Contingency Contracting in the Low-Intensity Conflict Environment

By

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The United States military presence in Central and South America is under attack, both literally and politically, as bombings and sniper fire directed against U.S. military personnel characterize the low-intensity conflict (LIC) environment in certain parts of Latin America. The process of contracting support for U.S. forces in a LIC environment is oriented toward sustaining operations in the field, as opposed to contracting for mobilization or surge production. A significant characteristic of this field support is that a contracting officer (KO) deploys overseas with the supported military unit. Some of the unique concerns faced by a KO deploying with an operational unit involve chain of command disconnects, locating vendors in the local economy, the timeliness of administrative support, obtaining special authorizations for purchases, and maintaining personal security. These concerns are exacerbated by the fact that a deployed contracting officer normally operates one-deep without backup. This article reflects the author's personal experience in Honduras and illustrates the obstacles a KO may encounter in the performance of his mission in an LIC environment.

The terms "contingency" and "contingency contracting" have been recently defined and added to the 1 December 1989 Department of Defense Dictionary of Military and Associated Terms (Joint Pub 1-02, formerly JCS Pub 1):

> ***contingency***: An emergency involving military forces caused by natural disasters, terrorists, subversives, or by required military operations. Due to the uncertainty of the situation, contingencies require plans, rapid response, and special procedures to ensure the safety and readiness of personnel, installations, and equipment.
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> ***contingency contracting***: contracting performed in support of a peacetime contingency in an overseas location pursuant to the policies and procedures of the *Federal Acquisition Regulatory* System.

Headquarters, U.S. Army South (USARSO) has a staff position for a Principal Assistant Responsible for Contracting (PARC). The PARC issues the Contracting Officer the required warrants for the command. The Directorate of Contracting, also a USARSO agency, provides installation contracting support for garrison activities in Panama. The Directorate's Mission Support Division provides contracting support for Joint Chiefs of Staff and U.S. Southern Command (USSOUTHCOM)-sponsored deployments in theater, and is the division to which the military KOs are assigned. Due to the usually austere living and working conditions required to provide responsible contracting support for a deployed unit, neither civilian contracting officers nor female contracting officers are normally deployed in the field.

An inexperienced contracting officer may be induced by a forceful commander into believing that the KO must procure whatever is directed by the commander. While this is close to the truth, the KO must be aware that no supplies or services may be procured without proper authority. There are no special codified procedures for "LIC contracting." All procurement actions must adhere to the guidance established in the *FAR* [*Federal Acquisition Regulation*]. Contract files resulting from short leadtime requirements must be fully documented. This is a difficult task when one is operating alone and filling an average of twenty procurements requests a day.

While the issue of undue influence is by no means unique to contracting in an LIC environment, it must be emphasized that few of the KOs assigned to USARSO's Mission Support Division have ever been previously issued a contracting officer's warrant. For most such Army KOs, their principal qualification has been completion of the Basic Contracting Course at the Army Logistics Management Center, Fort Lee, Virginia. No Spanish language training for these KOs was provided. These military officers were issued warrants, deployed, and were expected to do a job that could withstand the scrutiny of auditors and investigators.

The United States Southern Command maintains a continuing presence in Honduras at Soto Cano Air Base (formerly Palmerola Air Base). Sponsorship of the contracting office at Joint Task Force-Bravo (JTF-B), Honduras, is by the Directorate of Contracting (DOC), USARSO, a command subordinate to Southern Command. Contracting pressures have resulted from the involvement of these different levels of command. If the commander of JTF-B was dissatisfied with his contracting support or a KO's decisions, he would call his sponsoring four-star headquarters. It was an uphill battle for USARSO (a two-star headquarters) to defend the KO's decision.

