coverage is purchased through the USACE mandatory requirements DBA contract administered by CNA Insurance and their Managing Broker, Rutherford International.
- (f) Failure to comply and purchase Defense Base Act (DBA) Insurance in accordance with FAR Clauses 52.228-3 Workers' Compensation Insurance (Defense Base Act), from the U.S. Army Corps of Engineers mandatory Insurance Carrier/Broker (CNA Insurance/Rutherford International) for the Prime and all of the Subcontractors at every tier, shall be considered a material breach and could cause your contract to be terminated for default/cause.

INSTRUCTIONS TO CONTRACTING OFFICERS: The Special Contract Requirement “**Workers Compensation Insurance (Defense Base Act) – Security (OCT 2008)**” **shall be included in the contract as applicable.** Whenever Defense Base Act (DBA) insurance is required under the contract for security, the following Special Contract Requirement shall be incorporated into the applicable section of the contract.

WORKERS COMPENSATION INSURANCE (DEFENSE BASE ACT) – SECURITY (OCT 2008)

- (a) This Special Contract Requirement supplements FAR Clause 52.228-3 Workers' Compensation Insurance (Defense Base Act).
- (b) The contractor agrees to procure Defense Base Act (DBA) insurance pursuant to the terms of the contract between the U.S. Army Corps of Engineers (USACE) and **CNA Insurance** unless the contractor has a DBA self-insurance program approved by the Department of Labor. Proof of this self-insurance shall be provided to the Contracting Officer. The contractor shall submit proof of a valid DBA Insurance policy with CNA Insurance for the Prime and their Subcontractor's at every tier prior to performance of the contract. The current rate under the USACE and JCC-I/A contract is **\$12.50 per \$100 of compensation for security.**
- (c) The contractor agrees to insert a Special Contract Requirement substantially the same as this one in all subcontracts (at every tier) to which DBA is applicable.
- (d) Should the rates for DBA insurance coverage increase or decrease during the performance of this contract, USACE shall modify the contract accordingly. However, the revised rates will not be applicable until the Contractor's or Subcontractor's DBA Insurance policy is due to be renewed.
- (e) Premiums will be reimbursed only if coverage is purchased through the USACE mandatory requirements DBA contract administered by CNA Insurance and their Managing Broker, Rutherford International.
- (f) Failure to comply and purchase Defense Base Act (DBA) Insurance in accordance with FAR Clauses 52.228-3 Workers' Compensation Insurance (Defense Base Act), from the U.S. Army Corps of Engineers mandatory Insurance Carrier/Broker (CNA Insurance/Rutherford International) for the Prime and all of the Subcontractors at every tier, shall be considered a material breach and could cause your contract to be terminated for default/cause.

TECHNICAL EXHIBIT #2
List of DOL Waivers

List of blanket waivers to include the following countries:

Belgium	South America
Germany	Honduras
Japan	El Salvador
Oman	Qatar
United Arab Emirates	Botswana
Saudi Arabia	South Korea
Bahama Island	Territory of Guam