

**INTER-SERVICE SUPPORT/PARTNERSHIP
MEMORANDUM OF AGREEMENT**

**Program Management Support of
Defense Commissary Agency Construction Projects between**

**DEPARTMENT OF DEFENSE
COMMISSARY AGENCY**

and

**U.S. ARMY CORPS OF ENGINEERS
20 June 2007**

ARTICLE I. PURPOSE AND AUTHORITY.

This Inter-service Support/Partnership Memorandum of Agreement (MOA) defines the responsibilities and support relationships between Headquarters Defense Commissary Agency (HQ DeCA) and U.S. Army Corps of Engineers, (USACE) for providing specialized contracting support for sustainment, design, and construction of Department of Defense (DoD) commissaries and other technical support as may be required to support the sustainment, design and construction of commissaries. The designation "USACE" will also include the Kansas City District who has been designated the service provider for USACE.

AUTHORITY. DoD Instruction 4000.19, Interservice and Intragovernmental Support, August 9, 1995; USACE ER 1140-3-1 Support to Defense Departments and Agencies, 15 May 1992; and DeCA Directive 70-12, Interservice, and Intergovernmental Support Agreements (ISA), September 19, 1997. The authority for joint construction of a commissary and exchange is established at 10 United States Code, sections 2485(b)(1) and 2484(h)(2)(A). The authority for USACE to accept orders from DeCA to provide services is 10 U.S.C. 3036(d).

ARTICLE II - SCOPE

Goods and services which the USACE may provide under this MOA include specialized contracting support for sustainment, design, and construction of Department of Defense (DoD) commissaries, and such other related goods or services as may be agreed upon in the future. This agreement shall apply primarily to the DeCA Facilities Division, Program Management Directorate (PMF) and USACE. Contracting services shall be consistent with the DoD established policies and procedures. It shall generally apply to commissary projects funded from commissary surcharge resources, (funds need to be provided in advance of work being performed) but, in selected instances, it may also include funding from other sources and joint contracting support for other agencies, such as the Army and Air Force Exchange Service (AAFES) and Naval Exchange Command (NEXCOM), who participate with DeCA on joint construction projects. All procurement will be performed according to Federal Acquisition Regulation procurement policies, as supplemented.

ARTICLE III - AGREEMENT GOALS

It is the mutual intent of both parties of this agreement to provide for the most efficient and cost effective use of commissary surcharge funds in support of DeCA's Strategic Plan Objective to improve the infrastructure. Consistent with this objective, the parties to this agreement will conduct joint strategic business planning and establish/maintain mutual policies and operating procedures to deliver quality design and construction, on time and within budget.

ARTICLE IV – RESPONSIBILITIES OF THE PARTIES

A. U.S. ARMY CORPS OF ENGINEERS

Establish a DeCA Support Branch collocated with DeCA/PMF at Lackland AFB, TX; with reach back support to the Kansas City Office. The USACE DeCA Support Branch will provide project management and full contracting support to include maintenance, architect-engineer and construction contracts, as well as separate contracts for full construction management services. Also included in this support is construction contract administration. Services include manpower to provide contracting support, paying office (accounting and finance) support, legal review and claims assistance support, contract review committee support and pricing analysis. USACE (Kansas City) Contracting Division, DeCA Support Branch will assume responsibility for monitoring and meeting contracting schedules and established milestones for specific programs and projects and implementing appropriate performance systems to measure and track progress toward achieving these objectives. Other specific duties include:

1. U.S. Army Corps of Engineers (Kansas City District), Contracting Division, DeCA Support Branch:

a. Contracting of Architect-Engineer (A-E) services in support of DoD commissary construction, including, but not limited to, Title IA - Studies, Title IB - Design and Title IIC - Construction Inspection Services for all CONUS locations and selected overseas locations, including joint construction with other DoD activities. A-E services are required to perform Title IA and IB Design services related to specific construction projects and they consist of conducting charrettes, field surveys, and all necessary investigations to obtain design and preparing contract document plans, specifications and cost estimates.

b. Contracting of construction projects for DoD commissaries in all CONUS locations, Alaska, Hawaii, Puerto Rico, Guam, and selected overseas locations, including joint projects with other DoD activities.

c. Perform contract administration during the design and construction phase of commissary construction projects, including joint projects with other DoD activities.

d. Centrally administer DeCA regional maintenance contracts.

