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OFFICE OF THE ASSISTANT SECRETARY
MANPOWER AND RESERVE AFFAIRS
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WASHINGTON, DC 20310-0111

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MEMORANDUM FOR DEPUTY CHIEF OF STAFF, G-1

SUBJECT: Personnel and Adjutant General Exemption Requests

Reference memorandum, Deputy Chief of Staff (DCS), G-1 (DAPE-ZA), subject: Third Wave Exemption Requests, 15 January 2002.

Function. This request includes military and civilian employees in the infrastructure and operating force performing personnel management, adjutant general and related administrative functions. I will exclude civilian and military career progression, civilian personnel advisory centers (CPACs) and civilian personnel operations centers (CPOCs), as these will be decided in separate decisions.

Decision. The personnel management function cannot be characterized as a core Army competency. This function (overall) may not be divested or transferred to another agency as it is one of five Deputy Chiefs of Staff responsible for "furnishing professional assistance to the Secretary for such recruiting, organizing, supplying, equipping, training, servicing, mobilizing, demobilizing, administering, and maintaining of the Army, as will assist in the execution of any power, duty, or function of the Secretary or the Chief of Staff." (Title 10, U.S. Code, Section 3032). There are sub-functions that could be switched to other Services, the DoD or another executive agency. Inherent with these responsibilities is the manning of the force that will manifest these responsibilities. There currently is a basis for military performance of this function in the operating forces in the area of engagement where Uniform Code of Military Justice (UCMJ) authority is needed in order to compel performance in certain operational situation away from home station. Within the infrastructure, the credibility of the promotion and selection function requires a cadre of military and civilian personnel assigned to PERSCOM and EREC in these functions and these military and civilian personnel shall be exempt from review for private sector performance. I agree that all Career Counselors (soldiers holding PMOS 79S) should be exempt from review for private sector performance. The use of a core cadre of military in the retention function whether titled Career Counselor, Retention NCO, or Operations NCO, etc, directly affects the manning of the force.

For the most part, civilians may perform personnel management and adjutant general functions. Except at the level of a minimal number of senior level DCS, G-1 staff in the Army management headquarters (covered in a separate determination), the work is not inherently Governmental and may be contracted out. A prior exemption determination approved by the Secretary of the Army in his delegation of authority to me determined that the military personnel and adjutant general function performed by military personnel in the operating forces and Table of Distribution Allowances (TDA) is

not inherently Governmental. The limitations and scope of this decision are discussed in detail below.

Military Recruiting and Examining Operations (United States Military Entrance Processing Command-USMEPCOM)—The potential for transfer of this function to the Selective Service Commission is not a course of action that can be excluded from consideration in the exemption process, subject to the normal coordination required between the respective Military Departments and the Office of the Secretary of Defense before entertaining such an option. In the meantime, I recognize three military officer positions fulfilling the command and UCMJ roles as military essential. All other authorizations are not inherently Governmental. However, a competition plan would have to be developed on a Tri-Service basis and would be subject to limitations imposed by the Assistant Secretary of Defense (Force Management and Personnel).

The Army postal function is not a core competency of the Army; not required by any statutory provision; and not inherently Governmental or military essential. As provided in your exemption request, Army Reserve postal units are available if the operations area becomes too hostile for other than military postal carriers. Therefore, Army postal service is not exempt from review for private sector performance or transfer to another executive agency to the extent not requiring Army Reserve units.

Casualty and Mortuary Affairs is not an Army core mission, nor is it inherently Governmental. However, national policy dictates personal casualty notification by direct notification of families by Army officials. Casualty and Mortuary Affairs functions provide a strong binding of esprit de corps and direct support to soldiers and families.

The Army Career and Alumni Program (ACAP) is not an Army core function nor is the provision of this service inherently Governmental in nature. Sections 1142 and 1143, Title 10, U.S. Code, provide for this service to departing and departed service members; it does not mandate the source of this service other than to mention the roles of the Department of Veterans Affairs and the Department of Labor in assisting departing and departed service members with an explanation of benefits and employment opportunities and advice. Therefore, transfer of ACAP to another executive agency cannot be excluded as a course of action for consideration in the Third wave implementation planning process. The Army Continuing Education System (ACES) is not an Army core function nor is the provision of this service inherently Governmental in nature, nor required by statute. ACES is divestible or transferable to another executive agency, and potentially subject to private sector performance.