The contracting office at JTF-B has been staffed by contracting officers assigned to the Directorate of Contracting, USARSO, and by temporary duty augmentees from the Army Materiel Command (AMC). The KOs on temporary duty were issued warrants by the USARSO PARC. The authorized level of staffing for the JTF-B contracting office is for an office chief and additional KOs for construction, small purchases, and administration of a $3 million base operations contract. For one six-month period, there were no temporary Army Materiel Command augmentees; the Honduras branch office was staffed by the author and one other KO from the Mission Support Division. Since the facilities in Honduras are becoming more habitable, AMC had sent some government civilians to fill the requirement for augmentees, but funding account issues and delayed overtime payments caused the entire complement of civilian contracting officers to threaten to depart. Two of them actually carried out the threat. The gap was plugged by military contracting officers from Mission Support; KOs had to be ready to deploy without notice.

The issues faced by a deployed KO vary significantly and illustrate the types of situations a KO may have to face. For example, the U.S. Air Base in Honduras has a small Base Exchange which operates under non-appropriated funds. The exchange manager provides shuttle bus service for his employees to get them to work from outlying areas. If the bus breaks down, which frequently happens, the BX manager must find a replacement. Once, a JTF-B staff officer volunteered to provide a bus from the base operations contractor's motor pool to transport the BX employees to work. The administrative contracting officer for the base operations contract refused to allow the base ops bus to pick up the BX employees because of the differential in funds: it would be improper for appropriated funds to be used to support a non-appropriated activity. Similarly, the JTF-B dining facility was operated under a base operations contract. Fresh bread was obtained by a blanket purchase agreement from a local supplier. When the baker closed his facility for renovation, the dining facility manager tried to purchase bread from the BX; again, this was inappropriate, and another supplier had to be found.

In addition to the continuing mission in Honduras, the Mission Support Division provides KOs in support of various units deployed for training throughout Central and South America. The deployments are vastly more demanding than the relatively stable work environment in Honduras.

As was mentioned earlier, KOs normally operate alone in a support role. This is because vendors for support requirements must be actively sought out by the KO; local economies never have all the sources necessary to support a field deployment. The KO may spend the majority of his time hundreds of miles from the supported unit. Although TELEX and facsimile are nominally available to obtain written documentation for contract files (e.g., guidance from the Director of

Contracting and legal opinions), this capability is only available in major cities, and then only in select facilities. As a result, KOs have had to be quite certain that any contract they prepared had proper authorization and fund citation. One frequent procurement request was for livestock to be roasted and consumed in an end-of-deployment party. Two specific items had to be checked prior to contracting for locally supplied meat: a veterinarian had to inspect and approve the animal for consumption before it was purchased; and the funds used to purchase the animal had to be especially designated for that purpose. Separate funds had to be provided for the purchase of alcohol for these parties, also.

Several pre-deployment planning conferences were held before a unit packed up and deployed south. The contracting officer was an active participant in these planning sessions. The DOC has published a pamphlet explaining contracting procedures for supplies and services normally requested by units deploying for training; multiple copies of this pamphlet were furnished at each planning conference. Additionally, a supporting KO wrote the contracting annex for the unit's deployment plan, and reviewed the logistics annex. The regionally unique support requirements included human waste disposal, fresh fruits and vegetables, ice, fuel and brush clearing. A recurring problem was that units deploying to Latin America assumed that local businesses would have ready sources of supply for potable ice, all-terrain forklifts, rock drills, refrigerated trailers, etc. This was not the case, but the KO did his best to locate sources to fill these requests. In the case of contractor non-performance, it again fell to the KO not only to impose monetary penalties, but to find an immediate alternative, even at one o'clock in the morning.

Units repeatedly requested leases of commercial vehicles for administrative and command purposes during their deployment. Although the lease of commercial vehicles is an authorized expenditure, units continually requested more vehicles than could legitimately be used in a support capacity. As a result, the USARSO transportation officer stated that all requests for commercial vehicle leases must be approved by his office. This policy frequently placed the KO in the middle of a disagreement between the unit commander who had sufficient funding and wanted additional vehicles, and the USARSO Chief of Staff, who would not approve leases which could not be justified.

