TERMINATION AND CLOSEOUT OF SOUTHEAST ASIA CONTRACTS

D.M.Z.

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LONG BINH
SAIGON
SOUTH VIETNAM

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WESTERN COMMAND
FORT SHAFTER, HAWAII
INTRODUCTION

FINAL REPORT OF SETTLEMENT AND CLOSEOUT OF SEA (VIETNAM) CONTRACTS

1. This final "wrap-up" report was written to summarize the Army negotiation procedures taken to settle the contract claims which arose after the US Government evacuation of Vietnam.

2. The report is intended primarily for three groups of readers: Those who were responsible for contract support in Vietnam, historians, and current military doctrine planners for contract support in a combat zone.

3. This report does not address the question of in-house support versus contract support. In Vietnam, both means were usually merged, with specific tasks performed by each. After the withdrawal of US military forces on 29 March 1973, virtually all in-country supply and service support to the Republic of Vietnam Armed Forces (RVNAF) was performed by contractors until 29 April 1975.

4. It is clearly evident in the details of this report that the contract support provided in Vietnam was, by its sheer volume and variety, an extremely difficult effort to manage.

5. Comments concerning the contract effort in Vietnam and considerations for contract support planners are contained in the Executive Summary, Inclosure 1.

6. No attempt has been made here to use this summary as a report card on contractor performance in Vietnam. It is sufficient to say that the whole range of support required in a combat zone was performed by contractors. This included all major elements of rear area support; such as, port operations, stevedoring, transportation, computer systems, depot operation, depot maintenance, property accountability, vessel operation and repair, facility engineering, heavy and light equipment repair. In addition, numerous other types of supply and service support performed in Vietnam are listed in Inclosure 5.

7. In this current era of funding constraints, spiraling inflation and critical determinations for priorities to weapons and troop units, the option of developing doctrine to utilize contract support in rear areas of combat zones appears to be a viable option.

8. The original contract files listed in Inclosure 5 are currently maintained in a holding area in Hawaii pending final closeout of the remaining few contracts.
9. This Command is issuing this report to officially close out the contract support era of Vietnam. We believe it will be of interest to you.
## INDEX

<table>
<thead>
<tr>
<th>Title</th>
<th>Inclosures</th>
</tr>
</thead>
<tbody>
<tr>
<td>Executive Summary</td>
<td>1</td>
</tr>
<tr>
<td>Summary of Retired Contracts - Number &amp; Value</td>
<td>2</td>
</tr>
<tr>
<td>Value of Claims (Settled and Unsettled)</td>
<td>3</td>
</tr>
<tr>
<td>Final Report Contract Settlement Southeast Asia</td>
<td>4</td>
</tr>
<tr>
<td>List of Retired Contracts</td>
<td>5</td>
</tr>
</tbody>
</table>
EXECUTIVE SUMMARY

1. Background. Emergency situations in Vietnam regularly resulted in contractors' immediate response to contracting officers' requirements. In many instances, time did not permit detailed negotiations, nor even full knowledge on the scope of work. In some instances, the work ordered was in unsecured areas. The contractor support role was greatly amplified with the withdrawal of DOD military forces. In general, the contractors readily assumed the responsibility and performed the total role of logistics support for the Defense Attache' Office. Although competition was the normal solicitation procedure, many instances required sole source contract awards which were justifiable and fully documented.

2. The complexity of negotiating and settling the claims involved considerable personal judgment and skill on the part of the contracting officers. Fortunately, the personnel selected for the TCO Team had personal experience in procurements in Southeast Asia, which facilitated their tracking of data submitted with the contract claims. The decisions by US DOD contracting officers in Vietnam were made many times without precedent and were also based on reasonableness and personal judgments consistent with the urgencies and military situation.

3. Readers of this report will find specific details in the attached inclosures and are encouraged to identify those areas of interest and review the data therein. In addition to the statistical data, the report contains some improvised steps performed by the Termination Contracting Officers' Team to process these claims within legal boundary. The rationale, determinations and findings, legal opinions and other documentation are filed in the contracts files and are not part of this report.

4. Few management personnel gave the attention required to the termination and settlement of contracts, devoting their primary interest to proposed, new and ongoing contracts. There was no exception in this case and you will note that for this entire effort very few contract specialists were assigned to the task. Much of the processing time was consumed by outside
agencies in audits, legal reviews and the development of claims by contractors. This report is tailored specifically to the task of settlement of claims and close-out of contracts without reference to the many, many individuals that participated in the tremendous procurement support effort in Vietnam.

5. Support from Procurement Activities in PACOM. With the long lead time in the normal supply system, logisticians tasked the procurement activity in Vietnam to procure many quickly needed items from other Asian countries. To assist in this concept, a US Army Procurement Agency was formed in Hawaii to perform the procurement role with US contractors, and the Procurement Agency in Vietnam was changed to be the Contract Administration Office to perform the contract administration role. This concept of relationship between a DOD Procurement Office in a foreign country and a procurement activity in the United States to provide local procurement support of commercial off-the-shelf US items is still a viable procurement answer to expedite supply of selected items having a long lead time through the normal supply system, or for service-type contracts with US firms.

6. Control Over Invited US Contractor Employees. One important factor that became evident in Vietnam was the lack of control in Vietnam of invited US contractor employees. Service component procurement offices in CONUS were awarding contracts for contractor performance in Vietnam without satisfactory coordination with DAO Saigon. The total number of US contractor personnel in Vietnam was unknown. To cope with the directed drawdown, a central procurement staff office was formed at the Defense Attache Office, Saigon, where all US contractor employees had to report to obtain visas, rations and many other US Government support items, regardless of which component service awarded the contracts. It also became evident that there should be only one central DOD Procurement Management Office in Vietnam to establish DOD policy and in-country procurement procedures.

7. In-Country Procurement Program. Not detailed in this report, was a major in-country procurement program which was directed by the US Government in an attempt to develop in-country industrialization for the production of supplies in support of RVNAF. The success of the performance of these contractors may be rated in the entire range as unsatisfactory to outstanding, depending upon the contractor. During the week of 20 April 1975, many of these contractors were still producing equipment, supplies and performing services for RVNAF, at the request of US contracting officers, notwithstanding the general panic of the populace. It is our
opinion that the in-country procurement development program was valuable and, given the opportunity, could have achieved the goal of self-sufficiency envisioned by the US Government. The cases of failures and unsatisfactory performances were primarily the failure of the US Government procurement system, which had great difficulty in coping with the cultures of the Vietnamese businessman. Only recently have we begun to recognize the failure of our normal US DOD procurement process to be applicable in Asian countries.

8. The opinions and conclusions made by the Termination Contracting Officers' Team of the entire contract effort in Vietnam are:

a. That in the front and rear area war-zone environment in Vietnam, many procurement DOD military, US and local national civilians and contractor personnel performed very difficult unprecedented logistics contract support duties in a highly professional manner. They represented their organizations in a manner that reflected great credit upon themselves and the DOD procurement career field. Their efforts upheld the highest standards of contract integrity between the US Government, and US and foreign contractors. The widely publicized procurement irregularities by a few Nonappropriated Fund personnel in all military services in SEA were unfortunate. This was due to the lack of assignment, control and support from professional DOD procurement personnel.

b. The former name tags of carpet baggers, camp followers and turtles were not warranted in Vietnam by contractors. Most contractor personnel in Vietnam were either retired military personnel or veterans with military service. Many had expert qualifications and were employed as trainers and teachers in logistics. There were many documented and undocumented heroic acts by contractor personnel far and beyond the assigned tasks for which they were paid.

c. The settlement of the contract claims in this report, and contract experiences in Vietnam clearly dictate the following:

(1) There is a real-world need today for support planners to recognize that close local contract support is an essential planning support option for any small or large contingency. In a peacetime era, the shelf life and cost of stocking sizeable quantities of essential war reserves for commercial "off-the-shelf" items is a low priority and generally is prohibitive by funding constraints.

(2) Progress in industrialization in many allied countries allows for contingency support from contractors in foreign countries. The
Executive Summary

The multiplicity of available and capable sources for supplies and services provides a high degree of reliability from both US and foreign established commercial firms.

(3) In support of OPLANS, it is essential that planners develop supply and service "off-the-shelf" requirements that can be furnished by commercial firms and that procurement offices be tasked to determine the potentials in the commercial market in their area of responsibility.

