AD-A139 401 ENSURING RETENTION OF ESSENTIAL CIVILIANS OVERSEAS DURING HOSTILITIES(U) GENERAL ACCOUNTING OFFICE WASHINGTON DC NATIONAL SECURITY AND INTERNATIONAL AFFAIRS DIV 14 MAR 84 GAO/NSIAD-84-73 F/G 5/1 1/1

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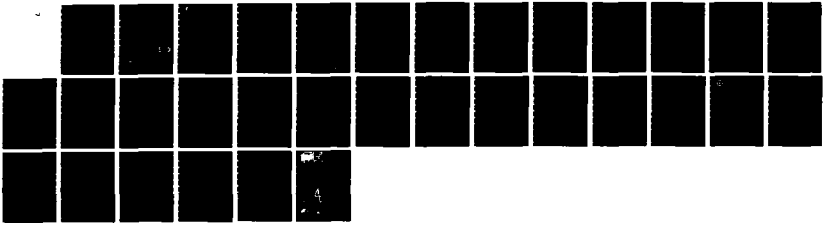

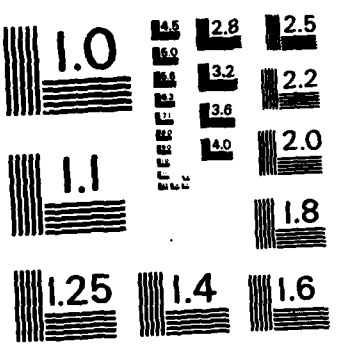


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BY THE U.S. GENERAL ACCOUNTING OFFICE

# Report To The Secretary Of Defense

# Ensuring Retention Of Essential Civilians Overseas During Hostilities

AD A139401

Estimates indicate that as many as 6,000 U.S. civilians work in positions overseas essential to accomplishing the Department of Defense's wartime mission. Without this civilian support, some very important military systems and equipment would soon become seriously degraded or fail.

Defense does not now have a means to ensure that these civilians would remain in the event of potential or active hostilities. Defense is concerned about this and is drafting policy directives to ensure continued support--one directed at its civilian employees and another at contractor personnel. GAO reviewed Defense's actions and recommended some improvements, which include identifying the degree of essentiality by position and tailoring policy alternatives based on the criticality of the need rather than an across-the-board solution, as was being considered by Defense.

Defense said that its policy directives, coupled with implementing GAO's recommendations, would provide an acceptable level of assurance that essential civilians would be avaliable during crises.

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GAO/NSIAD-84-73
MARCH 14, 1984

UNITED STATES GENERAL ACCOUNTING OFFICE
WASHINGTON, D.C. 20548

NATIONAL SECURITY AND
INTERNATIONAL AFFAIRS DIVISION

B-214085

The Honorable Caspar W. Weinberger
The Secretary of Defense

Dear Mr. Secretary:

Recent studies have estimated that as many as 6,000 U.S. civilians are now in Department of Defense (DOD) and contractor positions overseas that are essential to accomplishing the DOD wartime mission. These studies have concluded that without civilian support, some very important military systems and equipment would soon become seriously degraded or fail. Evidence regarding the likelihood that essential civilian employees would remain at their jobs in periods of potential or actual hostilities is contradictory, and there is reason for concern that some essential employees would choose not to stay at their jobs if they thought conditions were excessively dangerous. DOD officials have identified several alternatives to address this situation, including

--amending title 5 of the United States Code to authorize military commanders to require civilians to remain at their posts under penalty of criminal sanctions,

--expanding jurisdiction under the Uniform Code of Military Justice to cover civilians in situations not involving a declaration of war,

--requiring military Reserve status for civilians in essential positions,

--requiring agreement to accept officer status upon mobilization,

--requiring written agreements from DOD civilians performing essential functions, and

--requiring contract provisions aimed at ensuring retention of essential contractor civilians.

Progress, however, in fully defining the extent and significance of the problem and in improving the situation has been slow. Some of the alternatives appear to be costly or difficult to implement because of existing administrative or legislative restrictions.

The Assistant Secretary of Defense (Manpower, Reserve Affairs and Logistics) has recently issued draft policy guidance intended to ensure retention of essential civilians. It calls for using individual written agreements and contract provisions. This approach stresses incentives such as danger pay allowances and evacuation of dependents and is the principal emerging method for resolving this problem. However, some DOD officials have expressed serious doubts about how effective such an approach would be because only administrative sanctions could be imposed on violators. Draft policy on retaining contractor employees is being developed.

Within the projected group of essential civilians, there is a smaller subset of critically needed civilians, such as World Wide Military Command and Control System (WWMCCS) contractor-employed technicians, whose loss could have a debilitating impact. Identifying such critical groups is important in determining the most effective and appropriate solutions to the retention problem.

Appendix I presents the results of our review, and appendix II presents our objective, scope, and methodology. We initiated this effort because we had found during our survey of contractor logistics support in DOD that military services depend increasingly on contractors to support their systems and equipment and that a significant number of contractors perform very important functions which must be continued during a mobilization or conflict. Our objective was to determine whether the services were reasonably sure that contractor and DOD civilian support would be available when needed and what actions might be taken to ensure continuity of essential functions during mobilization and conflict.

We support, as a first step, DOD efforts to identify all essential civilian positions and to develop a policy to ensure their retention. However, the solution is likely to require a combination of contractual agreements from essential DOD civilians and contractors and more stringent measures for the very critical positions. DOD should carefully examine all alternatives in order to provide the most effective policy. Accordingly, we recommend that DOD expand its current policy proposals to include

--more specific guidance on what constitutes an essential civilian;

--the identification of the subset of very critical civilian positions; and

--the tailoring of policy alternatives, based on the essentiality of individual positions, to provide an acceptable level of assurance that both critical and essential civilians will remain at their posts, focusing first on those whose loss would have the most severe impact on combat missions.

DOD agreed with our findings and recommendations. (See app. III.) DOD said that the draft report provided a fair representation of its concern about the continuity of certain essential services currently performed by civilians in the event of crises. Historically, civilians have played vital roles in crisis locations in support of U.S. deployed forces. DOD said that it was confident that current policy initiatives, coupled with implementing our recommendations, would give commanders an acceptable level of assurance that emergency essential services provided by civilians would continue during crises.

As you know, 31 U.S.C. § 720 requires the head of a federal agency to submit a written statement on actions taken on our recommendations to the House Committee on Government Operations and the Senate Committee on Governmental Affairs not later than 60 days after the date of the report and to the House and Senate Committees on Appropriations with an agency's first request for appropriations made more than 60 days after the date of the report. We would appreciate receiving a copy of the statements.