When deploying into an area of operations, one of the KO's first stops was at the American Embassy. There it was beneficial to meet with the Government Services Officer (GSO), who could assist the KO in locating some vendors who might be able to fulfill unit purchase requests. The GSO also maintained a supply of forms commonly used in Government contracting, as well as a copy of the *FAR*. At the embassy, the KO would also meet with the military assistance group commander. The MILGP commander is the main point of contact for in-country deployments, and may become involved in the contract award process. It was not uncommon for the lone KO to explain *FAR* requirements for competition and determination of price reasonableness to this commander.

A representative of the Military Group presents in-country briefings to newly-arrived military personnel; security precautions are the main topic of these briefings. Security had to be in the forefront of the KO's mind. For example, one should not operate for longer than four days out of the same hotel room, or one could be targeted by hostile intelligence-gathering activities. Similarly, a KO operating alone should not invite contractors to his room; business should be conducted either in hotel lobbies, restaurants, or in the contractor's facility. Since contracting support in the field has to be mobile, the amount of blank forms and office supplies a KO takes on deployment is restricted. The author found that a top-opening sample case was the most practical "office" to have. Also, the advent of laptop computers is a plus, since Purchase Order forms can be formatted in the computer and the data filled in as needed. One should note, however, that the electric current in Latin America is at 220 volts, while laptop computers run on 110 volts. Unless

one chooses to carry a transformer on a deployment, it is sometimes possible to operate the computer off the electric shaver socket (110 volts) in the lavatory, if available.

One negative aspect of traveling light is that documents are easily misplaced. Once, while the author was checking into a hotel, his car was stolen, and all the contract files which were in the vehicle were lost. The car was found upside down in a river two days later. Fortunately, the missing files were able to be restored by copying the disbursing officer's copies of the purchase orders.

Disbursing officers were designated at random from the USARSO staff. Since this responsibility was not a job for which the officer had been extensively trained, the KO frequently had to assist in setting up the disbursing officer's files. Also, the KO had to maintain close liaison with the disbursing officer in order to ensure that contractors were not overpaid; to clear these accounts, the disbursing officer merely had to match cash receipts with cash paid out. On the other hand, the KO had to match cash receipts with contractor invoices, as well as with funds obligated, in order to close out the contract. A further incentive to the KO was that all contract files had to be closed before he could leave the country.

A disbursing officer quickly becomes known by the local populace, and is armed for protection. While the KO serves as his mentor, time spent together must be kept to a minimum. The KO avoids being present when contract payments are made, since his role could become confused with that of the disbursing officer in the eyes of the contractor. The author was ambushed twice while traveling from an operational area, and although no injury resulted, the rental vehicles sustained bullet holes.

Another area which requires liaison with the disbursing officer focuses on currency value. *FAR* 25.501 states that "contracts entered into and performed outside the United States with local foreign firms will be priced and paid in local currency, unless an international agreement provides for payment in U.S. dollars, or the contracting officer determines the use of local currency to be inequitable or inappropriate." In Latin America, the KO has to be especially cautious of authorizing payments in dollars, since to do so is frequently in violation of local law; dollars generally command a much higher price on the black market than they do in an officially-sanctioned bank where the official (i.e., lower) exchange rate is enforced.

In most locations, local vendors have never done business with the United States government. The *Federal Acquisition Regulation* offers very little in the way of guidance for contracting officers operating in a LIC environment, removed from administrative support. *FAR* 32.110 states that KOs "shall give due consideration to the sovereignty, laws, and procedures of the country concerned, and shall obtain legal advice as necessary." Obtaining this legal advice often involves time delays, given the scarcity of FAX or TELEX capability. Some contractors (and government agencies) require that the official version of the contract be in Spanish, while *DFARS* 252.213-700 requires that "in the event of inconsistency between any terms of a contract and the translation thereof into another language, the English language meaning shall control."