(4) There is a need now for designated MACOM staff procurement offices to maintain current contractor source data on US and foreign firms with the capability to support the requirements of MACOM OPLANS.

(5) There is a need now for the service components to review their military personnel local procurement force structure to provide cadre personnel training in military combat support organizations accompanying major combat elements on missions designated in OPLANS.

9. Although there remain a few claims yet to be settled, as shown in Inclosure 3, this report constitutes advice that the project has been wrapped up and no further reports will be made.

10. Examples of the detailed work involved in the processing of these claims are shown in the wrap-up report (Inclosure 4). Your attention is invited to the examples of significant achievements performed by contractors in Vietnam in Section VII of Inclosure 4.

11. Readers of this report may find the classes of supplies and services procured to be of interest and are shown in the list of retired contracts (Inclosure 5).
### SUMMARY OF RETIRED CONTRACTS
#### NUMBER & VALUE

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<th>ELEMENTS:</th>
<th>NUMBER OF CONTRACTS</th>
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**NAF - VIETNAM**

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#### TYPE OF CONTRACTS:

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<td><strong>TOTAL</strong></td>
<td><strong>1,002</strong></td>
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#### NATIONALITY OF CONTRACTORS:

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<tr>
<th>CONTRACTORS</th>
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<td>United States</td>
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<td>Japan</td>
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<td>Hong Kong</td>
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<td>.4</td>
<td>$ 1,433,242.01</td>
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<td><strong>TOTAL</strong></td>
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<td><strong>100.0</strong></td>
<td><strong>$1,052,883,055.01</strong></td>
<td><strong>100.0</strong></td>
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VALUE OF CLAIMS
(SETTLED AND UNSETTLED)
1 March 1975 - 1 March 1979

SETTLED:

Total Cost Proposals and Claims $27,367,521.38
Total Negotiated Settlement 18,655,544.78
Cost Avoidance $ 8,711,976.60

UNSETTLED:

Number of Contracts 14
Contract Dollar Value $56,009,377.48
Claims $1,345,342.46

*A BRIEF OVERVIEW OF UNSETTLED CLAIMS IS COVERED BY THE WRAP UP TCO REPORT, INCLOSURE 4, UNDER SECTION VIII, SUMMARY.
FINAL REPORT

CONTRACT SETTLEMENT

SOUTHEAST ASIA

By

MINORU SATO

GEORGE UYESHIRO

MARCH 1979

Office of Assistant Chief of Staff for Procurement
US Army Western Command
Fort Shafter, Hawaii 96858
# TABLE OF CONTENTS

<table>
<thead>
<tr>
<th>I. HISTORY</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>A. Vietnam Conflicts</td>
<td>1</td>
</tr>
<tr>
<td>B. Japan, Including Okinawa Contracts</td>
<td>2</td>
</tr>
<tr>
<td>C. Thailand Contracts</td>
<td>2</td>
</tr>
</tbody>
</table>

| II. USAPAH STAFFING FOR CONTRACT CLOSEOUT | 2 |

| III. BASIC POLICY AND PROCEDURES GOVERNING CLOSEOUT AND SETTLEMENT OF CONTRACTS | 2 |

| IV. TYPES AND EXAMPLES OF CONTRACTS | 3 |

| V. CONTRACTORS INVOLVED | 3 |

| VI. PROBLEMS AND RESOLUTIONS ASSOCIATED WITH CONTRACT CLOSEOUT | 4 |
| A. Administrative Actions | 4-5 |
| B. Negotiations and Settlements | 5 |
| 1. Contracts Terminated for Convenience of the Government | 5-6 |
| 2. Undefinitized Change Orders | 6-7 |
| 3. Settlement of Final Overhead | 7-9 |
| 4. Settlement of Claims | 9-19 |

| VII. SIGNIFICANT ACHIEVEMENT BY THE CONTRACTOR PERFORMING CONTRACTUAL SERVICES IN VIETNAM | 20 |

| VIII. SUMMARY | 21-22 |

| XIV. CONCLUSION | 22 |

<table>
<thead>
<tr>
<th><strong>Title</strong></th>
<th><strong>TAB</strong></th>
</tr>
</thead>
<tbody>
<tr>
<td>Memo for Record, Subj: Contractor Abandonment of Government Furnished Property, Vietnam</td>
<td>A</td>
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<tr>
<td>Memorandum, Negotiation and Final Settlement of Modifications</td>
<td>B</td>
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<td>Memorandum, Settlement of Final Overhead</td>
<td>C</td>
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<td>Memorandum, Settlement of Contract Terminated for Convenience of the Government</td>
<td>D</td>
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</tbody>
</table>
In late 1974, US Army Procurement Activity, Hawaii (USAPAH), in its capacity as Principal Assistant Responsible for Army Procurement in the WESTPAC, inherited the mission of settlement and closeout of the contracts executed and administered in Vietnam. Also, to a lesser degree, contracts were also received from Thailand, Japan and Okinawa. These overseas contracts were issued for services and supplies which were not readily available from CONUS. In many instances, high dollar value contracts with US firms, were executed on a short fuse notice to meet the needs of combat forces. To a lesser extent, many contracts were also entered into with sources available from the host country for supplies and services.

These contracts which were negotiated, executed and administered in Vietnam under combat environment, certainly cannot be compared with the contracts administered in CONUS and other non combat areas. This activity, with the expert guidance and assistance from DCAA; Legal Counsel of US Army Support Command, Hawaii; the Office of the Judge Advocate General and the General Accounting Office, made it possible to facilitate closeout action in the best interest of the US Government.

This report is not intended to be critical, as to the short falls in contract administration, but to bring out some of the problems faced during the closeout action and to stress the importance and need for proper documentation of the contract files to preclude costly settlements of claims.

I. HISTORY

A. VIETNAM CONTRACTS:

In 1962, the Army Purchasing and Contracting Office was established in Vietnam. In 1965, the office became the Purchasing and Contracting Division of the 1st Logistical Command. Subsequently, the build-up of US forces in Vietnam necessitated a need for an expanded procurement effort; and in 1966 US Army Procurement Agency, Vietnam (USAPAV) was created. During this period, USAPAV awarded and administered contracts in excess of $500 million per annum. Major high dollar value contracts were cost reimbursable, operation and maintenance type services in support of US installations in Vietnam. In November 1972, US Army Procurement Agency, Vietnam, was deactivated and the Contract Administration Branch under US Army Vietnam was established. In March 1973, this organization was redesignated the
Contract Administration Branch, Army Division, Defense Attache Office (DAO) under the US Embassy, Saigon, Vietnam. Later the office designation was changed to Procurement Branch, Army Division, DAO. This organization remained in operation until late April 1975, when the US forces evacuated en masse from Vietnam. Just prior to evacuation, all the contracts, both active and inactive were transferred to US Army Procurement Activity, Hawaii for settlement and closeout action. For further details on Vietnam procurement during FY 75 and during the phase out period, refer to Memorandum For Record dated 10 May 1976, attached at TAB A.

B. JAPAN, INCLUDING OKINAWA, CONTRACTS.

In 1974 a study was made to consolidate US Military Procurement in Japan, including Okinawa, under one service in the interest of economy. As a result of this study, a decision was made in late 1974 to turn over the Army Procurement Mission in Japan to US Air Force (PACAF). During this time an agreement was reached, that all inactive Army contracts requiring closeout action would remain with the Army for final disposition. These contracts were transferred to the US Army Procurement Activity, Hawaii, for administration and closeout action.

C. THAILAND CONTRACTS.

During Calendar Year 1976, the Army Procurement Activity in Thailand was deactivated and, as a result, all inactive contracts together with contracts terminated for the convenience of the US Government, requiring closeout action, were transferred to US Army Procurement Activity, Hawaii.

II. USAPAH STAFFING FOR CONTRACT CLOSEOUT:

A. 1974 2 Military Contracting Officers
   1 Civilian Price Analyst
B. 1975 5 Civilian Contracting Officers
   1 Civilian Price Analyst
C. 1976 4 Civilian Contracting Officers
   1 Civilian Price Analyst
D. 1977 4 Civilian Contracting Officers
   1 Civilian Price Analyst
E. 1978 4 Civilian Contracting Officers
   1 Civilian Price Analyst

III. BASIC POLICY AND PROCEDURES GOVERNING CLOSEOUT AND SETTLEMENT OF CONTRACTS.

A. DAR 3-700, Settlement of Negotiated Overhead Rate.

B. DAR 3-706, Coordination. Services having major cost reimbursement type contracts will generally sponsor and conduct negotiations.