We are sending copies of this report to the Chairmen of the above four committees and the Chairmen of the House and Senate Committees on Armed Services. We are also sending copies to the Director, Office of Management and Budget, and the Secretaries of the Army, the Navy, and the Air Force.

Sincerely yours,

Frank C. Conahan

Frank C. Conahan
Director

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## ENSURING RETENTION OF ESSENTIAL CIVILIANS OVERSEAS DURING HOSTILITIES

DOD has been increasingly reliant on contractor and DOD civilian personnel to support its systems for several reasons, including congressionally imposed troop ceilings; promotion of contracting to reduce defense costs; the perceived need to field new systems as soon as possible, although military support may not yet be available; the procurement of sophisticated weaponry; and the inability to retain highly qualified military personnel to maintain it. Although an exact number is unknown, a 1981 survey requested by the Joint Chiefs of Staff estimated that about 6,000 contractor personnel and DOD civilians were in positions overseas that were essential for accomplishing wartime missions. These civilian positions support a wide range of military functions, including some vital military systems, which would be seriously degraded or fail without civilian support. However, DOD has no legal means to require civilians to remain.

### NEED TO RECOGNIZE THE RISK THAT CIVILIANS MAY NOT REMAIN

The growing dependence on civilians to support important military systems has raised concern about the services' ability to retain civilians during times of increased tension and hostilities. Current law does not allow the services to require civilians to remain at their jobs until war is formally declared by the Congress. Although contractor and DOD civilian personnel have historically been willing to go into a war zone to work and have proven reliable in that circumstance, there is concern that essential civilians hired and serving in peacetime will not be willing to remain in a potential war zone if the likelihood of war increases or if a conflict actually starts.

### Civilians cannot be required to stay under current law

Under current law, essential civilians cannot be required to stay on their jobs during mobilization, hostile action, or an undeclared war. DOD civilian and contractor personnel may remain in, or be sent to, unsafe areas overseas only on a voluntary basis. The Uniform Code of Military Justice extends court martial jurisdiction to civilians accompanying or serving with an armed force who fail to perform duties or obey orders during time of war. However, this has been interpreted by the U.S. courts to mean only a war declared by the Congress and not a

military action, such as Vietnam. New legislation would be required if DOD were to have broader jurisdiction to include mobilization or hostilities without a congressional declaration of war.

Historical evidence of continued support may be misleading

Our interviews and a review of several studies on wartime civilian support indicate that essential civilians have been willing to go into a war zone to work and have proven reliable in that circumstance. Civilians provided technical assistance in direct support of combat units in World War II, Korea, and Vietnam. However, there is concern that essential civilians hired and serving overseas in peacetime may not be willing to remain in a potential war zone if the likelihood of war increases substantially or if a conflict actually starts. For example, the Office of the Under Secretary of Defense for Research and Engineering has stated that experience in Vietnam may not be relevant to situations which might arise in Europe because contractor personnel knew the situation in Vietnam and could reasonably assess the risks they would be taking. In addition, a 1982 Defense Science Board Task Force report[1] concluded that modern military conflict would involve new scenarios of suddenness and intense actions that would not permit time for planning, training, and replacement.

Some DOD and industry officials remain optimistic that essential civilians would voluntarily remain in their positions and important functions would continue. However, we gathered information through data searches and interviews which indicates that this may not happen. For example:

--Some contractor personnel interviewed said that their companies permit them to leave areas of potential hostilities at their own discretion and to be reassigned elsewhere in the company organization. Many of the 25 employees interviewed in Europe said they were not likely to remain.

--Except for the base maintenance contracts, the contracts reviewed were written in such a manner that even in those with war clauses, contractors did not have a firm obligation to continue providing services during

[1]Contractor Field Support During Crises, Defense Science Board Task Force (Oct. 1982).

periods of increased tension or hostilities. This finding was also cited by an Air Force Inspector General report.[2]

--In an informal poll conducted by the WWMCCS contractor, only 5 of 38 employees said they would remain on the job in a crisis. A company spokesman in Washington, D.C., said that the company expected that its employees would be evacuated before a conflict started.

--Twenty Army field maintenance technicians assigned to U.S.-based deployable units told us that they would not be willing to support equipment in hostile areas unless they were assured of certain benefits and incentives, including government life insurance policies, medical and disability coverage, and chemical protective equipment and training.

--None of the companies providing maintenance and repair of equipment at three Air Force bases in Europe have clauses in their contracts which require them to provide their services during an emergency.

--Only 47 percent of the Army Materiel Development and Readiness Command Logistics Assistance Program civilians in Europe agreed to sign contracts promising to remain at their posts if hostilities occurred and the distribution of the personnel who agreed to remain may be uneven. For example, the VII Corps would be left with only 1 of its 15 Materiel Development and Readiness Command representatives.

--Some Army activities in Europe will not assign a Mobilization Table of Distribution and Allowances (MTDA)[3] slot to a civilian although a civilian currently performs the job and his or her expertise is needed in wartime. This is because there is no assurance that the civilian will stay on the job during hostilities. Rather, the

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[2]Functional Management Inspection of Contracting of Selected Services and Its Effect on Air Force Readiness and Sustainability, Air Force Inspection and Safety Center (PN-81-622, 29 Apr. 1981 - 12 Feb. 1982).

[3]An MTDA is the list of personnel (including civilians) and equipment needed by a unit to perform its wartime mission. A civilian working with an MTDA unit must appear on its MTDA to qualify for chemical protection equipment and training.

activities prefer to designate the position as a military one even though a military person has not been identified to fill it.

## INFORMATION ON CIVILIANS IN ESSENTIAL POSITIONS IS NOT CONSISTENT AND COMPLETE

To assess the significance of the retention problem and to best tailor actions to address it, DOD needs comprehensive and reliable data on the extent of contractor and DOD civilian support in areas of potential hostility and the severity of the impact on operations or combat missions if civilians in these positions leave their jobs. DOD does not currently have this data. Prior studies and reports have not produced consistent, reliable, and comprehensive lists of essential civilian positions, and current efforts will not, in our opinion, produce the quality of data needed for addressing the problem.