e. Conduct Liaison with audit agencies and legal activities related to contract administration of commissary and joint Agency projects.

f. Select and supervise contracting personnel in support of DeCA. Overall supervision of the support group will remain the right and responsibility of the USACE. DeCA personnel will have opportunity to sit on selection committee as a voting member and provide letter input on performance to direct supervisor and higher level rater.

g. Prepare a projected annual branch budget request in May of each year delineating funding requirements for the coming fiscal year and providing justification and rationale for

required manpower authorizations. The approved budget will be submitted to DeCA no later than (NLT) 1 June of each year.

h. Provide a quarterly report on the expenditure of DeCA funds including personnel expenses, overtime paid and other miscellaneous expenses. An Estimate at Completion (EAC) will be provided with the end of the third fiscal quarter report.

i. Return of any unobligated budget authority provided by DeCA to USACE for contracting support, including, but not limited to, excess civilian payroll funding NLT 15 September of every year.

j. Provide a quarterly and annual report identifying the number and dollar value of active contracts, the number and dollar value of negotiated modifications and total value of work under management. Separate USACE data will be maintained on major construction contracts, sustainment construction contracts, refrigeration maintenance contracts, A-E contracts, Program Management Assistance Contracts (PMAC) and other miscellaneous work

k. Provide a quarterly and annual report that identifies program metrics demonstrating efficiency and effectiveness in processing contracting actions, including initial awards, modifications and other actions.

l. Provide a quarterly status report on current contract litigation, including listings of all claims, protests and other administrative or judicial actions pending before an administrative or judicial forum, or filed on behalf of DeCA. Information to be provided will include type of action summarized current status and next pending action.

2. U.S. Army Corps of Engineers, Program Management, DeCA Support Branch:

a. USACE will provide one project manager (PM) forward to be co-located with DeCA. This PM will be assigned workload by the DeCA Program Manager.

b. DeCA will allow NWK, or other USACE personnel as coordinated through Kansas City District (NWK), to perform construction oversight on projects to be selected by the DeCA Program Manager. This will occur on a to-be-negotiated number of DeCA projects.

3. Prepare revisions to this agreement based on information furnished by the functional managers, for coordinating negotiations and approvals and for administering the support agreement execution, reviews and possible termination.

B. Defense Commissary Agency.

The Defense Commissary Agency has overall responsibility for design and construction cost, schedule, performance management and funding. Other specific duties include:

1. Funding/Manpower:

a. DeCA will provide funding no later than 1 October each fiscal year for the personnel in support of the program. The following are the projected staff: One GS-13 Contracting DeCA Support Branch chief, two GS-12 Contracting Officers, one GS-11 Contracting Specialist and four contracted equivalent, GS-11 Contract Specialists. Also one GS-13 Program Manager. The cost of personnel will be reimbursed at the effective labor rate plus overhead (this includes benefits and leave). USACE will submit a funding request which shall contain sufficient summary information to identify the types of support that will be provided, the cost per unit of reimbursable support (i.e., wages, overhead cost), and an estimate of annual funding that will be required for the specified support (i.e., estimated total reimbursement). Additional details and information required to clearly define all requirements pertaining to the support provided and development of cost data for each type of support should be provided. In addition, funding will be included for temporary duty travel for DeCA Support Branch operations and supervision. These requirements will be reviewed quarterly by the respective agencies to assure appropriate costs per unit output have been assessed and appropriate manpower levels applied. It is agreed to by the agencies that manpower considerations will be based on the following year's specific workload requirements as well as long-term (3 fiscal years) as identified by DeCA. If workload projections demonstrate a sustained increase or drop off in workload, the two parties agree to discuss and agree on the appropriate manning number and revise this MOA to reflect that level of manning for the coming FY. DeCA will reimburse the USACE District for all costs associated with a Reduction in Force (RIF) or Voluntary Early Retirement / Voluntary Separation Incentive Pay (VERA/VSIP) for DeCA support personnel.

b. DeCA will provide funding for architect-engineer (A-E) design and construction management/surveillance contracts, construction and facility equipment installation contracts, facility construction contracts, maintenance contracts, supplemental professional construction management consultant contracts, supplemental professional Contract Specialist contracts and all change order requests. DeCA will provide funds for construction project costs using a direct fund cite Military Interdepartmental Purchase Request (MIPR).