D. DAR, Section VIII, Termination Settlement.
E. DAR 3-809, Contract Audit as a Pricing Aid.
F. DAR Appendix A, Settlement of Appeals.
H. DARS No. 3, Property Administration.
I. DAR 7-103.21, Termination for Convenience of the Government.

IV. TYPES AND EXAMPLES OF CONTRACTS.

A. FFP - Firm Fixed Price:
   General Supplies: Aggregates, cement, sandbags, jungle shoes, dehydrated rice, lumber, plywood, asphalt, pharmaceuticals, batteries, barbed wire, tire retread.
   Services: Laundry, maintenance of office machines, stevedoring, bus service, security service, vehicle repair, tugboat service, construction.

B. FPIQ - Fixed Price Indefinite Quantity:
   Line-haul transportation, ship repair, pilot service, laundry service, repair and overhaul barges, stevedoring, electricity, asphalts, aggregates.

C. CPFF - Cost-Plus Fixed Fee:
   Facility engineering, engineer and technical consultant service, management course training, operations and management of motor pool, collection and salvage service, operation of Class I point, operation and maintenance of Government furnished equipment, operate field maintenance facility, care and preservation facility, manage and operate industrial gas and dry ice facility, management and control of G.F.P.

D. CPAF - Cost-Plus Award Fee:
   Operation and maintenance of high voltage facility.

E. CPAF/IF - Cost-Plus Award Fee/Incentive Fee:
   R&U operation, facility engineer service, operation of power distribution.

V. CONTRACTORS INVOLVED:

A. VIETNAM
   1. US Invited Firms performing in a foreign country.
   2. Vietnamese firms
3. Third country firms doing business in Vietnam:
   a. Philippines
   b. Korea
   c. Hong Kong
   d. Japan

B. THAILAND:
   1. US Invited Firms
   2. Thailand firms

C. JAPAN - INCLUDING OKINAWA:
   1. US Invited Firms
   2. Japanese firms

VI. PROBLEMS AND RESOLUTIONS ASSOCIATED WITH CONTRACT CLOSEOUT.

A. ADMINISTRATIVE ACTIONS:

   1. Receipt and Review of Contracts by USAPAH:

      a. A total of 1038 contracts with a face value exceeding $1.1 billion was received from Vietnam, Thailand, Taiwan, and Japan for closeout action. The bulk of the contracts was transferred from Vietnam to this activity during the time period 15 - 25 April 1975, just prior to US forces withdrawal from Vietnam. Five hundred and thirty-four boxes of contract files and procurement administrative records were evacuated from Vietnam to this activity.

      b. Due to the volume of the contents received, it necessitated an inventory of the contract records. The assigned Termination Contracting Officers then proceeded to review each contract in order to identify and isolate outstanding issues needed to be resolved.

      c. The review disclosed that 320 of the contracts required settlement action, with some requiring multiple actions such as: open claims, unpaid invoices, undefinitized change orders, DCAA Forms 1, termination for the convenience of the Government, termination for default and settlement of final overhead on cost-type contracts. The resulted findings on each contract were summarized to assure that timely and appropriate action would be taken by the Termination Contracting Officer.

      d. The amount of unsettled claims exceeded $28.6 million with a contract face value of $790 million. (See Incl 3)
2. Fiscal Problems.

The next course of action was to review the funding aspect of the contracts. Many contained funds involving the Tri-Services which included the multiplicity of Fiscal Year appropriation data. The respective cognizant finance office was contacted to ascertain availability of funds by Fiscal Year and by contracts, to assure that sufficient funds were reserved in order to effect payment upon completion of settlement. A few contracts with unsettled actions dated back to 1968. To compound the problem, many of contract financial records maintained by the cognizant financial office had been retired. Extensive coordinated efforts were required, to locate the office with the past payment records on the respective contracts, and to re-establish an account with the responsible finance and accounting office for future payments resulting from the accomplished negotiated settlement. Each service identified their respective finance and accounting office to satisfy future payments. Some of the problems encountered were: missing payment vouchers; overpayments; payments charged to wrong appropriations and, in some cases, required reconstruction of the financial records of the contract, through coordinated efforts of DCAA, Finance Office, and the Contracting Officer's contract files.

B. NEGOTIATIONS AND SETTLEMENTS.

1. Contracts Terminated for Convenience of the Government:

a. Some contracts were partially terminated dating back as far as 1973 with no settlement, while a few contracts were terminated due to phase down and operational changes dictated by a war time environment. Timely termination proposals were submitted by the contractors, but the final negotiated settlements were still pending on many of the contracts. All active contracts, at the time of Vietnam evacuation, were terminated for the convenience of the Government. Some contractors were given the Notice of Termination just prior to evacuation in April 1975, while others were notified of the termination after evacuation, with an effective date of 30 April 1975.

b. The spirit and intent of the T for C clause (DAR 7-103.21) were followed in effecting equitable settlement of claims. Many of the settlement claims by the contractors were forwarded to the cognizant DCAA for audit; with the exceptions of contracts held with Vietnamese firms. The independent analysis of the elements of claimed costs together with the recommendations of the audit findings, were reviewed; evaluated and negotiated for an equitable settlement. This activity was generally successful in effecting settlement on all of the terminated contracts with both US and Vietnamese companies, among others. There were some instances where the basic termination costs were agreed to, and
settled to the mutual satisfaction of the contracting parties, except for certain unique elements of cost (e.g. personal property losses, business losses, etc.) which could not be accepted by the Contracting Officer as valid termination expenses. In these cases, the Contracting Officer rendered a final decision by disapproving the unacceptable elements of costs. In conformance with the disputes clause, a few contractors, within the prescribed period, appealed the matter to the Armed Services Board of Contract Appeals for adjudication. The Contracting Officer prepared the necessary Rule 4 and the trial attorney's litigation file, supporting the Government's position, and forwarded the papers to the Trial Attorney, Department of the Army, for appropriate action. Discussion of the cases, via long distance telephone conversation, between the Contracting Officer and the Trial Attorney was the rule rather than the exception, because of the unique contractual conditions that existed in Vietnam. Finalization of settlement in these cases, were based on the decision of the Armed Services Board of Contract Appeals.

c. There were many problems encountered in settlement of claims with the Vietnamese firms. The majority of the Vietnamese who were successful in evacuating from Vietnam, left the country without, or with a minimum, of contractual documents. Claims were submitted with no substantiating documents for end items delivered; items that were ready for delivery; raw materials on hand and in the manufacturing process, among others. On every claim submitted, it required the Contracting Officer to: extensively research the files; correspond with the former Administrative Contracting Officer, Quality Assurance Specialist, and the Receiving Activity, to establish the validness and reasonableness of the claim. In some instances, the claimed cost had to be reconstructed from the raw material stage; to-work-in process stage and finally to the finished product, in order to negotiate an equitable settlement. In some cases, the contractors were unable to establish ownership of the firm, although the records indicate that compensation was due the firm. Still in some cases, the contract was assigned to a bank which necessitated numerous correspondence between the rights of the firm versus the assignee resulting from the aftermath of the collapse of Vietnam. The nature of the Law (31 CFR 500.20161), as revised by (40 FR 19202) requires the Vietnamese firms to obtain a license from the Foreign Currency Assets Control Office, US Treasury Department. The regulation prohibits any payments to a company of a blocked country unless a license is issued by the US Treasury Department.