### Past efforts to identify essential civilian positions

In recent years, DOD has tried, through service efforts, consulting firms, and special task forces, to determine the nature and extent of essential contractor and DOD civilian support. For example, using DOD data, a 1980 Logistics Management Institute report[4] placed the total number of both contractor employees and DOD indispensable civilians (those overseas and those in the continental United States) at about 4,500. In 1982, the Defense Science Board Task Force report stated that the services had designated the number of essential overseas contractor employees alone at more than 5,000.

The services have also tried to identify essential positions, but the resulting data has been questionable. For example, in response to a 1981 Joint Chiefs of Staff request, the services responded that they employed about 6,000 essential contractor and DOD civilian personnel overseas. However, the Navy reported a total of only 155 essential U.S. civilian employees--far below the 2,540 Navy essential positions estimated in the 1980 Logistics Management Institute report. In a 1981 presentation to the Defense Science Board Task Force, the Navy stated that there were 669 essential Navy contractor employees alone. The DOD official who was the focal point for the essential civilian issue and a Joint Chiefs official have acknowledged that the data from the Joint Chiefs' effort was not reliable.

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[4]DOD Use of Civilian Technicians, Logistics Management Institute (DOD Contract No. MDA 903-77-0370, July 1980).

The U.S. European Command initiated perhaps the most comprehensive service studies to date on essential contractor and DOD civilian positions in the European Theater. The 1981 and 1982 studies listed the positions, country locations, potential for military conversion, and a loss impact analysis for about 2,200 essential contractor and DOD civilian positions they identified in Europe. However, the data is not consistently reliable enough to properly address the retention problem. For example:

--Questionable positions, such as historians, dietitians, and "Stars and Stripes" newspaper editors, are listed as essential.

--Several civilian contractors that maintain the Bitburg, Germany, Air Base computer appear on the list. There is contradictory opinion whether these positions are actually wartime essential. An August 1982 consultant report[5] on a base automated data processing (ADP) exercise concluded that they were not. Bitburg Air Base officials told us that they agreed with the report; however, U.S. Air Force in Europe took issue with the report and an Air Force Inspector General report (see note 2 on p. 3) considers base level ADP necessary to support sustained combat operations because it provides standard base supply support and vital airplane engine maintenance information.

--The four contractor computer repairmen located at each World Wide Military Command and Control site in Europe during peacetime were classified as wartime essential. Yet a contractor representative said that only two repairmen and perhaps just one would be needed at each site during wartime since there would be no need to compensate for vacations, home station training, or 8-hour shifts.

--The Contractor Engineering and Technical Services positions at U.S. air bases in Europe were listed as essential, but the official Air Force position was that these positions provided for training only and were not included on wartime staffing requirements lists.

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[5]Consultant Report--Third Exercise of the Functional Management of Contingency Planning for Automated Data Processing (PN-80-624, Aug. 1982).

## Current efforts to identify essential civilian positions

Currently three DOD efforts are being made to identify essential civilians. DOD regulations require that an annual review be made to identify Ready Reservists who hold key (essential) civilian positions and to screen them out of the Ready Reserve so that they will not be mobilized out of their key positions during an emergency. This screening is reported on annually by the Reserve Affairs Office of the Assistant Secretary of Defense (Manpower, Reserve Affairs and Logistics). In addition, the U.S. Army in Europe has placed increased emphasis on developing good quality MTDAs--a mechanism for declaring civilian positions as emergency essential--and officials have conducted classes and provided guidance on the correct method of mobilization table preparation. The U.S. Air Force in Europe is undertaking similar efforts to identify emergency essential positions. However, none of these efforts is, in our judgment, producing the data needed to address the problem of retaining essential civilians. We visited several installations within the Army Forces Command, the Materiel Development and Readiness Command, and the U.S. Army and Air Force in Europe and found four shortcomings in their identification processes.

First, the criteria used to identify essential civilian positions permit varying interpretations. Army Forces Command and Army Materiel Development and Readiness Command officials told us that Army criteria made it possible to designate positions ranging from ammunition and equipment specialists to accountants as emergency essential.

Army Regulation 690-8 defines a key employee as one who

--occupies a key defense position and for whom no qualified replacement can be recruited and trained in 90 days and whose duties cannot be reassigned to other employees or

--has a civilian mobilization assignment and whose immediate recall to military active duty during an emergency would seriously impair the effective functioning and continuity of the Department of the Army with regard to production and research vital to the national defense effort or activities necessary to the maintenance of the national health, safety, or interest.

More recent guidance in Headquarters, Department of the Army, Letter 690-83-5 states that an emergency essential DOD civilian is an individual who, as a direct hire civilian

employee, occupies a position the duties of which are considered essential to support DOD's mobilization and wartime mission. These positions are considered emergency essential because (1) no qualified and immediate replacements exist for incumbents and (2) not filling them would (a) impair the effective operation of essential military support systems or (b) adversely affect the combat mission of deployed forces.

Air Force guidance stated in Regulation )-910 defines an emergency essential position as one which " quires performance that is critically essential to the support assigned Air Force missions at the beginning and in the -ly stages of an emergency."

U.S. Army and Air Force officials in Eu.ope report no major problem with their criteria and feel that the guidance has been generally adequate. However, some of their designations using those criteria are questionable. For example, the Army has designated a wartime need for an arts and crafts supervisor, a librarian, and a sports specialist, and Ramstein Air Force Base in Germany has identified a need for a supervisory linen control clerk and five historians.

Second, some processes used to identify essential DOD civilians may not be designating all essential civilian positions. Some DOD components apparently resist classifying Ready Reservists as being in key positions because the employees in these positions are required, by DOD regulation, to give up Ready Reserve status and pay. According to a Fort Bragg Civilian Personnel Office official, during the last annual screening, several Ready Reservists were identified as occupying essential positions. When the Civilian Personnel Office notified their supervisors that regulations required these people to be removed from Ready Reserve status, the supervisors reevaluated their positions and determined that they were not essential. An Army Forces Command Headquarters Civilian Personnel Office official told us that this situation was not unusual and that a similar situation had recently occurred at Forces Command Headquarters. Not all the screening data was available when we completed our work. However, a Civilian Personnel Office official told us that the data obtained to date indicated that activities were not identifying many of their essential civilian positions because they did not want to ask these employees to give up their Reserve status.

The DOD Office of Reserve Affairs has expressed concern about the effectiveness of the screening process and has requested that the Department of Defense Inspector General audit the area. While not specifically addressing the effectiveness

question we are reviewing the screening process, and the Defense Inspector General's office has deferred a decision on whether to begin its own audit until we have completed our work.