c. DeCA will provide funding to USACE's Kansas City office for personnel costs for facilities, administrative supplies, temporary duty travel and associated costs, equipment acquisition and maintenance and other operating costs to support the DeCA design, construction and maintenance mission using a reimbursable MIPR. Funding requirements include the acquisition and maintenance of information technology equipment and the costs associated with establishing and maintaining a direct connection to the USACE, Contracting Division network for the DoD Standard Procurement System. This includes funding for all hardware, software and equipment necessary to maintain a state-of-the-art infrastructure, for the monthly lease of a dedicated T-1 line from the Defense Information Services Agency, and on-site system

administration assistance. Severable equipment purchased with DeCA funds (if any) will be transferred to DeCA upon any termination of this agreement. Facilities will be provided at Lackland AFB, TX, therefore USACE shall fund the appropriately prorated portion of facilities costs from the standard overhead rate paid by DeCA.

d. Personnel servicing will be provided by fund transfers on a cost reimbursable basis. Reimbursement will be calculated as follows: Actual payroll cost of assigned USACE personnel, plus costs of overhead.

e. The fee structure for DeCA/USACE support services as covered in this Agreement will be reviewed semi-annually.

2. DeCA's Facilities Program Manager will serve as the final approving authority for A-E, construction, maintenance and IDIQ contract and task order selections. DeCA will support the A-E selection process and provide voting membership for both Pre-Selection and Final Selection Boards.

3. The DeCA Program Manager will serve as the Source Selection Authority (SSA) for all Design/Build acquisitions. DeCA will also provide qualified architects and engineers for technical support in preparing source selection analyses for acquisition actions.

4. Serve as the sole requirements agency to the USACE (Contracting DeCA Support Branch) for commissary and other joint facility contracting.

5. Provide project programming and approval documentation.

6. Provide functional design review and approval for all projects.

7. Provide project managers for design and construction (DeCA Facilities), program managers for design/build projects (DeCA Facilities) and technical support for maintenance contracts (DeCA Plans and Programs, Facilities Sustainment Division).

8. Conduct liaison in communications with Installation Engineering/Public Works Officers and staff.

9. Assist the Contracting Officer in determining project acquisition strategy.

ARTICLE V - FUNDING

The DeCA shall pay all costs associated with USACE's provision of goods or services under this MOA.

If USACE forecasts its actual costs under this agreement to exceed the amount of funds available under the agreement, it shall promptly notify the DeCA of the amount of additional funds necessary to complete the work and the DeCA shall either provide the additional funds to the USACE, require that the scope of work be limited to that which can be paid for by the then-available funds, or direct termination of the work under the MOA.

Within 90 days of the USACE's completing the work for the previous fiscal year under this MOA, the USACE shall conduct an accounting to determine the actual costs of the work. and additionally, within 30 days of completion of this accounting, the USACE shall return to the DeCA any funds advanced in excess of the actual costs as then known, or the DeCA shall provide any additional funds necessary to cover the actual costs as then known. Such an accounting shall in no way limit the DeCA's duty in accordance with Article IX to pay for any costs, such as contract claims or other liability, which may become known after the final accounting.

DeCA will provide funding to USACE in accordance with USACE Interagency/ Support Agreement, Eng Form 4914-R using a Military Interdepartmental Purchase Request (MIPR), DD Form 448. DeCA will be billed on a monthly basis for all support costs during that month using the automated Intra-governmental Payment and Collections (IPAC) process.

ARTICLE VI - APPLICABLE LAWS

This MOA and all documents and actions pursuant to it shall be governed by the applicable statutes, regulations, directives, and procedures of the United States. Unless otherwise required by law, all contract work undertaken by the USACE shall be governed by USACE policies and procedures.

ARTICLE VII - CONTRACT CLAIMS AND DISPUTES

All claims and disputes by contractors arising under or relating to contracts awarded by the USACE shall be resolved in accordance with Federal law and the terms of the individual contract. The USACE shall have dispute resolution authority for these claims. Any contracting officer's final decision may be appealed by the contractor pursuant to the Contract Disputes Act of 1978 (41 U.S.C. § 601-613). The Armed Services Board of Contract Appeals (ASBCA) is designated as the appropriate board of contract appeals. In lieu of appealing to the ASBCA or its successor, the contractor may bring an action directly to the United States Court of Federal Claims.

USACE shall be responsible for handling all litigation involving disputes and appeals, and for coordinating with the Department of Justice as appropriate. The USACE shall notify the DeCA of any such litigation and afford them an opportunity to review and comment on the litigation proceedings and any resulting settlement negotiations.