2. Undefinitized Change Orders.

a. Major high dollar value contracts for facilities engineer services in Vietnam, were entered into on a cost reimbursable basis. No other type of contracts were feasible at that time due to; multiple facilities being serviced under one contract, constant changes in military requirements, and unknown cost situations. Frequently, change
orders were necessary to reflect the needs and/or deletion of the services of various facilities.

b. Many of the Change Orders issued under these cost type contracts, were not definitized and remained open. Although adjustments in payment of plus or minus were made during the performance of the contract based on DCAA's provisional approval of the voucher, final settlement of the changes were required to fix the actual cost and the corresponding adjustment to fee.

c. Pursuant to the "Changes" clause in the contract, the contractors, in many cases, were timely in submission of cost proposals based on the Government directed changes. However, for reasons unknown, the Administrative Contracting Officer did not take steps to negotiate and definitize these changes. It can be reasonably assumed that the reasons may have been attributed to the constant turnover of Administrative Contracting Officers and, more so, due to the Government's further directed changes to the issued Change Orders, which compounded the problem of negotiating settlement. Every open Change Order was negotiated to a satisfactory conclusion with the contractors. (To further illustrate this situation, see sample of Memorandum of Negotiation and the Modification under TAB B.)


a. The US Army Procurement Activity, Hawaii, was assigned the mission of representing all services to negotiate a settlement of final overhead, under the cost reimbursable features of the contracts in Vietnam and Thailand.

b. General guidelines prescribed under DAR Section XV, Contract Cost Principle and Procedures, were followed to determine allowability and reasonableness of cost, based on common industry practices and to achieve fair and reasonable costs, chargeable and allowable, to the US Government contracts.

c. One particular US company, had multiple cost reimbursable contracts in Vietnam spanning the period of 13 years (1962 - 1975). At the time when all of the contracts were transferred from Vietnam to USAPAH, during March and April 1975, final overhead settlements for the years 1969 through 1975, involving 45 contracts (with Army alone), with face value in excess of $500 million were still pending. Although major overhead costs have been paid through provisional billing, during the performance of these contracts, the contractor was quite anxious to expedite settlement of final overhead for the calendar years involved; in order that billing can be made for the outstanding residual overhead, as well as, receiving payments of fixed fee held in reserve under each of these contracts.
d. Settlement Procedures:

(1) The contractor submitted a proposal on final overhead expenses by calendar year, to the Contracting Officer who in turn, forwarded the proposal to DCAA for audit. The Contracting Officer reviewed the proposal, together with the audit report, to determine the major cost areas that needed to be identified for negotiation. Due to the numerous overhead elements recorded from the contractor's General Ledger Account, a worksheet was developed outlining the elements of costs in question or considered suspect. Prior to the negotiation with the contractor, the elements of costs in question, on considered suspect, were discussed with the cognizant auditor and, in some instances, with the procurement legal counsel, to establish a unified Government position.

(2) The Government Negotiation Team usually consisted of: Contracting Officer, Price Analyst, DCAA Auditors and, in some instances, Legal Counsel. The contractor was usually represented by: Executive Vice President, Comptroller, Senior Accountant and a Legal Advisor.

(3) The elements of costs in question, both as to allowability to Government contracts, as well as, reasonableness of costs were negotiated over the table. To relate some examples; the costs of top executive's salaries, other payrolls, legal fees, proposal costs, out-of-period cost and project overhead of various geographical areas, were the major cost elements requiring negotiation. All of these costs were actually incurred by the contractor as verified by the DCAA Auditor; however, many of these costs, some in toto and others at various percentage rates, in support of commercial operations, were considered to be not allocable to Government contracts. The Contracting Officer was generally successful in excluding these costs from Government contracts; however, in the instance of disagreements, a final decision under the "Disputes" clause was rendered in each case.

(4) Upon concluding the negotiations to the satisfaction of both parties, the Contracting Officer prepared the negotiation memorandum, including a worksheet allocating final overhead to all applicable contracts involved during the year. This included all Government contracts, as well as, commercial operations that the company was engaged in. The allocation of final overhead was distributed in ratio of sales, applied to all of the company's operating areas. Within the operating areas, the project overhead was prorated among the contracts affected, based on ratio of dollar value of each contract, as applied to total sales within the operating areas. All contracts shared the overhead burden regardless of the contract type entered into. However, cost adjustments are made only to the cost reimbursable type contracts. This is necessary to place a fix on the provisional overhead negotiated prior to contract award.
Residuals owed to the Government or the company as the result of the final negotiated overhead, are determined by the difference between the provisional overhead paid and the allocated overhead amount distributed to each contract.

(5) Supplemental agreements were issued to all applicable cost reimbursable contracts, fixing the final overhead. DCAA performed the final audit prior to effecting final payments. Clearance statements were received from the contractor releasing the Government from any further obligation. All other DOD activities which have had contracts with the company for the affected overhead years, were notified of the allocation resulting from the negotiated agreement. The copy of the negotiation memorandum and the worksheet, outlining the final overhead allocations, were distributed to the activities concerned. (Example of the final overhead settlement made by Fiscal Year is at TAB C.)


a. One of the most difficult tasks faced by the Contracting Officer was in settlement of various claims, starting from: the initial review of the contract files to identify unsettled open claims; reviewing the cost details, and, in certain cases, with the assistance of DCAA; reviewing the applicable provisions and clauses in the contract to determine the validity of the claim; and to negotiate for an equitable settlement. All of these factors required a tremendous effort on the part of the Contracting Officer.

b. The claims ranged from a low of $350, for loss of contractor's properties, to a high in excess of $500,000, for personnel severance pay. Various other claims were: war hazard death; overtime; Local National Wage Increase; hazardous duty; demobilization; per diem; DCAA Form 1, exempt from US Government property loss; termination for default; record retentions.

c. Many of these claims stem from US Government's sudden withdrawal from Vietnam in April 1975.

d. Claims of US Firms:

(1) Claims of US companies were relatively high in dollar value. Documentation, both by the contractors as well as Government files, for the most part, was relatively good. The Contracting Officer was generally able to determine whether the claims were valid or not, based on the records in his possession.

(2) For example, claim for loss of contractor's property was substantiated by:
(a) Inventory list.
(b) Payment invoice.
(c) Transportation records.
(d) Property verification as to receipt at the port.
(e) Voucher with actual cost.

(3) The contractor referred to the applicable provisions of the contracts in preparation and submission of claims.

e. Claims of Vietnamese Firms:

(1) Unlike US firms, the majority of Vietnamese firms evacuated from Vietnam with bare minimum of contractual records; in most instances, with no records at all.

(2) Many claims were submitted after evacuation as to: alleged items delivered with payments pending; items on-hand ready for delivery to the US Government; and raw materials on-hand with payments pending and on services rendered.

(3) The Contracting Officers were generally able to substantiate many of the claims by inspection records, copy of receiving reports, and payment vouchers contained in the contract file. Any claims which could not be substantiated were accordingly denied.

f. Settlement of War Hazard Claims.

(The death of employee working under Government contracts in Vietnam)

(1) The US forces support in Vietnam started to build up during 1966 to 1968, and the need for logistic support through its contractors increased tremendously. During this period, the US Government determined that since the contractual logistic services were being performed in the war zone, and in order to avoid the high cost of premiums for war hazard insurance, the War Hazard Self-Insurance Program was implemented.

(2) Any claim which was based on war hazard and not compensable under workmen's compensation laws, were adjudicated on a case-by-case basis, and if found to be compensable under the contract, the Contracting Officer authorized the contractor to proceed with the settlement
to an agreed fixed cost. Contractors were in turn reimbursed for the amount.

(3) All of the claims which have been lodged against the contractors through the competent courts in the US, as well as allied countries, have been cleared. However, numerous claims by citizens of US, Third Country Nationals, and Vietnamese, filed before the courts in Vietnam prior to April 1975 are still unresolved. Further, details on unresolved claim issues are covered in the Summary under Section VIII.

g. Personal Property Loss.

(1) Numerous US citizens working for the contractors in Vietnam, lost their personal property when they were suddenly directed to evacuate Vietnam. Claims, in some cases, in excess of $100,000, were lodged against the company for renumeration. Contractors in turn, referred the claims to the Contracting Officers for reimbursement or disposition instructions.

(2) In every case, the applicable contract was reviewed to determine whether a provision existed in the contract, under which the Government is liable for such claim.

(3) The majority of the personal property claims were denied by the Contracting Officer on the basis that, the US Government was neither contractually, regulatorily, or statutorily liable to pay the claims, even though, the claim was submitted on behalf of the claimant by a contractor either contracted on a fixed price or cost reimbursable basis.

(4) In few of the cases, the contractor has appealed the final decision of the Contracting Officer, and the appeal was forwarded to the Armed Services Board of Contract Appeals (ASBCA).