Third, contractor employees have not been included in the identification processes. The Office of Deputy Chief of Staff for Personnel, U.S. Army in Europe, told us that guidance on including contractor positions in MTDAs had recently been provided to the units and units may soon begin to include contractor positions. The U.S. Air Force in Europe base committees have been tasked by the Civilian Personnel Office to identify essential contractor positions. Neither effort was completed at the time of our review. According to Navy civilian personnel officials, the Navy process for identifying and screening essential civilians out of the Ready Reserve does not include identifying essential contractor employees.

Fourth, essential civilian positions in some U.S.-based tactical units, which are to be mobilized overseas, are not being included. For example, Army Materiel Development and Readiness Command and XVIII Airborne Corps officials identified a number of U.S.-based contractor and DOD civilian positions that they considered as essential to the Rapid Deployment Force, which is based in the United States but is to be deployed overseas in time of hostilities. Rapid Deployment Force missions are likely to be in areas where no established MTDA exists to refill. Therefore, although these civilian positions are considered essential by Forces Command officials, they are not included in an established mobilization table. However, a Forces Command Civilian Personnel Office official told us that if civilians were not included in these deployment plans, they must not be emergency essential; therefore, the Forces Command had not designated them as such to the Department of the Army.

## Impact of civilian loss has not been assessed for all essential positions

As the essential civilian positions are identified, the services should also assess the impact of the loss of these civilians on the units' missions. Such an assessment would determine which positions have the greatest need for assurance of continuity.

While various studies and reports have indicated that the loss of civilian support in wartime would adversely affect mission accomplishment, we found that the degree of impact had been accurately identified only in certain instances where the civilian positions were primary and did not supplement military positions.

--Although World Wide Military Command and Control System breakdowns occur at random, without any essential contractor civilians present, maintenance problems could be expected to degrade ADP operations almost immediately, and system operations would almost certainly cease after 1 week. For example, had contractor personnel not been available for the 2-week period in which the Poll Station/Wintex exercise took place, the U.S. European Command would have lost its Datanet 355 communications processor and the U.S. Army in Europe would have lost its Interface Message Processor, Datanet 355, and the WWMCCS Intercomputer Network teleconference software and thus possibly lost its ability to send and receive messages. The U.S. Air Force in Europe would have lost its computer communications access to the WWMCCS Intercomputer Network and its link to other commands. DOD told us that while the loss of the WWMCCS Intercomputer Network would unquestionably degrade national authorities' ability to direct and control military activities, this function could be carried out using other existing systems.

--Maintenance for the F-15's AN/ALQ Jammer and the TEWS/ECM AN/ALR 56-A radar warning receiver at Bitburg Air Base is being done by three contractor personnel using factory test equipment, and according to base operations officials, it is unlikely that pilots would return from combat if these systems were inoperative. No Air Force personnel have been trained to maintain these avionics systems using factory test equipment, so if the contractors left, the base personnel would have to use the spare parts available in a "shotgun maintenance" approach.

For other systems where civilians supplement an existing military capability as technical representatives, the extent of potential loss impact is less clear for two major reasons. First, there is currently no requirement to document the work activities of these technical representatives, so there is no record of how essential their contribution is. As a result, impact estimates vary considerably. For example, the official position of the U.S. Air Force in Europe is that contractor technical representatives only train military personnel and therefore are not essential to wartime requirements. However, we found that the F-15 airframe and avionics contractor technical representatives at Bitburg Air Base in some cases actually perform the repairs. The military maintenance crews considered the technical representatives to be very important to readiness and felt that sortie production rates would decline markedly without them. Yet there is no data available to assess the impact of their loss.

Second, the impact of civilian loss over an extended period has not been evaluated. During mobilization exercises, commands ask civilians to leave temporarily in order to make the point that they cannot be legally required to remain during hostilities. However, the commands in Europe have never held a field training or readiness exercise or operated for a sustained period without contractor and DOD civilian support.

## Critical civilian positions need the greatest assurance of continuity

Recent reports and regulations identify a relatively small subset of essential civilian positions that are especially important to the military mission. The 1982 Defense Science Board Task Force report on contractor support called these positions critical. These positions, if left vacant or if occupied by unskilled persons, could cause serious and widespread degradation of wartime operations. An example of such a position is a computer technician for the maintenance of the World Wide Military Command and Control System or theater intelligence ADP equipment. The loss of these technicians could have especially serious consequences, and the military potential for providing skilled people to fill these positions is very low.

Identifying this subset of critical positions is important for assuring continued wartime support for those functions which have the greatest need of continuity. The Defense Science Board Task Force report concluded that DOD efforts should focus first on retaining the civilians who occupy such critical positions. The report estimated that there are about 500 to 1,000 critical contractor positions worldwide, but the Board could not find documentation to support its estimate. The task force does not discuss essential DOD civilian positions.

The U.S. European Command requested that its subordinate commands identify their critical positions in their submissions for the 1983 command study on essential civilian support. No such data had been submitted at the time of our review. U.S. Air Force in Europe efforts to inventory essential civilian positions also include the requirement to identify critical positions. Air Force Regulation 40-910 includes provisions for identifying within essential DOD civilian positions those which are key (especially essential) positions, and this is being done by 16 Air Force base committees in Europe. The U.S. Army in Europe has not yet made a similar effort to identify its critical civilian positions. An Army official who has worked with the essential civilian issue said that it would take only about 6 months to complete once the process was started, but it has not yet been done because the unit's Mobilization Tables of

Distribution and Allowances have not all been submitted to U.S. Army in Europe and approved by Army Headquarters. He felt that it would be some time before the mobilization tables were of the quality needed to use in identifying critical positions.

NEED TO TAILOR SOLUTIONS

Over the past several years, solving the problem of retaining essential contractor and DOD civilians has been the subject of discussion and debate among various DOD offices and the services. A number of solutions have been proposed and are discussed below. Each solution has been intended to apply to all positions regardless of their level of criticality. There has been disagreement as to the appropriateness of each. These proposals are

--amending title 5 of the U.S. Code to authorize military commanders to require civilians to remain at their posts under penalty of criminal sanctions,

--expanding jurisdiction under the Uniform Code of Military Justice to cover civilians in situations not involving a declaration of war,

--requiring military Reserve status for civilians in essential positions,

--requiring an agreement to accept officer status upon mobilization,

--requiring written agreements from DOD civilians performing essential functions, and

--requiring contract provisions aimed at ensuring retention of essential contractor civilians.