ARTICLE VIII - DISPUTE RESOLUTION

The parties agree that, in the event of a dispute between the parties, the DeCA and the USACE shall use their best efforts to resolve that dispute in an informal fashion through consultation and communication, or other forms of non-binding alternative dispute resolution mutually acceptable to the parties. The parties agree that, in the event such measures fail to resolve the dispute, they shall refer it for resolution to the Office of the Assistant Secretary of Defense for Economic Security.

ARTICLE IX — RESPONSIBILITY FOR COSTS

If liability of any kind is imposed on the United States relating to the Department of the Army's (DA's) provision of goods or services under this MOA, the USACE will accept accountability for its actions, but the DeCA shall remain responsible as the program proponent for providing such funds as are necessary to discharge the liability, and all related costs. This obligation extends to all funds legally available to discharge this liability, including funds that may be made legally available through transfer, reprogramming or other means. Should the DeCA have insufficient funds legally available, including funds that may be made legally available through transfer, reprogramming or other means, they remain responsible for seeking additional funds from Congress for such purpose, although nothing in this MOA shall be construed to imply that Congress will approve and authorize funds sufficient to meet the liability.

Notwithstanding the above, this MOA does not confer any liability upon the DeCA for claims payable by the USACE under the Federal Torts Claims Act. All Federal Tort Claims Act claims will be processed by the military service with area claims jurisdiction over the site where the claim occurred. Provided further that nothing in this MOA is intended or will be construed to create any rights or remedies for any third party and no third party is intended to be a beneficiary of this MOA.

ARTICLE X - PUBLIC INFORMATION

Justification and explanation of DeCA's programs before Congress and other agencies, departments, and offices of the Federal Executive Branch shall be the responsibility of DeCA. The USACE may provide, upon request, any assistance necessary to support DeCA's justification or explanations of DeCA's programs conducted under this MOA. In general, DeCA is responsible for all public information. DeCA may make public announcements and respond to all inquiries relating to the ordinary procurement and contract award and administration process. DeCA or the USACE shall make its best efforts to give the other party advance notice before making any public statement regarding work contemplated, undertaken, or completed pursuant to this MOA.

ARTICLE XI - MISCELLANEOUS

A. Other Relationships or Obligations

This MOA shall not affect any pre-existing or independent relationships or obligations between DeCA and the USACE.

B. Survival

The provisions of this MOA which require performance after the expiration or termination of this MOA shall remain in force notwithstanding the expiration or termination of this MOA.

C. Severability

If any provision of this MOA is determined to be invalid or unenforceable, the remaining provisions shall remain in force and unaffected to the fullest extent permitted by law and regulation.

ARTICLE XII - CHANGES TO THE ISA

This agreement is entered into with the understanding that any signatory party may request, at any time, re-negotiation concerning any and/or all provisions to this agreement. Any party proposing modification or termination of this agreement shall forward the rationale and/or suggested modifications in writing to each of the signatories of the agreement for their consideration. If agreed upon by all parties, USACE will prepare an amendment to the agreement and forward to each signatory for coordination and approval.

ARTICLE XIII - AMENDMENT, MODIFICATION AND TERMINATION

This MOA may be modified or amended only by written, mutual agreement of the parties. In the event of termination, DeCA shall continue to be responsible for all costs incurred by the USACE under this MOA and for the costs of closing out or transferring any on-going contracts as well as separation of personnel impacted by the termination or modification. Any termination proposals shall be effective at the end of the fiscal year upon the notification not less than one hundred eightieth calendar day following notice, unless an earlier or later date is set forth.

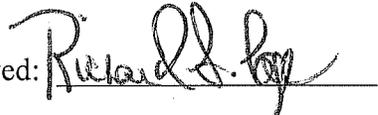
ARTICLE XIV - EFFECTIVE DATE

This MOA shall become effective when signed by both the Defense Commissary Agency and the US Army Corps of Engineers.

HEADQUARTERS
U.S. ARMY CORPS OF ENGINEERS
AGENCY:

HEADQUARTERS
DEFENSE COMMISSARY

Approved:  SES

Approved: 

for MEREDITH W.B. TEMPLE
Brigadier General, USA
Director of Military Programs

RICHARD S. PAGE
Chief Operating Officer

Date: June 26, 2007

Date: June 29, 2007