(5) Although the claims were rejected on valid grounds, many claimants may continue to pursue their claims through other avenues such as; congressional channel, and/or to a court of competent jurisdiction.

h. DCAA Form 1, Notice of Contract Costs Suspended And/Or Disapproved:

(1) Pursuant to Defense Acquisition Regulation 3-809, "Contract Audit as a Pricing Aid," DCAA provided an audit assistance to procurement and contract administration personnel in connection with analysis of contractors incurred cost. Basically, the following guidelines are provided under the DAR:
(a) Under the cost reimbursement type contracts, the contract auditor is the authorized representative of the Contracting Officer, for the purpose of examining reimbursement voucher, submitted by the contractor, for provisional payment by the disbursing officer.

(b) In the case of audit, if the auditor finds certain costs claimed are considered not allowable, DCAA Form 1, "Notice of Contract Costs Suspended and/or Disapproved" is issued. A copy of the report is provided to the cognizant Contracting Officer and to the contractor.

(c) In the case of costs suspended, if the contractor disagrees with the suspension action, and the difference cannot be resolved, the contractor may appeal in writing to the cognizant Contracting Officer who will make his determination promptly in writing.

(d) In the case of costs disapproved, the DCAA Form 1 notice constitutes the final decision of the Contracting Officer, effective sixty days after the date of its receipt by the contractor, unless the contractor furnished to the cognizant Administrative Contracting Officer, a written appeal before the expiration of such sixty day period. If the notice becomes a final decision of the Contracting Officer, by virtue of expiration of the sixty day period, the contractor may appeal in accordance with the provisions of the "Disputes" clause of the contract.

(2) The review of cost reimbursable contracts transferred from Vietnam disclosed considerable number of DCAA Form 1 issued, pending finalization of questioned costs. To cite a few examples: Unallowable or improper allocation of G&A expenses claimed for reimbursement; disallowance of quarters expense; demobilization costs; outside legal expenses; administrative office expenses with regard to appeals; excess salary payments to Third Country Nationals; failure to partially terminate a subcontract; and allocation of management support costs between the contracts.

(3) Each DCAA Form 1, was thoroughly reviewed by the Contracting Officer to determine whether recommendation of DCAA would be the final determination of the Contracting Officer; or would require further negotiation with the contractor in the interest of effecting equitable adjustment.

(4) Numerous DCAA Form 1, disapproving the costs, were accepted by the contractor after discussing the issues concerned. In some cases, pursuant to "Disputes" clause, the contractor appealed the Contracting Officer's final decision. Several of these cases were forwarded to ASBCA for resolution and settled based on the Board's decision.
i. Other Claims.

(1) In the performance of contracts in Vietnam, the contractor had employed thousands of US and foreign National persons and over the years, the contractor has been subjected to hundreds of separate claims and law suits by its former employees.

(2) Some of the basis on which former employees have, in the past, claimed damages are: wrongful termination; erroneous computation of pay or other benefits; overtime pay; housing allowances; severance pay; annual bonus; reimbursement for transportation expense; and benefits under the provisions of the Vietnam Labor Code.

(3) Many of these claims arose out of conflicts between the laws of the Republic of Vietnam, and the policies of the United States Government, as expressed, by contract provisions and regulations governing contractor actions.

(4) Although these claims were against the contractor, and not directed to the US Government, if the ruling of the court was in favor of the appellant, the cost of claims and litigation is reimbursable as direct costs to the applicable contract under the provisions of DAR 7-203.22.


(1) The majority of the cost reimbursable type contracts executed in Vietnam, were provided with Government furnished property in performance of the services. Contracts containing Government property clause, required the contractor to maintain detailed accountability of the property during the life of the contract.

(2) All of the contracts whose performance was completed, prior to the evacuation from Vietnam, were properly cleared of Government property. Property was either transferred to the ensuing contract or returned to the US Government.

(3) The contract files contained DD Forms 1593, Contract Administration Completion Record, signed by the Government Property Administrator.

(4) The contracts which were in existence at the time of withdrawal from Vietnam, were terminated for convenience of the Government; and the property, both Government furnished, as well as contractor owned, was abandoned in place.

(5) The sudden notification of evacuation by the Government precluded any timely disposition of the property.
(6) Each of these contracts were carefully reviewed by the Termination Contracting Officer, and upon determining the credibility of report of losses by the contractor, a written relief of responsibility for the liability of Government property was given to the contractor. For further details refer to Memorandum For Record, dated 10 May 1976, TAB A.

k. Unique Types of Claims for Settlement.

(1) Employee Stock Ownership Plan (ESOP):

(a) In late 1975, one major US invited contractor that performed various services in Vietnam, under cost type contract, submitted its corporate overhead for Calendar Years 1972-1973 for settlement. Included in the overhead was the cost of Employee Stock Ownership Plan contribution to a trust fund.

(b) The review of the documents offered revealed that ESOP plan was established by the company in late 1972, and contributions were made within the respective years toward the plan.

(c) The request for reimbursement of ESOP under Government cost contracts was deferred, due to the fact that, the plan was not approved by the Internal Revenue Service until November 1974.

(d) The contractor filed the corporate tax returns for the years 1972 and 1973. in a timely fashion and within the time periods allowed by law. In the tax return the contractor had, indeed, claimed as tax deduction contributions to the Employee Stock Ownership Plan in the amount of $1.823 million for the year 1972, and $1.497 million for the year 1973.

(e) In July 1975, the Internal Revenue Service reviewed the Employee Stock Ownership Plan for compliance with the Internal Revenue Code, Section 401(a), and found it to be in accordance with the rules and regulations.

(f) Under DAR Section XV, Contract Cost Principles and Procedures, Indirect Overhead, including Employee Stock Ownership Plan, is an allowable cost recoverable under Government cost type contracts.

(g) In the instant case, upon receipt of IRS approval, the contractor submitted their ESOP claim for reimbursement under the cost contracts in effect during the applicable Calendar Year pursuant to DAR Section 15-205.6 (f), "Deferred Compensation."
(h) Contractor's ESOP settlement proposal for Calendar Years 1972 and 1973, as part of the corporate overhead, was submitted to DCAA for audit.

(i) DCAA performed the audit and approved the proposed costs, except for the amount of $364,086 for 1972 and $352,630 for 1973. The questioned costs were the differences in net asset book value vs current market and appraisal value of those assets contributed toward the trust fund. DCAA's rationale was that gains realized on negotiable securities and real property were not considered allowable under DAR 15-205.32.

(j) At the initial negotiation settlement of final overhead, including ESOP for the years of 1972 and 1973, the Contracting Officer took the position to settle the cost of ESOP as recommended by DCAA. However, the contractor would not agree to the Government position, and insisted that DCAA's analysis of allowable cost was wrong, and that DAR Section XV permits current market value of the securities and real properties as a valid cost to be reimbursed by the Government.

(k) In view of the impasse and sizeable amount of money involved, both parties agreed to effect a provisional settlement of ESOP based on the net asset value approved by DCAA, and to further negotiate the costs in question at a later time for final settlement.

(l) The DCAA questioned costs of ESOP were brought to the attention of the Legal Advisor, SJA, US Army Support Command, Hawaii, for guidance.

(m) The response from the Legal Office was as follows:

"DAR 15-205.32(g) cited by DCAA has no applicability to the present situation. That provision relates to gains and losses arising from the sale or exchange of capitol assets, other than depreciable property. Here, there was no sale or exchange.

DAR 15-205.6(f) governs the instant situation. It provides pertinently, that deferred compensation is allowable to the extent that, it is deductible for the same year for Federal Income Tax purposes under Section 404(a)(5) of the Internal Revenue Code. Thus, the amounts of contractor's costs allowable for contributions to the plan, i.e., the market value of the property at the time of the transfers rather than the acquisition cost of the property."

(n) In view of the Legal Advisor's disagreement to the recommendation of DCAA, the Contracting Officer forwarded the legal comments to DCAA for their re-consideration.
(o) DCAA, in response, still maintained their original recommendation that capital gains are not allowable under Government contract. However, DCAA elaborated on a point that if the contractor had, in fact, liquidated the security and transferred the cash to the trust fund, DCAA would not have any objection.