Amending the U.S. Code

In May 1978, the Army circulated proposed legislation to the Air Force and Navy which would amend the U.S. Code to authorize the retention of civilian employees under penalty of criminal sanctions. Opinion on the proposal varied among the services and DOD offices in regard to the necessity for, and appropriateness of, criminal legal penalties. The DOD Office of the General Counsel stated that the draft legislation raised constitutional issues of involuntary servitude under the 13th amendment and that, if enacted, it would probably be put to an early court test. The Army Office of Judge Advocate General

expressed the opinion that the proposed legislation was arguably constitutional but that its weakness was lack of clear enforcement authority for commanders. The conflicting opinions on this proposal were not resolved and the draft legislation was not released from DOD.

Extending the Uniform Code of Military Justice

Uniform Code of Military Justice jurisdiction over civilians in time of war has been interpreted by the courts to begin when the Congress declares war. DOD and the services have considered requesting legislation to expand the Uniform Code of Military Justice coverage found in title 10, U.S. Code, to include a presidential declaration of a national emergency. Draft legislation to this effect was circulated for comment within DOD in June 1981. Again, there was conflicting opinion on the appropriateness and effectiveness of that alternative. The Army Office of Judge Advocate General recommended amending the code; however, it stated that the proposal would face substantial obstacles and, if enacted, would likely be tested in the courts. Again, agreement could not be reached and the option was not pursued.

Requiring military reserve status

Requiring that essential civilian employees join the Armed Forces Reserves is a third option which has been considered by the services and DOD. The DOD Office of the General Counsel has stated that while the option, applied to contractor personnel, was legally unobjectionable, it could make recruitment difficult because of the unwillingness of these employees to agree to such service. The Defense Science Board Task Force report, previously mentioned, also voiced this concern. The Army Materiel Development and Readiness Command stated that any solution which was not voluntary would exacerbate recruiting problems. The Office of the General Counsel also stated that if a reservist were activated, he or she would be a member of the armed services and could not legally continue under the direction of the contractor. The Office of the Assistant Secretary of Defense for Reserve Affairs expressed the view that the option was not feasible because existing law would have to be changed and because orientation, special clothing, and military identification would have to be provided.

Policy offering three levels of commitment

In July 1981, the Office of Assistant Secretary of Defense (Manpower, Reserve Affairs and Logistics) circulated a draft policy statement designed to ensure that critical civilians

remain on their jobs. According to this policy, each critical DOD civilian would have to agree to one of three levels of commitment:

--join the Reserves if eligible,

--agree to accept officer status upon mobilization, or

--sign a contract to remain on the job.

In this policy draft, DOD recognized that contractor employees should have the same obligation as DOD civilians, but the mechanism for generating such commitments was to be the defense/industry contract. The Reserve membership option was opposed by some DOD components largely because of the changes it would require in current service regulations. The agreement to accept officer status was dismissed as both complicated and ineffective because an employee could simply resign rather than become an officer if hostilities occurred. There was some opposition to the concept of employees signing contracts to remain on the job because only administrative sanctions could be used and employees could resign rather than remain in a hostile area. The DOD Office of the General Counsel stated that the courts would probably not enforce performance requirements should anyone test them through litigation. The Deputy Assistant Secretary of Defense for Civilian Personnel Policy concluded that contracts would not ensure that essential civilians remained. The Joint Chiefs of Staff and the Office of the Under Secretary of Defense for Research and Engineering recommended that no guidance be issued until appropriate contracting principles were developed and until Reserve requirement issues were resolved. This proposal was not enacted.

Progress in recent proposals

In May 1983, the Office of the Assistant Secretary of Defense (Manpower, Reserve Affairs and Logistics) released for comment separate draft policy proposals for retaining essential DOD civilian and contractor employees. The policy for contractor employees is still being discussed and revised by DOD components. The policy for DOD civilians was written into a draft DOD directive in July 1983. The draft directive, in general, is based on the May 1983 policy draft. It defines essential civilians and requires DOD components to identify them and find replacements for them. It requires that the civilians sign written agreements to remain and that essential employees be screened from the Ready Reserve. The directive provides for

dependents' evacuation, employees' danger pay allowances, and Geneva Convention identification cards. In addition, DOD components are to report the results of activities required by the directive annually to the Assistant Secretary of Defense (Manpower, Reserve Affairs and Logistics).

The draft policy on contractor employees states that they are to have the same obligation to remain as DOD civilians. However, the medium to be used to ensure that contractor functions are not interrupted is the contract between the DOD component and the contractor. Contract provisions are listed, and a reporting requirement is included. Current discussions suggest providing for direction early in the acquisition process to consider the importance of retaining contractor personnel during hostilities by making it an evaluation factor and part of the source selection process. In addition, during hostilities, premium pay, if required, would be provided for via a prepriced option provision in the contract.

These recent efforts, in our opinion, represent a positive step in addressing the problem. They contain several provisions that are important in ensuring that important functions will continue to be performed. These include requiring DOD oversight and review of the designation effort; identifying employee incentives, such as dependent evacuation, insurance, danger pay, and Geneva Convention identification; and designating those civilians who are based in the United States but will be mobilized overseas. In addition, they make employees aware of their responsibilities should hostilities occur. However, we believe the proposals need modification in two areas:

--The guidance for identifying emergency essential positions should be clear and specific to avoid questionable designations, such as those discussed earlier in this report.

--Provision should be made to identify the very critical positions which are a subset of the essential positions and to tailor the most effective solution for each position.

## Current draft directive needs more specific guidance

The latest draft guidance on what constitutes an essential DOD civilian, dated July 1983, is as follows:

"E-E (emergency essential) civilian position. A civilian position located overseas the continued performance of which is considered critical to the support of mission requirements in a crisis situation and wartime."

"Key Position. A direct hire or statutory civilian position which requires a minimum of 90 days of specialized training or experience and which position is: (a) necessary to the mobilization or emergency functions of a DOD Component or (b) essential to the continuity of operations on the leadership of a DOD Component in an emergency."

However, these definitions, which are to be used as screening criteria, are similar to those discussed earlier, which allowed questionable positions to be classified as essential.

In a May 1983 guidance draft from DOD for both essential DOD and contractor civilians, definitions were more specific than in the July 1983 draft. These were as follows:

"An emergency essential contractor service is a service that is provided by a firm under contract to DOD, and is considered essential to support DOD's mobilization and wartime mission. These services are considered emergency essential because: (1) the Military Departments cannot immediately perform these services by military or DOD civilian employees; and (2) not having the services immediately available would (a) impair the effective operation of essential military support systems or (b) adversely impact the combat mission of deployed forces."