The records management function is a ministerial function tightly circumscribed by regulations. It is not an Army core competency nor is it inherently Governmental in nature. The National Archives and Records Administration (NARA) is an independent

Federal agency and is America's national record keeper. Their mission is to ensure ready access to the essential evidence that documents the rights of American citizens, the actions of Federal officials, and the national experience. As part of their records management evaluation process they instruct responsible agency officials to—"Provide written notification of the evaluation to all appropriate offices and employees and *contractors* potentially involved; this notification will include instructions to cooperate with NARA by setting up interviews, providing requested information, and making records available for inspection." Furthermore, Title 44, Public Printing and Documents, Chapter 31, Records Management by Federal Agencies does not preclude the possibility of contracting records management functions. However, Office of Federal Procurement Policy Letter 92-1 states that the approval of agency responses to Freedom of Information Act (FOIA) requests (other than routine responses) and approval of agency responses to administrative appeals of FOIA denials are inherently Governmental functions, and that preparing responses to FOIA requests are not ordinarily inherently Governmental functions.

The library function is not an Army core competency, not required by statute, nor is it an inherently Governmental function. However, aspects of this function may be appropriate for exploration under the alternatives to A-76 that require enabling legislation.

Army Retirement Services is not an Army core mission, not required by statute, nor is it inherently Governmental or military essential. Therefore, it is not precluded from divestiture or consideration for transfer to another executive agency.

Based on this decision, I agree with your determination that about 40 percent of the military personnel operations are performing functions that can be appropriately included in an implementation plan conversion to civilian or contractor. Moreover, there are additional conversion opportunities resulting from planned transformation of the personnel system to an enterprise-wide, web-centric, transactional system.

At enclosure are instructions on how to implement this decision in the Inventory of Commercial and Inherently Governmental Activities (including the Federal Activities Inventory Reform Act Inventory), to be developed by DCS, G-1 in coordination with our responsible staff officers.

Requestor's Position on Issues. The request supports the Third Wave, but is hesitant to proceed in the midst of numerous ongoing personnel management initiatives. Requestor recommends proceeding cautiously and holistically out of concern for the net total effect this will have on the personnel system. The military selection process in PERSCOM involves the establishment of policy and executes that policy for all elements integral to the process. Career Counselors, regardless of job title, on Garrison TDA/Augmented TDA/MACOM TDA are further attached at an MTOE

unit within the Army. The functions of AC Career Counselors are performed exclusively by military personnel who deploy in a combat service/combat service support role. Career Counselors perform duties that are inherently Governmental. Their duties require value judgments; selection of program priorities; and direction of Federal employees, i.e., the discretionary exercise of Governmental authority. The request provides positions on specific issues as follows.

USMEPCOM is joint in nature and requires delay in implementing conversion from military to civilian and/or transfer to contracted services. The Navy, Marine Corps and Air Force code their USMEPCOM positions as core manpower (either inherently Governmental or exempt from competition). Prior to preparation of an implementation plan, if so required, USMEPCOM must coordinate with its sister services providing the same functions.

Partial exemption request aimed at military personnel operations that have very specific operational capabilities, organizations and functions where substantial and specific risks to core missions of the Army can be demonstrated. The Government cannot materially divest itself from fiduciary and legislative responsibilities associated with military personnel operations. Critical military personnel competencies must be sustained and the supporting progression structure retained. There is no historical precedence for the Army contracting military personnel operations in a theater of operations.

The military postal service operates primarily overseas as an extension of the USPS under Title 39, U.S. Code and DoD/USPS agreement. The military postal service is used to process personal mail, but is also used as a means to provide spare parts, moving official mail, and classified material. Postal personnel deploy early in support of contingency and combat operations. Reliance on contractors to provide postal service diminishes commanders' ability to directly control postal services. Reserve postal units that are war-traced to various theaters or earmarked for contingencies must have the opportunity to train and perform their mission in a wartime environment with the active forces they are programmed to augment.