One other specific area that is covered by the *FAR* concerns the differential in currency value between the dollar and whatever local currency the contract requires. *FAR* 25.501 states that "when the local currency increases in value in relation to the dollar, a violation of the Anti-Deficiency Act could occur." To avoid this possibility, the KO normally underestimates the exchange rate when writing the contact. Any funds remaining at contract closeout revert back to the control of the finance and accounting office.

The concept of competitive sealed bidding seems difficult to convey to foreign vendors. Contractors oftentimes will try to bribe their way to contract award, or to uncover the bids of their competitors and to then bid at a lower level. "Negotiation" also has a different connotation. For

example, one offer, for swimming pool construction at Soto Cano Air Base, was significantly below the others. Upon written notification that we suspected a mistake had been made by the contractor in computing the price of the offer, the contractor revised his price downward! In another example of negotiation, transportation services were needed to move construction materials into a remote area. A market survey indicated that there was only one vendor available who could provide the service. The author was escorted to a table in a dingy *cantina* and introduced to the bare-chested, swarthy vendor, who placed a loaded pistol on the table. The KO proceeded to explain what was needed. An agreement was reached, and the contract was handwritten and signed. The contractor then reached into the top of his boot and pulled out a clear plastic bag which contained a white, powdery substance, dipped two fingers into the bag, and inhaled the substance through his nose. He then passed the bag to the KO, who declined to partake.

Although the majority of contracting support for units deployed for training is for supplies or services under $25,000 (small purchases), KOs assigned to USARSO have to be versed in contracting procedures above that level, as well. Since the DOC was staffed principally by Panamanians, some of whom were sympathetic to General Noriega, certain contract actions were manually processed by the Mission Support Staff in order to keep sensitive information from being passed to Noriega. For contract actions requiring a request for proposal, the package had to be typed manually, since the computer system could be accessed by Noriega sympathizers.

One of the ways to achieve contracting coverage for a deployment is through the use of ordering officers, i.e., individuals authorized to obligate the government for supplies or services up to $2,500. The deploying unit nominates an ordering officer who is briefed by the supporting KO regarding the ordering officer's scope of authority. Once the deployment is over, the KO reviews the ordering officer's vouchers for sufficiency of funds and propriety of use. The author found that ordering officers never exceeded the dollar threshold, but purchases were often made of items that were not authorized. One young Army Special Forces non-commissioned officer purchased a video camera and VCR; the thinly veiled justification authorizing the purchase was that the "equipment was needed to make training films." This purchase was disallowed, and the soldier's unit ended up reimbursing the Government for the purchase. Other examples of abuses include the purchase of items to replace unit property and the purchase of repair parts; in both cases such replacements and repair parts are more properly requisitioned through military supply channels. The KO is responsible for the ordering officer's actions, and has to keep close track of these purchases. A weekly review of ordering officer transactions is usually adequate to detect trends of abuse.

The KO is also responsible for documenting the circumstances leading up to unauthorized commitments (UAC), and making recommendations to the Director of Contracting regarding ratification of the UAC (*FAR* 1.602-3). Expeditious processing of the UACs and other claims is especially critical in the LIC environment, since part of the KO's mission is to introduce contractors to doing business with the United States. Lock-step bureaucratic handling of contractor claims or invoices would project the image of an uncaring, overbearing America. During pre-deployment planning conferences, the KO should include the subject of the prevention of UACs on the agenda.

In summary the personnel system is sending qualified officers to fill contracting positions in Latin America, but the issue arises as to whether they can be better prepared to handle the problems they will encounter. The author suggests that the positions be coded male only, and that language training be provided prior to the officer's reporting in. If given the mission and the resources, the author could develop a seminar to be conducted at regular intervals, perhaps quarterly, which would cover the specific concerns of a contracting officer operating in the field in Latin America, some of which have been explained in this article.

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