"An emergency essential DOD civilian is an individual who, as a direct hire civilian employee, occupies a position the duties of which are considered essential to support DOD's mobilization and wartime mission. These positions are considered emergency essential because: (1) no qualified and immediate replacements exist for incumbents; and (2) not having them filled would (a) impair the effective operation of essential military support systems or (b) adversely impact the combat mission of deployed forces."

We believe these are superior to the July 1983 draft guidance definitions, but we could not determine from DOD why the definitions were made more general for the July 1983 draft.

In our opinion, the May 1983 guidance definitions, modified to include the 90-day training qualifier (as in the July draft and in Army regulations), would be clearer and more effective. In addition, there should be a requirement to identify the small subset of extremely critical positions. These should be clearly defined as highly technical or skilled jobs that require a specifically designated period of time to train and/or replace existing employees.

## Alternatives should be tailored to position requirements

After identifying both the essential and the subset of very critical positions, the services should examine the alternatives available for ensuring continuity of these important functions during a crisis. The alternatives chosen should be commensurate with the criticality of the civilian positions. A single alternative may not be appropriate for all positions.

For those essential positions whose civilian loss impact would not likely be as serious as for the critical positions, signed agreements and contract provisions may provide an adequate degree of assurance. For instance, continuity of a civilian supply analyst position is not as mission essential as continuity of a World Wide Military Command and Control System technician position, but the wartime need for a supply analyst might justify the use of a contract provision and the added assurance of retention it provides.

For critical positions occupied by civilians who are difficult to replace and whose loss could seriously impair combat missions, a higher level of assurance of continuity and thus another solution or solutions may be necessary. The estimated small number of truly critical positions should make it possible for DOD to manage them on an exception basis. As part of this consideration, DOD should not dismiss the possibility of converting very critical civilian positions to military and modifying its Reserve directives to permit such critical civilians to remain in the Ready Reserves so they can mobilize in their essential positions.

## AGENCY COMMENTS

DOD said that it was confident that current policy initiatives, coupled with implementing our recommendations, would provide an acceptable level of assurance that emergency essential services provided by civilians would continue during crises. (See app. III.) Specifically, DOD said that the Office of the Secretary of Defense would

--incorporate more specific guidance as to what constitutes an emergency essential civilian position into the current drafts of DOD directives on emergency essential DOD civilians and contractor personnel,

--incorporate policy guidance for identifying the subset of critical civilian positions into the current drafts, and

--incorporate the concept of tailoring the measures employed to achieve an acceptable level of assurance of essential and critical civilian retention into current draft proposals.

DOD stated that the revised draft directive for retaining DOD civilians should be available for comment/concurrence during the fourth quarter of fiscal year 1984. The initial draft directive for ensuring the continuity of emergency essential services performed by contractor personnel should be available for comment no later than the first quarter of fiscal year 1985.

## OBJECTIVE, SCOPE, AND METHODOLOGY

Our objective was to determine whether the services' reliance on contractor and DOD civilian support in areas of potential hostility created possible support problems. Specifically, we wanted to determine (1) the likelihood of retaining essential civilian support during periods of mobilization and hostilities and (2) what might be done to ensure continuity of essential functions in wartime.

Initially we planned to analyze the impact of using essential employees in more detail but modified our plans because we found that (1) there was not reliable data on the scope of the problem and (2) DOD had actions under way to address the problem. Therefore, we concentrated on evaluating DOD efforts and on identifying areas where they could be improved.

Our audit work focused only on U.S. civilian support to military operations. We did not include local national civilian employees, although local nationals constitute a large part of the total civilian work force in some countries. Further, we did not include those civilians who help to introduce new systems and equipment, because the requirement for their services is generally temporary. Finally, we did not try to evaluate the need for or efficiency of contractor and DOD civilian support, nor did we try to identify the best method of logistical support for each mission, function, or activity.

To accomplish our objective, we analyzed information from various sources, including (1) discussions with military officials, DOD civilian employees, and contractor employees on the nature, extent, and reliability of civilian support, (2) records, memorandums, correspondence, and plans concerning maintenance and logistical support, and (3) several DOD-sponsored studies on the need for and retention of essential civilians. We selected organizations for audit work based on the nature of their wartime mission, the number of civilians supporting the organization, and the importance of civilian support to mission accomplishment. Our work was performed in accordance with generally accepted government audit standards.

We did the work between February and July 1983 at the following organizations and locations:

Office of the Secretary of Defense:

--Office of the Assistant Secretary of Defense (Manpower, Reserve Affairs and Logistics)

--Office of the Under Secretary of Defense for Research and Engineering

--Office of the Director of Net Assessment

--Office of the General Counsel

Joint Chiefs of Staff:

--Directorate for Command, Control, and Communication Systems

U.S. European Command Headquarters, Europe

Army:

--U.S. Army Headquarters, Washington, D.C.

--U.S. Army Materiel Development and Readiness Command, Alexandria, Virginia

--U.S. Army Missile Command, Huntsville, Alabama

--U.S. Army Headquarters, Europe

--V Army Corps, Europe

--3rd Armored Division, Europe

--32nd Army Air Defense Command, Europe

--5th Signal Command, Europe

--U.S. Army Contracting Agency, Europe

--U.S. Army Materiel Development and Readiness Command, Europe

--Mainz Army Depot, Europe

--U.S. Army Forces Command, Fort McPherson, Georgia

--XVIII Army Airborne Corps, Fort Bragg, North Carolina

--101st Airborne Division, Fort Campbell, Kentucky

Air Force:

--U.S. Air Force Headquarters, Washington, D.C.

--U.S. Air Force Headquarters, Europe

--36th Tactical Fighter Wing, Bitburg Air Force Base, Federal Republic of Germany

--U.S. Air Force Contracting Office, Wiesbaden, Federal Republic of Germany

--Central Command, MacDill Air Force Base, Florida

U.S. Navy Headquarters, Washington, D.C.

Other Department of Defense organizations:

--Defense Communications Agency, Washington, D.C., and Europe

--Defense Acquisition Regulations Council, Washington, D.C.