The request includes permanent exemption for positions in the management headquarters and the two Army overseas mortuaries. GS-13 and Lieutenant Colonel and above perform inherently Governmental policy and planning functions. Management headquarters positions and overseas mortuaries are essential for national security and to minimize operation risk. Requestor also asks for temporary exemption for all other Army Casualty and Mortuary Affairs positions. CAFC function code definition must be redefined to delineate the distinction between the management headquarters and operations functions. National policy dictates personal casualty notification by direct notification with families by Army officials.

Regarding ACAP, requestor wants a permanent exemption for the ten headquarters positions and delay to further action until 2006, so as to assess the institutional risk resulting from outsourcing functional expertise. Regarding ACES, requestor wants partial exemption for key core Career Program Education Services professionals at HQDA, PERSCOM, U.S. Army IMA, IMA regional offices, and installations/communities Army-wide to develop and implement Army, regional and installation continuing education policy. Requestor also wishes to implement a two-phased review so as not to cause institutional risk and jeopardy to the program. They also oversee and provide quality assurance on ACES contracted activity, along with responsibility in developing policy for, and oversight of, academic and military personnel test control and security.

Requestor position on records management is that outsourcing will eliminate Governmental oversight on record keeping practices throughout the Army and deny individual commanders access to information. This staff regularly exercises decision-making authority requiring value judgments in determining what business information warrants preservation and applying Government authority to the release of sensitive information.

Support for competition of the library function is contingent upon verification that there is insufficient business base to allow realistic competition with firms capable of providing Army-wide service. The implementation plan should provide for a two-phased approach that first reviews for competition the library support positions (442 out of 748 authorized spaces). Rather than include these positions in installation level A-76 studies, a systematic, Army-wide, functional competition should be used to ensure standardization and quality of services across the Army. An Alternative to A-76 may also be pursued.

Army Retirement Services Office is a six-person office that wants total exemption to include Supervisor GS-14, Military Human Resource Specialist (GS-13), two Military Personnel Management Specialists (GS-13), and a Writer/Editor (GS-12).

Standard of review. The senior HQDA functional official for a function must describe and substantiate specifically how preparation and implementation of a Third Wave implementation plan for each course of action poses substantial and specific risks to a core war-fighting mission of the Army (i.e., a core competency) or violates a statutory requirement affecting a function. The following are risk factors to evaluate this request: force management risk; operational risk; future challenges; and institutional risk. How these risk criteria are applied may vary based on each course of action evaluated (i.e., A-76; alternatives to A-76; military conversions; transfer to another agency; divestiture). Therefore, exemption requests and decisions must assess the potentially adverse impact of each course of action.

Core Competency Relevant to Risk Issue. Although the personnel management and adjutant general functions are key enablers of the Army core competencies, they are not directly within the six recognized core competencies of the Army, as provided for in Army Field Manual 1 and The Army Plan: Shape the Security Environment (Deter Forward); Prompt Response; Forcible Entry Operations; Mobilize the Army; Sustained Land Dominance; or Support Civil Authority. Therefore, the risk criteria pertaining to the impact of an implementation plan or sourcing decision as it affects the Army's war-fighting competencies are directly relevant to the personnel management and adjutant general functions.

Statutory and Executive Order Requirements Relevant to Risk Issue. While personnel management and adjutant general cannot be characterized as core Army competencies, this overall function (except as provided above) may not be divested or transferred to another agency since the DCS, G-1 is responsible for it under the provisions of 10 U.S. Code, Sections 3032 and 3035, and the Secretary of the Army is responsible for conducting this function to administer the Army pursuant to section 3013. In addition, the records management function is assigned by statute as a responsibility of each executive agency under the provisions of Title 44. Executive Order 12958 provides that only the President, Heads of Executive Agencies, and Government officials pursuant to delegation, are authorized to classify or de-classify information.

Inherently Governmental Determination Relevant to Outsourcing Issue. An inherently Governmental function includes those activities that require either the exercise of substantial discretion in applying Government authority or the making of value judgments while making decisions for the Government. An inherently Governmental function is so intimately related to the public interest as to require performance by Federal Government employees. This concept does not include providing advice to Federal Government officials.

