OFFICE OF THE UNDER SECRETARY OF DEFENSE

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ACQUISITION,
TECHNOLOGY
AND LOGISTICS

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DPAP/P

MEMORANDUM FOR DIRECTORS OF THE DEFENSE AGENCIES
DEPUTY ASSISTANT SECRETARY OF THE ARMY
(POLICY AND PROCUREMENT), ASA(ALT)
DEPUTY ASSISTANT SECRETARY OF THE NAVY
(ACQUISITION MANAGEMENT), ASN(RDA)
DEPUTY ASSISTANT SECRETARY OF THE AIR FORCE
(CONTRACTING), SAF/AQC
EXECUTIVE DIRECTOR, ACQUISITION, TECHNOLOGY
AND SUPPLY DIRECTORATE (DLA)
DIRECTOR, ADMINISTRATION AND MANAGEMENT

SUBJECT: Inclusion of Defense Base Act Clause in DoD Overseas Contracts

It has come to my attention that there may be some inconsistency within the Department regarding the inclusion of the **Workers' Compensation Insurance (Defense Base Act)** clause at FAR 52.228-3 in our contracts to be performed outside of the United States. This clause, which is prescribed by FAR 28.309(a), requires contractors to provide the workers' compensation insurance mandated by the Defense Base Act (42 U.S.C. 1651, *et seq.*) for their overseas workers. FAR 28.305 provides additional implementing guidance on this subject, including a definition of the key term "public-work contract."

I want to emphasize that the **Workers' Compensation Insurance (Defense Base Act)** clause at FAR 52.228-3 should be included in all DoD service contracts to be performed (either entirely or in part) outside of the United States, as well as in all supply contracts that also require the performance of employee services overseas. This is consistent with the very broad definition of "public-work contract" at FAR 28.305, which would include virtually all DoD contracts for construction, repair, or any other national defense related service performed overseas.

In addition, while FAR 28.309(b) prescribes inclusion of the **Workers' Compensation and War Hazard Insurance Overseas** clause at FAR 52.228-4 when the Secretary of Labor has waived the applicability of the Defense Base Act, such waivers

are granted only for foreign nationals hired outside of the United States. Even when a waiver has been granted, both of the clauses at FAR 52.228-3 and 52.228-4 should be included in DoD service or supply contracts if any contract services will be performed overseas by employees to whom the waiver does not apply, such as United States citizens or foreign nationals hired within the United States.

Please ensure that this memorandum is widely disseminated within your organizations. Questions may be directed to Mr. Christopher Werner of my staff at (703) 695-9764 or Christopher.Werner@osd.mil.

for Deidre A. Lee
Director, Defense Procurement
and Acquisition Policy