--National Security Agency, Europe

Contractor representatives:

--Bendix Corporation

--Boeing Services, Incorporated

--Burroughs Corporation

--Eaton Corporation

--General Dynamics

--Honeywell, Incorporated

--Loral Corporation

--McDonnell Douglas Corporation

--Northrop Corporation

--United Technologies Corporation - Pratt and Whitney Aircraft Group

APPENDIX III

THE ASSISTANT SECRETARY OF DEFENSE

WASHINGTON, D.C. 20301

MANPOWER,
INSTALLATIONS
AND LOGISTICS

24 FEB 1984

Mr. Frank Conahan
Director, National Security and
International Affairs Division
United States General Accounting Office
Washington, D.C. 20548

Dear Mr. Conahan:

This is the Department of Defense response to your draft report, "Ensuring Retention of Essential Civilians Overseas During Hostilities" (GAO Code 943550, OSD Case 6437).

The draft report provides a fair representation of the Department of Defense's concern about the continuity of certain essential services currently performed by civilians in the event of crises. The findings have focused on some of the more difficult issues that must be resolved as a standard policy is developed and promulgated among Department of Defense components. Essential position definition and the assessment of the potential loss of services are crucial elements in the policy development process but cannot be standardized to the point of excluding some of the positions that provide a service peculiar to a unique agency or geographical location. Within this community of emergency essential positions, there are some that provide a service more critical than others. These critical services will be identified and policy options tailored toward ensuring their continuity during crises.

Historically, civilians have played a vital role in crisis locations in support of our deployed forces. We are confident that current policy initiatives coupled with the recommendations of this draft report will provide commanders an acceptable level of assurance that emergency essential services provided by civilians will continue during periods of crisis.

There is one portion of the report that needs to be clarified. The inference on pages 8-9 of the report that the loss of the World Wide Military Command and Control System (WWMCCS) intercomputer network would prevent the national authorities from having the information needed to direct and control effectively military activities is misleading. The loss of WWMCCS intercomputer network would unquestionably degrade the national authorities' ability to direct and control military activities but this function could be carried out using other existing systems. Thus, the loss of the WWMCCS intercomputer

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network could degrade, rather than prevent, the effective operational control of military activities.

Specific comments for each finding and recommendation contained in the GAO draft report are listed in the attachment.

Sincerely,

Jerry L. Calhoun
Principal Deputy Assistant Secretary of Defense
(Manpower, Installations & Logistics)

Attachment

GAO note: Page references in this appendix have been changed to correspond with those in the final report.

Specific comments on the findings and recommendations contained in GAO Draft Report, "Ensuring Retention of Essential Civilians Overseas During Hostilities," (GAO Code No. 943550; OSD Case No. 6437).

• FINDING A: Need to Recognize the Risk That Civilians May Not Remain. GAO found that the growing dependence on civilians to support important military systems has raised concern about the services' ability to retain civilians during time of increased tension and hostilities. GAO noted that a 1981 survey estimated that approximately 6,000 contractor and DoD civilians are now in positions overseas that are essential for accomplishing wartime missions. GAO further noted that under current law essential civilians cannot be required to stay on their jobs during mobilization, hostile action, or undeclared war. GAO concluded that DoD currently has limited means to ensure that essential civilians remain at their jobs prior to a declaration of war. In addition, GAO concluded that although historically, essential civilians have been willing to go into a war zone to work and have proven to be reliable in that circumstance, apparently there is concern that essential civilians hired and serving in peacetime would not be willing to remain in a potential war zone if the likelihood of war increases or if a conflict actually starts (pp. 1-4, GAO Draft Report).

- COMMENTS: Concur. Although not historically supported, the possibility that some civilians occupying positions critical to the support of combat forces might prematurely leave their duty station during crises is of concern to DoD. The number of those not willing to remain would be influenced by a variety of factors such as location of family, financial incentives, and other assurances. Recognizing that some key employees hired in peacetime may be reluctant to remain in an overseas location at the onset of a crisis, some DoD components have unilaterally established policies for the retention of DoD civilians performing emergency essential duties. The Office of the Assistant Secretary of Defense for Manpower, Installations and Logistics is currently standardizing the DoD policy for the retention of civilians in emergency essential positions.

• FINDING B: Information on Civilians in Essential Positions Is Not Consistent and Complete. Although DoD has attempted, through service efforts, consulting firms and special task forces, to determine the nature and extent of essential contractor and DoD civilian support (there are currently three DoD efforts being made to identify essential civilians), GAO found that none of these processes for identifying the extent and significance of civilian support is producing the data needed to address the problem of retaining essential civilians. Based on the several installations visited, GAO found four shortcomings in its identification processes: (1) that the criteria used to identify essential civilian positions permit varying interpretations, (2) that some processes used to identify essential DoD civilians may not be designating all essential

civilian positions, (3) that contractor employees have not been included as part of the ongoing identification processes, and (4) that essential civilian positions in some U.S. based tactical units, which are to be mobilized overseas, are not being included. GAO concluded that prior studies and reports have not produced consistent, reliable and comprehensive listings of essential civilian positions, and further, that current efforts will not produce the quality of data needed for addressing the problem. In addition, GAO concluded that evidence regarding the likelihood that essential civilian employees would remain at their jobs in periods of potential or actual hostilities is contradictory and, therefore, there is reason for concern that some essential employees would not choose to stay at their jobs if they thought conditions were excessively dangerous (pp. 4-8, GAO Draft Report).

- **COMMENTS**: Concur. Past efforts to determine the size of the emergency essential civilian position population have been decentralized and have produced varying numbers and position descriptions. Some of the variance is attributable to the different needs of the various DoD components and also to the lack of a DoD standard policy guidance document. Current DoD initiatives for both DoD civilian and DoD contractor personnel require centralized reporting procedures. This will permit acquisition of data not previously available at the OSD level, thus permitting OSD to exercise a more explicit oversight role in position designation. DoD policy guidance will be applicable to emergency essential positions overseas, and those currently based in the United States and subject to deployment into crisis locations.

- **FINDING C: Impact of Civilian Loss Has Not Been Assessed In All Essential Positions**. GAO found that while various studies and reports have indicated that the loss of civilian support in wartime would have an adverse impact on mission accomplishment, the degree of impact has been accurately identified only in certain instances where the civilian positions are primary and do not supplement military positions (see examples p. 9 GAO Draft Report). GAO further found that for other systems, where civilians supplement an existing military capability as technical representatives, the extent of potential loss impact is less clear. GAO reported that two reasons contribute to this -- i.e., (1) there is currently no requirement to document the work activities of these technical representatives (therefore, impact estimates vary considerably), and (2) the impact of civilian loss over an extended period has not been evaluated (pp. 8-10, GAO Draft Report).