The exercise of discretion in making a decision must be substantial in nature in order for the decision to involve an inherently Governmental function. The command of military forces is inherently Governmental. Determining, protecting and advancing United States economic, political, territorial, property, or other interests by military action is inherently Governmental. Commissioning, appointing, directing or controlling officers of the United States is inherently Governmental. A prior exemption determination approved by the Secretary of the Army in his delegation of authority to me determined that the military personnel and adjutant general function performed by military personnel in the operating forces and Table of Distribution Allowances (TDA) is not inherently Governmental, based on the foregoing standards.

While most records management functions are ordinarily not inherently Governmental, the Office of Federal Procurement Policy Letter 92-1 states that the approval of agency responses to Freedom of Information Act (FOIA) requests (other than routine responses) and approval of agency responses to administrative appeals of FOIA denials are inherently Governmental functions. On the other hand, the Office of Federal Procurement Policy Letter 92-1 states that preparing responses to FOIA requests are not ordinarily inherently Governmental functions.

Review of the decision-making process described in Executive Order 12958 depicts the classification and de-classification process as involving discretionary decision making which constitutes an inherently Governmental function.

Statutes and Executive Orders Relevant to Sourcing Decision. The DCS, G-1 is delegated personnel management responsibilities under provisions of 10 U.S. Code, Sections 3032 and 3035. Executive Order 12958 provides that only the President, Heads of Executive Agencies, and Government officials pursuant to delegation, are authorized to classify or de-classify information. Functions that are not inherently Governmental or otherwise exempted are subject to the standard statutory processes (10 U.S. Code, Section 2461 and Section 8014 of the annual appropriations acts) that require public-private competition in all but a few circumstances, such as the exceptions for functions with 10 or fewer civilian employees and for use of the preferential procurement programs (unless the functions are solely performed by military).

Personal Services. Where supervision by an official making inherently Governmental decisions in a management headquarters is required for effective performance of an activity in support of that decision maker, there is a basis for exempting that activity, whether advisory or clerical support, to avoid an inappropriate personal services contract. In addition, if persons supervised by an inherently Governmental decision maker in turn must supervise individuals supporting them in order to effectively perform the activity, a further extension of this exemption may be warranted. In the case of contractors accompanying the operating forces, there also may be a legitimate basis for exempting the function from contractor performance. Exemption may be necessary to avoid inappropriate personal services arrangements, or if command and control of the contractor by the commander in the field is required for effective performance because of the cohesive nature of military units, doctrine, tactics, and the risks associated with combat. However, Army Field Manual 100-21, Contractors on the Battlefield, March 2000, recognizes these issues and the Army has apparently, so far, effectively used contractors in support of the operating forces under the Logistical Contract Augmentation Program (LOGCAP) in military operations in Somalia, Haiti, Kuwait, East Timor, and the Balkans, as well as in support of major combat operations in Desert Shield and Desert Storm. Therefore, absent

substantiation of flaws in the current Army Field Manual 100-21, I will refrain from a blanket exemption on personal services grounds for functions in the operating forces.

Conflicts of Interest. No conflict of interest issues have been substantiated in the referenced exemption requests. I do not agree with the notion, even those supported anecdotally, that using contractors puts the impartiality of our decision-making processes at risk. Conflicts of interest concerns apply equally to Federal employees as well as contractors. Any alleged conflict of interest can be avoided through appropriate safeguards in the administration of the contracted work.

Military conversions. The mere fact that personnel units are deployed with larger military formations does not necessarily mandate that uniformed personnel may only perform these jobs. To the extent that these personnel carry out their personnel management duties in sustainment areas rather than in the actual area of engagement, civilians can carry out these personnel functions.

The DoD Inventory of Commercial and Inherently Governmental Activities Guide to Inventory Submission (Inventory Guide), Enclosure 6, page 6-3 provides guidance regarding manpower mix criteria. “[Manpower] that perform duties and responsibilities that are integral to military command and control of combat and crisis situations” shall be designated as Military Operations (Code A). See Enclosure 6, page 6-3, paragraph 1. Components that perform combat and service support functions shall be designated Code A only if there is such a high likelihood of hostile fire or collateral damage that: 1) military authority, discipline, and training are needed to maintain control and, if necessary, reconstitute the unit, and 2) use of civilians or contract support constitutes an inappropriate or unacceptable risk.