(p) Since DCAA and Legal Advisor did not agree to the allowability of cost, the problem of ESOP was referred to the HPA and the Trial Attorney's Office in Washington, in hopes of receiving guidance as to treatment of this case. The response from the HPA supported DCAA's contention; however, the written response from Trial Attorney's Office supported the Procurement Legal Advisor's recommendation. The comment was to the effect that, should the case be brought before the Board of Contract Appeals with the present evidence as provided by the Contracting Officer, the chance of the Government winning the case, based on DCAA's recommendation, would be very slim and that their recommendation was to further negotiate and settle on the principle as recommended by the Procurement Legal Advisor at USAPA.

(q) Based on the guidance as rendered by the Trial Attorney's Office, the Contracting Officer pursued the negotiation on the principle that, any cost which had not been recognized by the IRS would not be honored by the Government for reimbursement under cost type contract. ESOPs for CY 72 and 73, were settled under this principle. For CY 74, since the IRS approval on ESOP was still pending, agreement was made to withhold $50,000 until such time as the IRS approved the income tax return for that year. It was further agreed, that if IRS made any adjustment on ESOP contribution, such adjustment will be credited to the Government. Conversely, if additional allowability was recognized by the IRS, the contractor would be only entitled to $50,000 withheld by the Government.

(r) Subsequent to the agreement, IRS approved the tax return as claimed for CY 74, thereby, the Government released the $50,000 to the contractor which was withheld for payment.

1. Record Retentions:

(a) Pursuant to DAR 7-203.7, all cost reimbursement type contracts entered into by negotiation, require insertion of mandatory clause 7-104.15, "Examination of Records by Comptroller General." Under the normal circumstances, costs of this nature are charged against current contracts in existence based on a guideline of DAR 15-202.

(b) The contractor submitted a claim of $37,757, for record retention costs as part of their contract termination settlement. The volume of documents exceeded 14,000 linear feet, on the equivalent of 1750 four-drawer filing cabinets. This included the costs of records in
commercial storage, as well as future costs of storage, handling and destruction of records. The proposal was forwarded to DCAA for verification as to, the storage costs incurred, as well as to reasonableness of projected costs.

(c) DCAA took no exception to the cost already incurred. The record retention costs met the definition of a direct cost under DAR 15-202 and, therefore, would be allocable as a direct cost to the specific contracts. However, future costs to be incurred, subsequent to the period of performance, would be unallowable unless each contract was modified to extend the period of performance, to incorporate the period for maintaining these records.

(d) Since it was not practical, nor economical to charge the record retention costs to each applicable contract by extending the period of performance, the problem was referred to the Legal Counsel for guidance. Legal's opinion was that total lump sum settlement, including the future estimated costs, can be made, provided that advance agreements or contracts between the claimant and the storage company(s) are available to substantiate the total costs.

(e) Based on the above, the Contracting Officer determined that it was in the best interest of the US Government, that the total costs of record retention involving Vietnam contracts be settled on a lump sum basis.

(f) The contractor provided the documents substantiating the costs, based on the time frame required for storage of contractual records, and agreed that the amount of $37,757, is the maximum not to exceed cost subject to DCAA audit prior to final payment. The settlement was effected under a contract terminated in 1975, for which services were provided in Vietnam. The costs were allocated and charged to various appropriations based on contractors' percentage of sales during Calendar Year 1974.

m. Contract Closeout Expense.

(a) The contractor involved in performance of Government contracts in Vietnam for a period of 13 years, was abruptly severed of Government contracts in April 1975, when the US forces pulled out of Vietnam. During the periods involved, contractor provided service pursuant to sixty-two separate contracts, mostly cost reimbursable type contracts with cumulative sales in excess of $600 million. In performance of these services for the US Government, the contractor employed approximately 71,000 persons of whom over 11,000 were US citizens. Under normal circumstances, the cost of administration and management of contracts is recoverable as a project/corporate overhead under cost type contracts.
In this particular case, when the Government contracts were terminated in April 1975, the contractor was faced with continuing requirement for resolution of problems arising under completed contracts, and no avenue to recover these costs.

(b) In late 1975, the contractor requested from the Government an authority to establish a residual contract management office for contract administration services on completed contracts. The contractor perceived that the requirement for such functions will continue into the future and that it will relate to at least five specific categories: (1) Open items under completed contracts; (2) War hazard risk administration; (3) Insurance claims administration; (4) Pending and future employee claims and litigation; (5) Archive activities. The contractor believed that the establishment of a residual contract administration office was the only effective and economical means to accomplish continuing and necessary administrative responsibility; and that this approach is consistent with the provisions of DAR 15-201.4 as to allocability, since all costs incurred are for the direct benefit of the contracts in question. The contractor submitted an estimated cost proposal in the amount of $473,972 covering the period of 2 years, commencing 1 January 1976 through 31 December 1977, and further, proposed that the payments on monthly basis be allocated to various open contracts (approximately 50) on an agreed upon basis between the contractor and the Government.

(c) The Contracting Officer recognized the need for certain number of qualified contractor personnel to administer the open issues on contracts claims, litigations and the anticipated claims in the future. The costs incident to claims and litigations were reimbursable as direct costs under the applicable contract, therefore, there was no problem. However, to prorate administrative costs among the various contracts as suggested in the proposal by the contractor, places an undue administrative burden on the part of the Government. Furthermore, all the contracts would have to be kept open until completion of all administrative actions, in order to effect monthly prorated payments which certainly cannot be considered economical.

(d) Another method of accomplishing this requirement, if found valid, was to negotiate and establish a separate contract on a fixed price basis. However, in order to accomplish this, approval would have to be required authorizing development of such requirements, and obtain proper funds to support such action. Extensive research and study were made to determine the most feasible, economical and legally acceptable method to compensate the contractor for the costs incurred, and being incurred in residual contract management. Although the contract services in Vietnam were terminated in April 1975, residual administration of closeout actions, personal claims, and litigations still existed and required continued efforts.
These administrative efforts were considered inherently nonseverable costs to various contracts covering the span of 13 years.

(e) The Contracting Officer made a determination that the contractor's proposal of establishing contract closeout office, for a period of 2 years commencing 1 January 1976 thru 31 December 1977, was not acceptable, however, settlement would be considered on the following basis:

1. Any management cost incurred prior to the termination of cost type contracts in Vietnam (30 April 1975), will be treated as a project overhead for Calendar Year 1975, as negotiated and settled.

2. From the period 1 May 1975 thru 30 June 1976, the acceptable incurred cost will be considered as part of the termination settlement expense and will be applied under a terminated contract in 30 April 1975. Although the settlement of this cost will be effected under this cost type contract, proration of this cost based on total obligation among the services involved (Army, Air Force, Navy and ICCS) will be effected, using the Calendar Year 1974 total sales as a basis for allocation.

3. The settlement of administrative closeout expenses under the contract, as part of the termination expenditure, will be considered appropriate using Fiscal Year 1975 funds.

4. For the period beyond 1 July 1976, the cost of this nature will be considered as part of the corporate overhead and treated accordingly.

(f) The contractor, after considerable discussion on the subject, accepted the Contracting Officer's proposed method of settlement and resubmitted a proposal based on the above formula. Several cost elements included in the revised proposal, which had no application to contract closeout expense, were deleted. The final negotiated settlement for contract closeout expense, was to be the maximum cost subject to DCAA audit prior to payment.

(g) The Government realized a saving in excess of $300,000 by severing the contract closeout expense at July 1976. For further details, see TAB D.

(h) DCAA and the Legal Advisor concurred in the negotiated settlement.
VII. SIGNIFICANT ACHIEVEMENT BY THE CONTRACTOR PERFORMING CONTRACTUAL SERVICES IN VIETNAM:

During the span of approximately 13 years of US forces involvement in Vietnam, the majority of the logistical support requirements were provided under contracts by US contractors. Many of these services were performed under adverse conditions, magnified by a wartime environment. A few examples of laudable services provided by the US contractors were as follows:

A. POWER GENERATION.

(1) To augment the greatly needed electrical power by the military forces, a contract was issued to remove T-2 tankers from the mothball fleet in the US, and convert them into serviceable condition for use as power barges in Vietnam. After the necessary repair and modification were made to the vessels, the contractor directed his efforts toward conversion of the switching stations, land leased power plants and primary & secondary distribution systems. In all, thirty-three power plants in various locations from Da Nang to the Mekong Delta were built.

(2) Over 1500 miles of primary and secondary power distribution systems were also constructed by the contractors and successfully provided the needed electrical power to all military installations at Cam Rahn Bay, Nha Trang, Vung Tau, Qui Nhon and elsewhere.