- **COMMENTS**: Concur. The traditional philosophy that contractor employees performing maintenance functions on newly fielded weapons systems would eventually become unnecessary as military counterparts achieved comparable levels of training and experience has mitigated against any assessment of the loss of contractor services. The evolutionary nature of improvements to

certain major weapons systems and the unique low density employee nature of other systems have made contractor personnel an ingrained segment of the DoD work force. The current recognition of this situation will be reflected in the DoD policy guidance. DoD components will be required to assess the impact of the loss of emergency essential contractor services.

• FINDING D: Critical Civilian Positions Need the Greatest Assurance of Continuity. Recent reports and regulations identify a relatively small subset of essential positions that are especially essential to the military mission. If these positions were left vacant or if occupied by an unskilled person, it could cause serious and widespread degradation of wartime operations -- for example, a computer technician for the maintenance of the World Wide Military Command and Control System or theater intelligence ADP equipment. GAO found that identifying this subset of critical positions is important to assure continued wartime support for those functions which have the greatest need of continuity. The U.S. European Command requested that its subordinate commands identify their critical positions in their submittals for the 1983 command study on essential civilian support. GAO found, however, at the time of its review, that no such data had been submitted. GAO concluded that DoD should recognize the existence of the subset of very critical employees and tailor effective retention solutions to those positions (pp. 10-11, GAO Draft Report).

- COMMENTS: Concur. Degrees of criticality among emergency essential positions do exist within the DoD civilian work force and within the DoD contractor work force. OSD is dealing with the retention of emergency essential personnel as two distinct issues, i.e., the retention of emergency essential DoD civilian employees and the continuation of emergency essential services provided by DoD contractor employees. DoD policy initiatives concerning contractor personnel employ very specific functional definitions to isolate and identify this critical subset of emergency essential services. The current DoD draft directive providing policy guidance for the retention of emergency essential DoD civilians will be modified to incorporate the identification of the subset of critical employees.

• FINDING E: Need to Tailor Solutions. GAO found that over the past several years, solving the problem of retaining essential contractor and DoD civilians has been the subject of discussion and debate and a number of solutions have been proposed. These solutions included: (1) amending Title 5 of the U.S. Code to give military commanders the authority to require civilians to remain at their post under penalty of criminal sanctions, (2) extending the Uniform Code of Military Justice, (3) requiring military reserve status, (4) policy offering three levels of commitment -- i.e., join the Reserves if eligible; agree to accept officer status upon mobilization; or sign a contractual agreement to remain on the job. GAO concluded that each has been intended to apply to all positions regardless of

their level of criticality and that there has been disagreement as to the appropriateness of each of the proposals (pp. 11-13 GAO Draft Report).

- COMMENTS: Concur. The use of compulsory military affiliation and the extension of military control over civilians prior to a congressionally declared war have essentially been discarded as options for retaining emergency essential civilians. The potential legal, administrative, and cultural impediments to these courses of action mitigate against their further consideration. The use of a sliding scale of incentives is viewed as a more achievable method of tailoring retention initiatives commensurate with degrees of position criticality. The Army is currently sponsoring a study to determine the appropriate level of incentives necessary to assure retention, the feasibility of a sliding scale of financial incentives based on criticality of position and degree of threat, and the necessary legislation to bring these incentives into effect. Draft legislation is expected by the last quarter of FY 84. Resulting legislation would be applicable to employees of all DoD components.

• FINDING F: Progress in Recent Proposals. In May 1983, the Office of the Assistant Secretary of Defense (Manpower, Reserve Affairs and Logistics) released for comment separate draft policy proposals for retention of essential DoD civilian employees and for essential contractor employees -- the policy for DoD civilians was written into a draft directive in July 1983. GAO concluded, however, that the proposals need modification in two areas: (1) the guidance for identifying emergency essential employees and positions should be clear and specific to avoid questionable designations and (2) provisions should be made to identify the very critical positions (which are a subset of the essential positions) and to tailor the most effective solution for each position. GAO further concluded that while it supports current DoD efforts to develop an effective policy, in its view, the solution is likely to require a combination of contractual agreements from essential DoD civilians and contractors, and other more stringent measures for the very critical positions (pp. 13-16, GAO Draft Report).

- COMMENTS: Concur. The definition for emergency essential DoD civilians will be replaced by a more concise and explicit definition statement. Although the requirement for clarity in position definition is recognized, attempts to impose DoD wide standardization must be tempered by the differing needs of the DoD components that utilize the emergency essential services. Current DoD policy initiatives identify the need to identify the critical subset of emergency essential positions within the work force with initial emphasis on contractor personnel. The requirement for measures other than contractual agreements as a means of achieving civilian retention is addressed in part by the intended use of certain incentives and assurances. How stringent additional measures should be is

speculative until present DoD proposals are put into effect and evaluated.

## RECOMMENDATIONS

- **RECOMMENDATION 1**. GAO recommended that the Office of the Secretary of Defense expand its current policy proposals to include more specific guidance on what constitutes an essential civilian (letter, p, 2, GAO Draft Report).

- **COMMENTS**: Concur. The Office of the Secretary of Defense will incorporate more specific guidance as to what constitutes an emergency essential civilian position into the current drafts of DoD directives on emergency essential DoD civilians and contractor personnel. The revised draft DoD directive for the retention of DoD civilians should be available for circulation for comment/concurrence during the fourth quarter of FY 84. The initial draft DoD directive for ensuring the continuity of emergency essential services performed by contractor personnel should be available for circulation for comment not later than the first quarter of FY 85.

- **RECOMMENDATION 2**. GAO recommended that the Office of the Secretary of Defense expand its current policy proposal to include the identification of the subset of very critical civilian positions (letter, p. 2, GAO Draft Report).

- **COMMENTS**: Concur. The Office of the Secretary of Defense will incorporate policy guidance for the identification of the subset of critical civilian positions into the current drafts of DoD directives on emergency essential civilians.

- **RECOMMENDATION 3**. GAO recommended that the Office of the Secretary of Defense expand its current policy proposals to include the tailoring of policy alternatives, based on the essentiality of individual positions, to provide an acceptable level of assurance that both critical and essential civilians will remain at their posts, focusing first on those whose loss would have the most severe impact on combat missions (letter, p, 3, GAO Draft Report).

- **COMMENTS**: Concur. The Office of the Secretary of Defense will incorporate the concept of tailoring the measures employed to achieve an acceptable level of assurance of essential and critical civilian retention into current draft proposals. Emphasis will be placed on ensuring the continuity of service for those emergency essential positions whose loss would have the most immediate impact on the conduct of combat missions and national command and control functions.

END

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