Enclosure 8 of the Guide contains guidance for risk assessment. Applying the guidelines on p.8, paragraph 1-1, use of non-military personnel in combat support roles must be assessed in terms of risk to “the support mission and the missions dependent on that support.” Combat mission failure or loss of life are severe risks, while “loss of support elements that augment or enhance operations in theatre during a conflict often have minor impact on combat operations.” When a personnel official is deployed forward of a division, where refusal to obey a commander’s orders would create a risk of loss of life or mission failure, UCMJ authority will be needed in order to compel performance, so that official must be military. Otherwise, civilian employees may perform this function, with contract support in performance of the personnel function. (Although UCMJ jurisdiction applies to civilians accompanying the operating forces, which could include contractors, that jurisdiction only applies during a “declared war,” and most military operations augmented by civilians are operations other than war.)

Insofar as the personnel management function is not a core competency of war-fighting, the basis for arguing for military performance in the infrastructure is weak. The central issue (according to the Inventory Guide, Enclosure 6, page 6-9) is whether adequate performance of the function in the infrastructure requires military unique knowledge and experience that can only be derived from *recent* first-hand involvement in military activities – i.e., through commanding military forces or conducting or participating in military operations or exercises. This knowledge and experience must be more substantial than familiarity with doctrine, tactics, operations, or regulations; capabilities that can be developed by civilians; or, advice military retirees can provide based on their knowledge and experiences.



Reginald J. Brown

Assistant Secretary of the Army
(Manpower and Reserve Affairs)

Enclosures

CODING RULES for AG and Military Personnel functions

- 1) AG/Military Personnel units in the Operating Force
 - a) SRC12 units, Division or lower Code B – Support to Military Operations
 - b) SRC12 units, Echelons above Division (Corps/Theatre/Army) Code P – Pending Restructuring
- 2) Military Personnel Promotions, Selections, and Assignments Functions (addendum to existing exemption)

These positions are all within Total Army Personnel Command (PERSCOM), and are identified individually by that organization

 - a) All military in selected billets Code F – Military Unique Skills and Knowledge
 - b) All civilians in selected billets Code G – Esprit de Corps and Military Support
- 3) Military Career Counselors
 - a) All enlisted in MOS 79S (Career Counselor) Code F – Military Unique Skills and Knowledge
- 4) Military Entrance Processing
 - a) All military and civilians in MEPCOM units Code M – DoD Management Decision
- 5) Records management
 - a) All personnel involved in classification and declassification Code L – Protected by law, statute, treaty or agreement
 - b) All personnel in records management not included above (5.a.) Code R – Subject to review
- 6) Librarians
 - a) All civilians in the following occupational series Code X – Candidates for alternatives to A-76
 - 1) GS-1410 Librarian
 - 2) GS-1411 Library Technician
 - 3) GS-1412 Technical Information Services

7) Army Retirement Services

a) All personnel in the Army Retirement Services Office of PERSCOM

Code X – Candidates for alternatives to A-76

8) Casualty and Mortuary Affairs Activities

a) Casualty and Memorial Affairs Operations Center in PERSCOM

Code M – DoD Management Decision

b) OCONUS Mortuaries

Code M – DoD Management Decision

c) All other military and civilians in CMA Activities
(including Honor Guards and positions in MDEP VREM)

Code P – Pending Restructuring

9) Army Continuing Education System

Code P – Pending Restructuring

a) All personnel in MDEP VACE: Army Continuing Education System

b) All personnel in APE 333732: Army Continuing Education System

10) Army Career Alumni Program

Code P – Pending Restructuring

a) All personnel in MDEP VCAP: Army Career Alumni Program

11) Postal Functions

Code X – Candidates for Alternatives to A-76

a) Enlisted with ASI F4 (Postal Supervisor) or ASI F5 (Postal Operations)

b) Civilians in occupational series GS-305 (Mail and File Clerk)

12) Military Personnel Office operations

Criteria for identifying all MILPO's and PSD's in the generating force are still undergoing. Once identified the following rule will be applied.

a) 60% of personnel in MILPO/PSD

Code G – Esprit de Corps and Military Support

b) 40% of personnel in MILPO/PSD

Code R – Subject to Review