



UNCLASSIFIED

Contractor Accreditation Process--Germany

Articles 72 & 73 of the NATO SOFA SA

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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
 - 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
 - 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**

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

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 returns for modification/correction
Or DOCPER notifies COR if contract rejected



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

Phase I done:
contract approved,
both DOCPER and Land
concurrently approve.



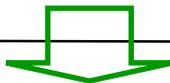
Status Approved

Bilateral Approval Process

Land reviews contract docs:
- Approves (Land approval) or
- Denies contract



DOCPER notifies COR of approval to proceed



* Applications accepted upon "DOCPER Approved"

Phase II: Individual Application Approval

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



Applicant completes online AE FORM 715-9C & uploads documents

COR submits completed application to DOCPER

COR Step 5: Submit DCOPS Application



DOCPER returns for modification/correction Or DOCPER notifies COR if status denied

DOCPER returns for modification/correction Or DOCPER notifies COR if status denied



DOCPER reviews application:
- Approves (DOCPER approval)
- Denies applicant accreditation

Bilateral Approval Process



Land reviews application:
- Approves (Land approval) or
- Denies applicant accreditation

Phase II done:
Individual Application Status accreditation approved
DOCPER issues 1172-2 and AE 600-77A



Status Approved



Contract Notification

- Request DCOPS access with your COR designation memo
- Once the COR is granted access to the contract/task order record in DCOPS, they will be expected to:
 - Enter the necessary contract/task order information
 - Upload the signed contract/task order
 - Upload the performance work statement (or SOW)
 - Upload a job description for each required job title
 - Upload subcontract documentation if sub-vendors will perform services that require approval under Article 73 (Technical Experts)
 - Upload a Detainee Memo for any Article 72 contract requiring Analytical Support services (not Troop Care or Troop Care IT)

Application Packages

- The COR or the VREP can create a new applicant record, which then invites the applicant to login
- After the application is submitted, any changes to information in the application package that might impact accreditation or taxation require a fresh applicant signature application, and a new application must be submitted.
- Applicant should upload a resume that meets the needs of the status accreditation process (month/year and duty location for each previous position, active duty and/or civil service clearly articulated).
- Applicant should upload a letter of employment verification or an offer letter
- The COR or the VREP should upload the approved job description after the applicant has submitted



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 will be the earliest of:
 - 3 years from the date of issue
 - The expiration of the contract/task order
 - **The expiration of the applicant's tourist 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 required for all contractor CACs**



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/task order providing the same services as previously approved is “New” vs. an “Extension?”

- When possible, it is preferred to have a contract/task order extended, rather than to process a contract/task order 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 on the basis of military exigency (ME) if requested**
 - **DOCPER recommends that every application for which ME approval is possible should include an ME request**
- **ME requests must come from the COR**
 - **Only DOCPER has the authority to approve an ME request**
 - **DOCPER will approve most ME requests**
 - **DOCPER may deny an ME request when deemed prudent**
- **ME requests can only 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 **DON'T USE A “FAX-BACK” IF YOU CAN GET A “MILITARY EXIGENCY** Support (ILS)
 - **<= 90** As stated in previous slide, ME a lot easier now.
 - 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.**



Ordinarily Resident (OR)

- **General criteria for OR determinations under Art. 72 or Art. 73**
 - 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 whether in Federal Republic of Germany or elsewhere**

Applicants determined to be OR are ineligible for status
- **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
 - “on the radar” for German taxation!
 - 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!



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**