B. FIXED FIELD MAINTENANCE OF US GOVERNMENT EQUIPMENT.

(1) A contract was issued for the operation and maintenance of the Fixed Field Maintenance facilities in Vietnam. Enormous amount of US Government equipment was damaged, which required restoration for ready-for-service conditions to meet the increasing demand for the equipment by the military forces. The types of equipment renovated were tanks, armored vehicles, self-propelled heavy artillery, rock crushers, bulldozers and 50 ton cranes. The Government property with an acquisition cost of over $200 million was restored to service at well below 30% of the acquisition cost. Later, all services were expanded toward repairing marine vessels such as; LCU's, LCM's, ocean going Tugs, and Refrigerator Barges.

(2) It can be said that the success of the rebuilt program, at a considerable savings to the US Government, was achieved through the contractor's effort in providing highly qualified professional and competent management, along with technical personnel to perform those services under contract.
C. FACILITY ENGINEERING SERVICES:

(1) Another major military support requirement in Vietnam was in the area of repair and utility services. The cost type contract was issued to a US contractor to provide R&U services throughout the major military installations in Vietnam. At the height of US military involvement in Vietnam, the cost of this service exceeded $100 million per annum.

(2) Many of these installations that were subjected to enemy attacks took direct hits from rockets and mortars. The white collar managers and supervisors of the company maintained the pulse of the emergency situation at all times, and shifted the crews to provide emergency support to the troops under attack. They formulated special teams to provide essential service; one team cleared all refuse, another repaired run ways, a third team repaired critically needed buildings, the forth fixed all electrical lines and generators, and the fifth, fixed the water lines. Within hours after those attacks, all essential requirements needed for the troops were restored.

(3) Contractors exemplary R&U services were recognized and applauded by the military commanders.

VIII. SUMMARY.

A. In the span of 3.5 years, USAPA/H virtually completed all the claim settlements and closeout actions on Vietnam accepted contracts under its cognizance. The only actions remaining to be settled out of 1038 contracts, are claims denied by the Contracting Officer, which are currently undergoing litigations in the Court of Claims and the Armed Services Board of Contract Appeals. Five cases (five contracts, all with same company) are pending submission of cost information on claims. The delay in submission of these claims, was primarily due to the non-receipt of a license from the US Treasury Department. A license is required before any payments can be made to a company from a blocked country. The license was granted to the contractor in September 1978. The settlement action will be accomplished upon receipt of cost information.

B. The statistical information that has been maintained by USAPA/H contracts, dollar value of claimed and settled amount, reflects the scope and magnitude of effort expanded by its personnel. See Incl 5.

C. There are 26 contracts, all with Vietnamese firms, terminated for convenience of the Government in April 1975, that still require termination settlement action; however, since the principles were assumed to be in Vietnam, and were not available for negotiation settlement, the contracts were retired to the Records Holding Area located in Hawaii.
D. Although all settlement and closeout of contracts have been virtually completed, other than those mentioned above there remains one area of particular concern to the Government, and that is, the matter of claims by non-Vietnamese for benefits under the Labor Code of the Republic of Vietnam. Currently, 57 Filipino Nationals and three US Citizens have filed suits for benefits prescribed by the Labor Code of the Republic of Vietnam. These claims arose out of conflicts between the laws of the Republic of Vietnam and the policies of the United States Government, as expressed by contract provisions and regulations governing contractor actions. Heretofore, the known cases brought to the attention of the Contracting Officer were all denied, on the basis that, the Labor Code of Vietnam did not apply to the US Citizens, as well as Third Country Nationals. If the court of competent jurisdiction ever rules in favor of these employees, this will open the doors to other thousands of former employees of the contractors who performed services in Vietnam, and the potential exposures to claims can run into millions of dollars.

VIX. CONCLUSION.

REVIEW AND CLOSEOUT ACTIONS ON OVERSEAS CONTRACTS REVEALED THAT:

1. Whenever US troops are deployed to a foreign country, contractual support in-country for various services and supplies normally support the mission. In this respect, the need for advance procurement plans are essential to assure that, when the occasion arise for procurement support, a team of qualified contract specialist can be dispatched with capability of determining the types of contracts best suited for the need, and to administer such contracts in compliance with rules and regulations.

2. Contract files need to be properly documented, especially in the case of cost reimbursable type contracts. Lack of documentation, and in some instances lack of specificity, could result in disputes and additional expenditures.

3. Overseas contracting activities need be made aware of the importance of establishing plans and procedures, to assure timely evacuation of the contract when the troops withdraw from the foreign country becomes eminent.

4. Current major overseas procurement activities, need to maintain a unit within the organization, with qualified Termination Contracting Officer to administer contracts for closeout actions.

5. A Claims & Appeals Branch needs to be established in any procurement activity effecting procurement of the magnitude of US Army Procurement Activity, Vietnam, and all claims and appeals should be timely processed.
MEMORANDUM FOR RECORD

SUBJECT: Contractor Abandonment of Government Furnished Property, Vietnam

1. PURPOSE: This memorandum is made to provide official documentation to Army Contracting Officers concerning the abandonment of Government furnished property (GFP) by contractors due to hostile enemy action and evacuation of US forces from South Vietnam.

2. BACKGROUND:

a. The purpose of this background information is to describe the conditions existing in RVN prior to evacuation and to provide a reasonable understanding why there is a lack of continuity in GFP documentation in contracts.

b. On 22 October 1972, initial logistic planning began by the US Military Assistance Command, Vietnam, to provide for the withdrawal of US forces from South Vietnam. Project Enhance (supplies) already in process was to be supplemented by Project Enhance Plus to provide the Armed Forces of the Republic of Vietnam (RVNAF) with supplies and equipment to sustain a self-defense posture. The level of supplies and equipment furnished to RVNAF was to be enhanced during the following 60-day period in view of the Paris government-to-government protocol agreement. The protocol agreement stated that after 30 March 1973, supplies and equipment furnished to RVNAF would be replacements only on a one-for-one basis. During this hectic period prior to 30 March 1973, billions of dollars of supplies and equipment were shipped into Vietnam. It was virtually impossible to keep detailed accountability. To further complicate the problem of accountability, the US Army became the prime responsible logistic agency to establish and supply the needs of the International Commission of Control and Supervision (ICCS) and the
SUBJECT: Contractor Abandonment of Government Furnished Property, Vietnam

Four Party Members of the Joint Military Commission. Separate accountability records were to be maintained by contractors for this effort in order to provide the US State Department the means to request reimbursement from other countries. (It is our understanding that such efforts to obtain reimbursements were futile.) In October 1972, GFP in the hands of contractors was accounted for by US Army logistic elements. With the withdrawal of those elements on 30 March 1973, official accountability was transferred directly to contractors as provided for in ASPR.

c. Due to the volatile situation throughout RVN from October 1972 up to the time of evacuation, GFP and supplies were in a constant transitory status with property being transferred between contracts and between contractors. Government Property Administrators working for Contracting Officers were unable to properly and timely record all transfers. A MACV/RVNAF decision was made to consolidate all field depots of RVNAF into one consolidated depot at Long Binh. This created additional in-country movement of property.

d. On 15 August 1972, MACV and RVNAF entered into a memorandum of understanding transferring title of some GFP on the property books and on the accountable property records in the custody of contractors to RVNAF. On 14 November 1972, a list of contracts with GFP and an amended agreement by MACV and RVNAF was made indicating transfer of GFP to RVNAF (TAB A).

e. On 2 February 1973, a Central Accountability contract was awarded to PA&E. This contract provided for PA&E to become the central "property accountable officer" for all Army GFP with an effective date of transfer from other contractors on 26 January 1973. PA&E was responsible for property accountability as the central office of record (ADP) for both US titled equipment and that equipment title transferred to RVNAF but retained in the custody of US contractors. Each contractor was to prepare a memorandum of receipt to RVNAF to indicate what equipment they had but this action was never completed due to contractors' fear that RVNAF would take the equipment away from them (TAB B).

f. On 3 February 1973, MACV and RVNAF executed another memorandum of agreement providing for responsibilities for maintenance, recording and resupply (TAB C).

3. PROPERTY ACCOUNTABILITY POLICY: For information, extract of AR 735-11 is attached which indicates Army field policy on abandonment of property (TAB D).
SUBJECT: Contractor Abandonment of Government Furnished Property, Vietnam

4. **TERMINATION FOR CONVENIENCE NOTICE:** For information, attached is a copy of a standard notice for a T for C indicating contractor responsibility to advise Contracting Officers on the disposition of GFP (TAB E).

5. **GOVERNMENT PROPERTY CLAUSE (FIXED PRICE):** For information, this clause is attached, indicating criteria why a contractor shall not be liable for loss of Government property (TAB F).

6. **GOVERNMENT PROPERTY CLAUSE (COST REIMBURSEMENT):** For information, this clause is attached indicating criteria why a contractor shall not be liable for loss of Government property (TAB G).

7. **LETTER TO CONTRACTOR:** A sample letter to a contractor is attached asking for the official Report of Loss (TAB H).

8. **GFP WAIVER DETERMINATION:** A sample letter to a contractor is attached providing a waiver of contractor's liability of Government property (TAB I).

9. **EVACUATION OF VIETNAM:** That all US forces and at least 130,000 Vietnamese were ordered by the US Government to be evacuated from Vietnam not later than 29 April 1975 is a nationally recognized fact. This order included evacuation of US contractors. Inherent with the evacuation was the situation that all US property and equipment in Vietnam would be abandoned in place. Rare exceptions were made to retrograde high priority and/or classified US property.

10. Although this MFR may be referred to by Contracting Officers to substantiate background and credibility of reports of losses by contractors, the provisions of each contract must be applied. The GFP provisions for both FFP and Cost Reimbursement contracts provide an adequate basis for contractor relief of responsibility for the liability of Government property. Where applicable, contractors should be required to submit in writing to Contracting Officers the facts and circumstances surrounding the loss or abandonment of property/equipment. In turn, Contracting Officers will review and determine relief of responsibility of Government furnished property in accordance with the applicable property clause of the contract.
MEMORANDUM OF
NEGOTIATION AND BACKUP

DOCUMENTS SUPPORTING

FINAL SETTLEMENT

MODIFICATION P000051

OF

DAJBO4-73-C-0037
SETTLEMENT MEMORANDUM
FOR
CONTRACT DAJD04-73-C-0037
PACIFIC ARCHITECTS AND ENGINEERS, INC.
600 SOUTH HARVARD BLVD
LOS ANGELES, CALIFORNIA

1. The following personnel were present for the negotiation:
   a. Contractor
      Mr. Martin L. Lehrer, Executive Vice President
   b. Government
      Mr. George Y. Uyeshiro, Contract Specialist
      Mr. M. Sato, Contracting Officer

2. Contract Summary - DAJD04-73-C-0037.
   Estimated Amount: $7,416,460.09
   Period of Performance: 1 July 1973 through 31 October 1974
   Type: Cost Plus Fixed Fee
   Service: To provide Facilities Engineering Support to various sites and locations throughout RVN.
   Outstanding Actions:
      b. Definitization of Modifications A00037, A00039, and A00040 for continuation of services from 1 September to 31 October 1974. Proposal submitted on 25 September 1974 in the amount of $706,393.
      d. Power barge support from 1 July through 31 August 1974. Proposal submitted on 29 July 1974 in the amount of $27,453.

f. Definitization of Modification A00043 for extension of Construction Group for one month. Proposal submitted on 11 October 1974 in the amount of $6,479.

g. Definitization of Modification A00044 for addition for one US and four VN for assistance in drilling a deep well and installing a pump for 16 days. Proposal submitted on 21 February 1975 in the amount of $954.

3. Discussion of Settlement: The negotiation with PAGF to settle all outstanding actions remaining under the contract commenced on 1300 hours, 8 Nov 77. During the discussion, it was evident to the Contracting Officer that some of the outstanding issues have been negotiated to a mutually acceptable amount but no modifications were issued to finalize the results of the negotiation. It was also evident that the contractor had recovered the cost of performance as incurred, relative to the outstanding open issues and the only negotiable issue remaining was the equitable adjustment to the fixed fee arising from the above actions. The following negotiation summary is presented in the order outlined in para 2 above.

a. Definitization of Modification A00014.

(1) Change Order A00014 directed Saigon Island PDO construction performance from 1 January through 15 January 1974 with an estimated cost to exceed amount of $46,000. Subsequently by Change Orders A00019, A00023 and A00027, the period of performance was extended through 20 May 1974. By Modification A00035, the Government obligated into the contract an amount of $51,000 to cover PDO construction and this amount includes the amount committed under Modification A00014. The contractor submitted a proposal dated 27 June 1974 as follows:

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Labor</td>
<td>$21,014.00</td>
</tr>
<tr>
<td>Profit at 3.5%</td>
<td>$735.00</td>
</tr>
<tr>
<td>Material Cost</td>
<td>$23,862.00</td>
</tr>
<tr>
<td>Proposal</td>
<td>$45,611.00</td>
</tr>
</tbody>
</table>

(2) Since the contractor under the cost reimbursement principle had recovered the incurred cost by past vouchering and as provisionally approved by YCMA, the only negotiable issue remaining was an equitable adjustment to the fee. During a short discussion relative to a need by the Government for meaningful data, the contractor proposed a fee of $29 for services provided under this requirement. The difference of fee on labor cost will be absorbed as part of the fee amount of $8,320 agreed to under paragraph e below. The Contracting Officer accepted. See TAB A for pertinent documentation.
b. Definition of Modifications A00037, A00039 and A00040.

(1) The Change Orders provided for continuation of services from 1 September through 31 October 1974. During our examination of the files prior to entering into negotiation, we have discovered that the Government and the contractor had already consummated the negotiations to the mutual satisfaction of both contracting parties. For reasons unknown to the contracting officer, the proposed modification consummating the results of the negotiations were never released. The results of the negotiations are as follows:

<table>
<thead>
<tr>
<th></th>
<th>Proposed</th>
<th>Negotiated</th>
</tr>
</thead>
<tbody>
<tr>
<td>Direct Labor</td>
<td>$401,964.00</td>
<td>$374,861.00</td>
</tr>
<tr>
<td>Labor Overhead</td>
<td>$24,016.00</td>
<td>$23,657.00</td>
</tr>
<tr>
<td>Other Cost</td>
<td>200,104.00</td>
<td>185,919.00</td>
</tr>
<tr>
<td>G&amp;A</td>
<td>65,018.00</td>
<td>60,439.00</td>
</tr>
<tr>
<td>G+O Credit</td>
<td>(7,667.00)</td>
<td>(7,667.00)</td>
</tr>
<tr>
<td>Subtotal</td>
<td>$683,435.00</td>
<td>$637,219.00</td>
</tr>
<tr>
<td>Fee @ 3.5%</td>
<td>$22,963.00</td>
<td>$21,545.00</td>
</tr>
<tr>
<td></td>
<td>$706,398.00</td>
<td>$658,764.00</td>
</tr>
</tbody>
</table>

(2) The total cost negotiated was determined to be fair and reasonable. Funds were made available by Modifications A00040 and A00042 in the amount of $630,000. The difference of $28,564.00 ($658,564 - $630,000) was subsequently absorbed within the estimated amount established under the contract. All incurred costs have been recovered through periodic vouchering with the exception of the fee. The contracting officer allowed the fee in the amount of $21,345.00 as negotiated. See TAB II for pertinent documentation.

c. Demobilization costs 31 December 1973 and 30 June 1974 and Power Barge Support of 1 January through 30 June 1974:

(1) Pursuant to the Option Clause of the contract, Change Orders A00010 and A000054 were issued. In response, the contractor submitted a proposal in the amount of $262,635.00 which comprised of the following elements needed to be finalized:

(a) Demobilization as of 31 December 1973.
(b) Power Barges, 1 January through 30 June 1974.
(c) Demobilization as of 30 June 1974.

(2) DCAA, in its Advisory Report Number 726-04-5-2011 questioned costs in the amount of $72,566.00. The file is completely void of any negotiation memorandum. It can be reasonably assumed that negotiations were concluded as the contractor prepared a revised proposal dated 18 December 1974 together with a Certificate of Current Cost or Pricing Data in the amount of $246,021.00. This Certificate is signed after complete agreement as to price negotiated. DCAA, by their Advisory Report 7111-04-5-2034